Appendix M: Response Summary to Public Comments on the February 23, 2009 Draft Nimishillen Creek TMDL

This Nimishillen Creek Watershed Total Maximum Daily Load (TMDL) Report was first made available for public review from May 28 to July 11, 2008. Responses to the comments received during the review period are contained in Appendix I. Ohio EPA then submitted a final TMDL report to U.S. EPA, and U.S. EPA approved the TMDLs for bacteria and sediment on September 25, 2008. At that time, U.S. EPA requested that Ohio EPA revise the report to clarify the discussion of phosphorus loadings.

The revised TMDL report (revisions to Sections 5.1 and 7.1.3), was available for public review from February 27 through March 31, 2009. One set of comments was received, from David Burchmore representing the City of Canton on March 30, 2009.

Comment: The City of Canton is resubmitting its July 10, 2008 comments, included in the March 30, 2009 letter as Attachment A. The City of Canton believes that the previous comments were "…largely rejected or ignored…" The City of Canton believes that the response to comments in Appendix I of the report was "…both unresponsive and conclusory in nature".

Response: Ohio EPA respectfully disagrees with the City of Canton. Ohio EPA considered and responded to the comments appropriately. Please refer to Appendix I for responses to the original set of comments.

Submission of comments does not by itself compel the agency to modify a TMDL report. Ohio EPA's responsibility under the Clean Water Act is to develop TMDLs that, when implemented, will restore impaired waters. Our experience is that all parties may not agree with all conclusions or recommendations in the TMDL reports.

Comment: The City of Canton believes that Ohio EPA has not shown that its "target level" for phosphorus, or the TMDLs based on that target, are necessary to attain or maintain applicable narrative and numerical water quality standards.

Response: The selected phosphorus target is based on the best information available at this time. Positive nutrient associations with biological impairment exist and have been described in published peer-reviewed literature. Canton has provided no direct evidence to either question or refute the ecological significance of phosphorus as a cause of biological impairment as part of its comments.

Because Ohio EPA recognizes that there are multiple complicating factors in determining an appropriate phosphorus level, both the target and the results it yields are applied with flexibility. In this case, although modeling projections indicate that an effluent level of 0.4 mg/l total phosphorus is needed to meet the total phosphorus target concentration at the compliance point during critical low flow events, a level of 1.0 mg/l effluent total phosphorus is recommended. Whether any further reduction in effluent

limits will be needed should be evaluated after these limits are being attained and an evaluation of the biological condition of the streams has been completed. The report contains language to explicitly state that Ohio EPA intends to apply the target and the resulting load in a flexible manner.

Comment: The data presented by Ohio EPA in the Nimishillen Creek TMDL do not establish that current levels of phosphorus are the cause of the observed nonattainment in the mainstem, or that the specified reductions of phosphorus loads are necessary to achieve the criteria.

Response: As stated in the report, the recommended limit of 1 mg/l total phosphorus will result in an initial phosphorus reduction of 60%, not the complete TMDL reduction indicated by computer modeling. The recommendation to begin with an effluent limit of 1 mg/l acknowledges the reality that there are additional causes of impairment to the Nimishillen Creek watershed.

Canton has provided no direct evidence to either question or refute the ecological significance of phosphorus as a cause of biological impairment as part of its comments.

Comment: The City believes that the modified validation discussion did not address their original concern that the data are insufficient. Also, neither the final or revised TMDLs provide an estimate of the range of error associated with the model estimates in terms of accuracy to real world conditions.

Response: Please refer back to the response in Appendix I. Canton has not provided any data they may have that rebuts the Ohio EPA model.

Comment: The City of Canton commented on the report mentioning a three year schedule to come into compliance with NPDES permit limits. The city indicates that a period of greater than three years may be needed to meet phosphorus limits of 1 mg/l.

Response: Ohio EPA believes that a limit of 1 mg/l is technologically and economically feasible. Dischargers in the Lake Erie basin and elsewhere have been meeting this limit for decades.

A compliance schedule may be greater than three years. This was included in the report as a typical example of a reasonable time frame. At the time a renewal permit is drafted for the City of Canton Water Pollution Control Center, Ohio EPA and the City will discuss an appropriate and acceptable time frame to achieve compliance. In the report, this passage has been rephrased as follows: “A general schedule would involve a period, typically up to three years, for completion of construction and final compliance. However, depending on the nature and extent of work needed at an entity’s facility, the schedule can be adjusted to reflect specific milestones and time tables.“

Comment: The City requested an opportunity to meet with Ohio EPA to discuss its concerns in its July 10, 2008, letter and renews the request.

Response: Ohio EPA met with the City of Canton and others several times during the preparation of the TMDL; two of the meetings were held at the Canton WWTP. These meetings were hosted by the Northeast Ohio Four County Regional Planning and Development Organization (NEFCO). Ohio EPA also held a public meeting during the original public comment period.

In response to the City's comments, Ohio EPA and Canton met again on September 30, 2009, to discuss the City's comments on the draft TMDL.

Comment: The City believes that neither the final nor revised TMDLs address the incompleteness of the biological data presented in Appendices D (maximum, minimum and average dissolved oxygen data) and G (macroinvertebrate data). The data does not permit an analysis of the long-term historic trends in the watershed. Specific mention was made of Figures 4.3 and 4.6 in the draft report.

Response: The data referred to in Appendix D is not related to the data used to generate Figures 4.3 and 4.6 in the report. Appendix D shows chemical data collected during the overall water quality survey (2003 to 2005) and largely concurrent with the collection of the biological data. These data are used to inform decisions regarding attainment of water quality standards.

The data used to generate Figures 4.3 and 4.6 was collected in a follow-up survey (carried out in 2006) where data collected is used to support modeling efforts and TMDL development. This dataset has been added to the final TMDL report as Appendix J

The apparent omission of data in Appendix G is in reality a mistake in Appendix A, the aquatic life use attainment table. Macroinvertebrate data was not collected at some survey locations; thus, Appendix G (the raw macroinvertebrate data) did not have those data despite their being indicated as available in the attainment table (Appendix A). Both Appendix A and Appendix G have been revised. The following table shows the changes to Appendix A as indicated by yellow highlights (change made), strikethroughs (information removed), and gray (information added).

Attainment Table for selected Hydrologic Units within the Nimishillen Creek watershed.

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RM	Year	IBI/MIwb	ICI	STATUS[a]	QHEI	MI[2]	Location
17-460 **Nimishillen Creek** WWH							
14.2/14.3	2005	40/7.1*	38	PARTIAL	71.5	94	Eighth Street
11.1	2004	30*/6.1*	38	PARTIAL	68.5	157	Ust. Sherrick Run
	2005	--	30[ns]	(FULL)	--		
9.9	2005	32*/6.9*	--	(NON)	79.5	170	Ust. Canton WWTP
9.2/9.6	2005	31*/6.5*	Fair*	NON	77.0	173	Dst. WWTP, Faircrest Rd.
-/9.5	2004	--	26*	(NON)			
6.7/6.7	2005	32*/5.4*	38	NON	78	177	Howenstien Rd.
2.7	2005	34*/6.5*	34	PARTIAL	75	186	Farber Rd.
17-461 **Sherrick Run** WWH							
0.1	2003	34*	~~POOR*~~ Poor*	NON	78.5	11.2	Allen Ave., at mouth
17-462 **Middle Branch Nimishillen Creek** WWH							
13.6	2003	24*	~~POOR*~~ Poor*	NON	28	4.8	State Route 44
11.4	2003	40	MG[ns]	FULL	59.0	9.0	Immel Ave.
10.4	2004	--	42	NON	--	26	State Street
	2003	28*/5.6*	--		52.0		
6.8[b]	2005	30*/6.3*	38	PARTIAL	56.0	34	Easton Street
	~~2004~~	~~--~~	~~MG[ns]~~	~~--~~	~~--~~		
	2003	28*/5.6*	~~38~~ --	(NON)	67.5		
2.7/2.6	2005	36[ns]/8.0	34	FULL	73.5	40	Martindale Park
	~~2004~~	~~--~~	~~Fair*~~	~~--~~	~~--~~		
0.1/0.2	2005	32*/6.7*	Fair*	NON	64.5	46	12th Street
17-463 **East Branch Nimishillen Creek** WWH							
8.6	2004	--	50	PARTIAL	--	12	Meese Rd.
	2003	28*	--		66.0[c]		

Attainment Table for selected Hydrologic Units within the Nimishillen Creek watershed.

HUC 05040001 050

RM	Year	IBI/MIwb	ICI	STATUS[a]	QHEI	MI[2]	Location
6.4	2004	--	38	NON	--	~~21.0~~ 18.9	State Route 153
	2003	22*	--		55.0[c]		
5.9	2004	--	48	NON	--	21	Ust. Louisville WWTP
	2003	26*/4.8*	--		73.5		
4.2	2004	--	44	NON	--	30~~.0~~	Back Road
	2003	28*/5.2*	--		79.0[c]		
1.9	2005	30*/5.9*	40	PARTIAL	79.5		Hermont Ave.
	2004	--	46	NON	--	40~~.0~~	
	2003	30*/4.8*	--		75.0		
0.1	2005	34*/6.2*	Fair*	NON	60.5	43	Cook Park
17-464 **West Branch Nimishillen Creek**							
10.5/10.4	2003	40	Fair*	PARTIAL	60.5	5.4	Mt. Pleasant Street
9.3/9.0	2003	26*	Fair*	NON	47.0	9.4	Applegrove Street
4.6/4.7	2003	28*	Fair*	NON	58.5	16.8	Ust. McDowell Ditch
3.5/3.4	2004	32*/6.6*	40	PARTIAL	77.0	~~30~~ 39	Ust. Fulton Road
3.2/--	2003	22*/5.1*	--	(NON)	42.0	39	Dst. Fulton Road
0.4/0.3	2004	--	Fair*	~~PARTIAL~~ NON	--	45	Ust. Gregory Galvanizing
	2003	31*/6.7*	--		74.0		
0.1	2005	36[ns]/5.8*	Fair*	NON	69.0	46	Market Street
	~~2004~~	~~--~~	~~Fair*~~		~~--~~		
17-468 **Hurford Run** LRW,MWH,WWH							
1.8	2005	--	VPoor*	--	--	4.3	Dst. Ashland Oil(LRW)
	~~2004~~ 2003	--	VPoor*	--	--		
0.1	~~2004~~	~~--~~	~~Poor*~~	~~NON~~	~~--~~	~~8.5~~	~~At mouth (WWH)~~
	2003	24*	Poor*	NON	69.0	8.5	At mouth (WWH)
17-479 **McDowell Ditch** MWH							

Attainment Table for selected Hydrologic Units within the Nimishillen Creek watershed.

HUC 05040001 050

RM	Year	IBI/MIwb	ICI	STATUS[a]	QHEI	MI[2]	Location
1.9/1.8	2003	24	~~Low Fair*~~ High Fair	~~PARTIAL~~ FULL	--	9.7	Everhard Road
17-481 **Zimber Ditch** WWH (RM 1.2 to mouth MWH)							
2.4	2005	40	Low Fair*	PARTIAL	60.0	5.1	Applegrove Street
	2003	--	Poor*	--	--		
17-484 **Swartz Ditch** MWH							
1.2	2003	26	Poor*	~~NON~~ PARTIAL	31.5	10	Nimishillen Church Rd.
0.2	2004	--	40	FULL	--	15.5	Tyro Street
	2003	24	--		65.5		
17-486 **Tributary to East Branch Nimishillen Creek @ RM 4.67** (WWH)							
0.3	2003	28*	Fair*	NON	59.5	9.5	State Route 44

a Attainment status based on one organism group is parenthetically expressed. Attainment status was not evaluated based on Qualitative macroinvertebrate data only.

b Fish were sampled at RM 6.9 in 2003

c QHEI scoring sheets from three 2003 East Branch sites were lost; 1998 habitat scores from the same locations were substitutes.

* Indicates significant departure from applicable biocriteria (>4 IBI or ICI units, or >0.5 MIwb units).

___ Underlined scores are in the Poor or Very Poor range.

ns Nonsignificant departure from biocriteria (<4 IBI or ICI units, or <0.5 MIwb units).