



Division of Surface Water Response to Comments

Rules: Water Quality Standards Program Rules, OAC Chapter 3745-1:
OAC 3745-1-08: Hocking river drainage basin.
OAC 3745-1-15: Little Beaver creek drainage basin.
OAC 3745-1-18: Little Miami river drainage basin.
OAC 3745-1-22: Chagrin river drainage basin.

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Ohio EPA held an interested party review comment period from November 16, 2021 to December 17, 2021 regarding four Water Quality Standards Program rules. This document summarizes the comments and questions received during the associated comment period.

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 the document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

Comment 1: Hocking river drainage basin. OAC 3745-1-08. Fetters Run was assessed at two sites in 2020 under an approved Level 3 PSP and documented in a written report that was submitted to the agency for the ESO comments (MBI 2020). The existing and unverified Warmwater Habitat Use (WWH) use designation was confirmed by our results and also by prior results obtained by Ohio EPA in 2004 and 2014 both upstream and downstream from the MBI locations.

The current draft OAC 3745-1-08 has Fetters Run with an underlined +. We assume that the agency is now basing the verified status on the previous Ohio EPA surveys. We would point out that the MBI 2020 survey was conducted at sites well upstream of the historical Ohio EPA surveys so would this include an underlined o for data other than Ohio EPA? Our ESO comment was addressed and we appreciate the acceptance of our comment. (Midwest Biodiversity Institute)

Response 1: Thank you for your comment. The Fetters Run use designation is based on Ohio EPA data from 2004, 2014, 2016, 2017 and supports a WWH use designation, as noted in "Beneficial Use Recommendations Summary for Select Tributaries in the Little Beaver Creek, Hocking, Chagrin and Little Miami River Drainage Basins (OAC 3745-1)", 2021.

Comment 2: Little Miami river drainage basin. OAC 3745-1-18. Table 18-1. Use designations for water bodies in the little Miami river drainage basin. In the current draft rule, East Fork Duck Creek is listed as LRW, with a note of “Small drainageway maintenance.” MBI recommended WWH (even though it was impaired) because the habitat conditions were not the same as the concrete channels in the other branches. The QHEI at two of the three sites was 51 and 59, which is better than most urban headwater streams in the area; the third site lacked a riffle where sampled. MBI again recommends the more protective WWH use rather than the current LRW use if anything to provide an incentive to direct restoration resources where such efforts would have a realistic proposed of being successful. We realize the reputation of Duck Creek in general, but the East Fork has not been subject to the most extreme impacts and it falls under the MSDGC Consent Decree part of which requires a prioritization of restoration actions much of which will include habitat.

MBI will be conducting additional monitoring of the East Fork Duck Creek in 2022 as part of the MSDGC CSO Permit required instream bioassessment. MBI does not necessarily agree with the Agency conclusion about the use designation remaining LRW, but we are willing to set this aside pending the outcome of the 2022 bioassessment. Because we have observed incremental improvement in this stream over two surveys in 2012 and 2017, this trend should continue and result in a use designation of WWH. It is also important for the Agency to be more accepting of recommendations made by Level 3 practitioners who are actually doing the scale of work that the Agency is no longer performing. It seems a necessity since the Agency has chosen to decrease this type of work and will therefore not be aware of such changes in various locations around the state.

As Ohio EPA is aware, MBI provided two reports with recommendations for beneficial use designations in the Lower Little Miami River basin, both of which are listed on these rules’ webpage:

Biological and Water Quality Study of Little Miami River and Tributaries 2012
https://www.msdgc.org/downloads/initiatives/water_quality/2012_lmr_biological_water_quality_study.pdf

Biological and Water Quality Study of the Little Miami River and Selected Tributaries 2017
https://msdgc.org/downloads/initiatives/water_quality/2017_Little_Miami_Report.pdf

Of the 37 sites that were assessed in the 2017 Little Miami River bioassessment, 11 sites were evaluated against the Exceptional Warmwater Habitat (EWH) use, 15 sites

were evaluated against the Warmwater Habitat (WWH) use, seven (7) sites against the Limited Resource Waters (LRW) use, and four (4) for the Primary Headwater Habitat (PHWH) classification. Most of the recommendations for aquatic life use changes were originally made as part of the 2012 bioassessment (Table 1; MBI 2013) and these were used to gauge attainment status in 2017. The lone recommended change in 2017 different from 2012 is the PHWH Class 2 assignment to the unnamed tributary to Duck Creek from PHWH Class 1.

The following table is from Biological and Water Quality Study of the Little Miami River and Selected Tributaries 2017.

https://msdgc.org/downloads/initiatives/water_quality/2017_Little_Miami_Report.pdf

Table 1. Summary of recommended aquatic life use (AQLU) changes based on use attainability analyses from the 2012 and 2017 Little Miami River biological and water quality assessments by stream segments evaluated.

Current AQLU 2012	Segments Assessed 2012	Recom. AQLU 2012	Segments Assessed 2017	Recom. AQLU 2017	Ohio EPA AQLU Changes
None	11	WWH	2	WWH	Pending
None	1	LRW	1	LRW	Pending
None	8	PHWH3A	1	PHWH3A	Pending
None	7	PHWH2	3	PHWH2	Pending
WWH	1	PHWH3A	0	--	Pending
LRW	3	WWH	2	WWH	Pending
LRW	1	PHWH1	1		Pending

WWH – Warmwater Habitat; LRW – Limited Resource Waters; PHWH – Primary Headwater Habitat

Based on the 2012 and 2017 MBI reports combined, Ohio EPA compared recommendations from these reports for undesignated streams. The table below lists those streams in the Little Miami River basin for which Ohio EPA either designated or verified use designations in the unnamed tributaries assessed by MBI in Lower Little

Unnamed tributary (Little Miami River RM 0.83)	Designate WWH, AWS, IWS, PCR
Unnamed Tributary to Clough Creek at RM 3.06	Designate WWH, AWS, IWS, PCR
UT at RM 0.95 to UT to Clough Creek at RM 3.06	Designate WWH, AWS, IWS, PCR
<u>McCullough Run</u>	<u>Verify WWH (and AWS, IWS, PCR???)</u>
Unnamed tributary (McCullough Run RM 1.08)	Designate WWH, AWS, IWS, PCR
Little Duck Creek (Duck Creek RM 2.0)	Designate WWH, AWS, IWS, PCR
Unnamed tributary (Duck Creek RM 4.8)	Designate LRW-SDM, AWS, IWS, PCR

Unnamed tributary (Little Miami River RM 13.1)	Designate WWH, AWS, IWS, PCR
Unnamed tributary (North Branch Sycamore Creek RM 5.4)	Designate WWH, AWS, IWS, PCR
Unnamed tributary (Sycamore Creek RM 1.12)	Designate WWH, AWS, IWS, PCR
Unnamed tributary (Polk Run RM 0.70)	Designate WWH, AWS, IWS, PCR
Unnamed tributary at RM 1.77 to unnamed tributary at Polk Run RM 0.70	Designate WWH, AWS, IWS, PCR
Unnamed tributary (Polk Run RM 1.79)	Designate WWH, AWS, IWS, PCR
Unnamed tributary (Sugar Creek RM 3.33)	Designate CWH, AWS, IWS, PCR

North Branch Sycamore Creek	Verify Current WWH, AWS, IWS, PCR
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All of the changes MBI recommended for undesignated streams were accepted. In the draft IPR rules, Ohio EPA lists McCullough Run in OAC 3745-1-18 designated as “default WWH” with an asterisk (“default” WWH designated from the 1978 or 1985 WQS). MBI submitted Level 3 data that supports McCullough Run as Level 3-verified as WWH so this should appear as verified with an “o” symbol. We do appreciate the efforts made by the agency to get these recommendations aligned correctly with the listings in the proposed BUDs for 2020.

Since 2011 MBI has also made extensive recommendations for Primary Headwater Habitat (PHWH) classes which was an outcome of having collecting all pertinent data (fish, macro- invertebrates, amphibians, QHEI, and HHEI) at the same time for any site draining less than 2.5 square miles. This approach allowed the resulting data to determine the use designation outcome as opposed to an *a priori* application of only the PHWH methodology. Relying only on the latter is a flawed practice that can result in erroneous use designation assignments in small headwater streams. For example, see MBI comments to Ohio EPA of November 25,

2020 re: "Great Miami River Drainage Basin, OAC 3745-1-21 (2017 Whitewater River survey)":

"Seven of the sites that are unique to the MSDGC/MBI survey were determined to be Primary Headwater Habitat, five as PHW Class 2 and two as PHW Class 3A. While we are not expecting the agency to act on the PHWH recommendations, this study illustrates how to properly distinguish between WWH and PHWH as opposed to the current over-reliance on rules-of-thumb."

MBI has submitted reports and tabular results which include recommendations for Primary Headwater status based on Level 3 biological and habitat assessment results. These and preceding recommendations have not been included in the Fact Sheet or other documentation to our knowledge. In order to ensure that these data are readily available and useful in the future, we strongly recommend that these data be documented in a publicly available database with links to the data and reports. This would allow use of this information to compare to future sampling and future regulatory decisions (e.g., Section 401 certification) in these streams, as well as to provide statewide information about the results of sampling small headwater streams.

Part of the Agency November 2021 Response to comments stated:

"Regarding the recommendation that these [PHW] data be documented in a publicly available database, we agree. Again, this remains a challenge because EA3 is the main repository of biological and habitat data used by the Agency and it does not currently have the capacity to accept only PHW macroinvertebrate data. Although discussions about expanding EA3 to accept PHW have periodically occurred, other competing priorities have hampered efforts to develop that capacity."

MBI recognizes the scope of this rulemaking. We appreciate the concurrence of the need for PHW data to be documented so that the data are available to others, errors can be avoided, and future decisions can be more informed. We encourage and look forward to this effort and offer to advise and contribute. We understand the difficulties that the agency has had in managing headwater streams from a policy perspective, but we see no harm in maintaining a publically available database.
(MBI)

Response 2: Regarding East Fork Duck Creek, Ohio EPA looks forward to seeing additional data from MBI's 2022 bioassessment.

McCullough Run has been edited from default to verified; thank you for the correction.

Regarding the Primary Headwater (PHW) data, we agree that PHW data need to be in a publicly available database, but this remains a challenge due to capacity and compatibility issues with our main repository, EA3, as we've stated in previous responses to comments. This is an ongoing issue for Ohio EPA, but one that we continue to work towards solving.

Comment 3: A Special Note for this IPR: For MSDGC, the issue of identifying PHWH streams to the correct class is even more important for identifying requirements for new stormwater discharges that are being created as CSOs are eliminated in pursuit of meeting the terms and conditions of the CSO Consent Decree. Some of these actions impact the highest quality headwater streams in the MSDGC Service Area that are located in the county parks and forests of the area, thus getting the WQS correct in these instances especially matters. We hope the agency will view the PHWH issue as having consequences beyond 401 certifications, which seems to be driving the virtual policy paralysis that currently grips this issue. When this issue first arose during the first round of MBI/MSDGC bioassessments during 2011-14, we were advised by the agency to treat PHWH Class 2 and 3 outcomes the same as if WWH applied. While this was a better-than-nothing interim approach, we believe that some of these streams have exceptional qualities that WWH requirements may not adequately protect. In the meantime, these projects continue apace under the interim approach. (MBI)

Response 3: We understand and are well aware of MBI's concerns. We agree there are challenges that need to be resolved such as those described in the comment, beyond the data management aspect and into policy implementation. Resolving this issue remains a challenge to be solved, but that goes beyond the scope and goal of this particular rulemaking. Please note that Ohio EPA will be surveying headwater streams in 2023 and these data will be used to support and inform future rule making.

End of Response to Comments