

2/16/2018

RE: Comments on Ohio's Domestic Action Plan

Dear Lake Erie Stakeholder,

An initial draft of Ohio's Domestic Action Plan was released on August 25, 2017 with public comments due September 25, 2017. The Plan was developed by Ohio pursuant to the requirements of the Great Lakes Water Quality Agreement of 2012, Annex 4: Nutrients and addresses Ohio's portion of Lake Erie. This Plan will serve to outline the actions proposed by the State of Ohio in cooperation with USEPA, other states bordering Lake Erie, and numerous other public and private stakeholders.

More than 30 organizations and individuals sent written comments, and 61 people signed in at in-person public comment meetings with 22 making oral comments for the record. We have amended portions of the Ohio DAP in response to some of the comments. Our response to remaining items is summarized below. Comments are grouped by topic in the order that the topic appears in the Ohio DAP. We have grouped and paraphrased comments that were similar. The number in parentheses reflects the number of times a similar comment was raised.

Agricultural Land Management

Manure

Limit manure spreading to agronomic rate **(10)**

Ohio's nutrient application standards limit manure applications to be applied at the nitrogen requirements of the next crop and/or the phosphorous needs of the crop rotation, whichever is less. The standards are enforced for permitted facilities and non-permitted facilities that have a documented discharge resulting from a manure application.

Better tracking of livestock numbers and/or manure placement. **(3)**

ODA does not currently have the statutory authority to conduct such an assessment and would require a change in state law. This is in addition to any necessary funding and staffing that would be needed to accommodate such an assessment.

Write regulations for design, management, and closure of manure stockpiles/wastepile with a max storage time. **(2)**

ODA already has standards in place for the use of manure stockpiles, including locations, setbacks, construction, amounts and use (Appendix A Table 2 to rule 901:10-2-14: Land application restrictions and setbacks Land Application Restrictions).

No exceptions to frozen ground regulations. (2)

Under current law, there have been no exceptions made for frozen and snow-covered manure applications from permitted facilities since 2006. In cases where violations have occurred, the ODA Division of Livestock Environmental Permitting has taken enforcement actions including penalties. The division requires facilities to have enough manure storage to ensure they can get through the winter without applying. If they do have an emergency, we have required them to find other storage alternatives, haul to a treatment facility or construct emergency storage.

For other livestock operations, the passage of Ohio Senate Bill 1 prohibited frozen ground applications.

Prohibition from spreading manure needs to be more substantial; prohibit application to saturated soils. (1)

This issue was already addressed in Ohio Senate Bill 1 which states that no person in the Western Basin of Lake Erie shall surface apply manure when the top two inches of the soil are saturated from precipitation.

Aggressively coordinate the technology of manure transportation and transformation. (1)

ODA agrees with the importance of this item. We strongly encourage the use of new technologies and there are currently several research and demonstration projects looking into the technology and economics of transforming manure into a marketable material, including projects receiving funding through the Ohio Department of Higher Education.

Model current regulations in place that control nutrient loading of biosolids for land application (OAC 3745-40 Sewage Sludge) to include chemical fertilizers and animal manure. The required biosolids practice is to have all fields tested prior to application so nutrients are not over-applied. Adopting, monitoring and enforcing this practice for chemical fertilizer and manure applications would support responsible agriculture practices and bring non-compliant farmers to adopt the more progressive measures to reduce nutrient loading. (1)

Rules put in place for biosolids application were modeled after ODA's rules for permitted facilities and standards utilized by Ohio's Soil and Water Conservation Districts.

Biosolids

Write regulations for design, management, and closure of Biosolids wastepiles with a max storage time. (2)

The current set of biosolids rules can be found at OAC Chapter 3745-40 Sewage Sludge. Also see the Biosolids Program at Ohio EPA.

Evaluate biosolids along with commercial fertilizer and manure in the Tri-State Fertility Guide and the Phosphorous Index. (1)

ODA already has regulations in place in OAC 3745-40, 901:10 and 901:13.

Better monitoring of biosolids applications (1)

Currently, Ohio EPA has authority in this area. Further discussion would be necessary to determine how this monitoring would occur, which agency would do it and what standards would be followed.

Enforcement

ODA creating an enforcement strategy that extends beyond relying on citizen complaints to find potential violations, make enforcement of the fertilizer and manure application restrictions and fertilizer certification requirements a top priority... Establish fair, clear and consistently enforced consequences and penalties (i.e. fines, withdrawal of funding) for non-compliance with policies and plans; Dedicate adequate human and financial resources committed to support compliance monitoring and regulatory enforcement; and Create an inspection program that will randomly assess compliance with plans, programs and rules targeted at key times when nutrient pollution risk is highest. (6)

Since transferring the Division of Soil and Water Conservation from the Ohio Department of Natural Resources to the Ohio Department of Agriculture, the Division of Soil and Water Conservation has acquired the authority to require corrective actions and assess civil penalties against non-permitted facilities that are in violation of Ohio Agricultural Pollution Abatement Laws. This additional authority is assisting significantly in establishing “fair, clear and consistently enforced consequences and penalties” for noncompliance.

Clarify that enforcement actions extend beyond the certification requirements and restrictions enacted by the Clean Lake Erie Act to also include violation of other rules such as those under the Livestock Environmental Permitting and Agricultural Pollution Abatement Programs. (1)

See response to previous item.

Specific BMPs

Require adherence to responsible practices, as well as to stipulate reporting obligations to share rates of adoption, and anticipated timeframes for implementation projects and nutrient reduction projections. (3)

State agencies do not establish regulations, it is the role of the legislature to enact new laws.

Require soil P and N tests for all farms. (3)

State agencies do not establish regulations, it is the role of the legislature to enact new laws.

Require farmers to inject/incorporate manure/nutrients subsurface and eliminate broadcast applications of nutrients (3)

State agencies do not establish regulations, it is the role of the legislature to enact new laws.

Add eligible practices considered for LE-CREP or general program funding for the WLEB that would likely need to be specified in the 2018 Farm Bill; use only nutrient retaining practices (2)

The ODA Division of Soil and Water Conservation has targeted state cost share funds towards several conservation practices that have been demonstrated to be effective at reducing the nutrient loads. These conservation practices include: soil testing, nutrient incorporation, drainage water management, cover crops, and manure storage facilities.

Develop regulations which reflect BMP's appropriate for terrain, crops, and land usage, and implement programs directed to reducing nonpoint source agricultural nutrient runoff; include lower erodible fields in eligibility (2)

State agencies do not establish regulations, it is the role of the legislature to enact new laws.

Require producers ≥ 50 acres to develop and follow plans that include the best management practices they will implement to properly manage nutrients. (1)

State agencies do not establish regulations, it is the role of the legislature to enact new laws.

Don't allow application of two years of fertilizer (1)

State agencies do not establish regulations, it is the role of the legislature to enact new laws.

Draw down high soil test P fields (1)

We agree that this should be pursued. At this time there is limited information on the best approach to this problem that will also maintain crop yields. It will be a high priority for research in the coming years.

General Ag Related

Consider climate change; increases in rainfall and water flows across ag lands (4)

There are no plans to do this at this time.

Voluntary measures by agriculture are inadequate. (3)

State agencies do not establish regulations, it is the role of the legislature to enact new laws.

Until ... improvements are realized, the state should consider enacting a moratorium on any new CAFO permits in the WLEB watershed. (2)

There are no plans to do this at this time.

Appreciate commitment to collaboration with federal Farm Bill (1)

This remains as an action item in the Ohio DAP for 2018.

Regulate agriculture discharge that is "released by overland drainage and released over a linear length of 20' or less" in the same way as point sources (i.e. subject to CWA). (1)

There are no plans to do this at this time.

Close roads and use the space to make fields larger, use some of the space for additional BMPs (1)

There are no plans to do this at this time.

Comments from Ag Representative Orgs

Track ag programs/installation with assistance of ag rep groups (2)

We will take this under consideration.

Object to multi-model approach for priority watersheds (generally or specific items) (2)

This discussion has been changed in the latest version of the DAP.

Establish a research clearinghouse that informs Ohio's agricultural community of the efforts being undertaken by ODA and others. (1)

There are no plans for ODA to do this at this time. OSU Extension and Ohio Sea Grant do have research resources available on the Internet at their sites.

Encourage state to work closely with the farmers and associations to solicit additional agricultural input (range of actions) (1)

We will continue to include these stakeholders in the discussions in support of the Ohio DAP.

Develop a panel of experts to aid in evaluating the economic implications associated with the installation of wide-spread nutrient management practices in the WLEB. (1)

There are no plans to do this at this time.

SWCDs should serve as a conduit for future state funded initiatives implementing BMPs. (1)

Some state funds have been directed via the SWCDs, and if additional funds are allocated from the state legislature, it could go this route again.

Concerns about the reliability and completeness of data that show agriculture as the major source. (1)

Multiple independent sources both inside and outside of state agencies, including research universities, USGS, and Ohio EPA, indicate that agricultural nonpoint sources are the largest single source of nutrients to Lake Erie by a wide margin. This consistent weight of evidence from multiple independent sources is the best available information. We are continuing to work with all interested parties to develop new methods and refine the data to get a more detailed picture of sources at finer scales and smaller watersheds.

Refer to comments submitted to Ohio EPA RE: OAC 3745-1-04; resistance to manure in waters of the state rules (1)

The established rulemaking process will be followed for any proposed changes to rules, as indicated in the Ohio DAP. Comments to Ohio EPA will be considered as part of that process.

Any identification or targeting of specific (non-permitted) operations or individuals (producers) in a public capacity is unacceptable. (1)

There are no plans to do this at this time.

Community Sources

Concerns about/oppose the proposed 1 mg/L P limit in statute. Consider cost/benefits (3)

Additional language about the process for adding this limit in statute have been added to the Ohio DAP, to state that the existing legislative change process would be followed. Considerations of cost/benefit would be part of the legislative process and affected parties would be able to present information about their specific conditions as part of the process.

Support P limit in statute; consider pairing with ag regulations (2)

At this time, there are no additional regulations proposed for agriculture (see previous section).

Waste water treatment plants should have a target of 0.5 mg/l where economically feasible (1)

All major (>1 million gallons per day) dischargers in the Lake Erie watershed of Ohio have a 1 mg/L total P limit in their permits. To meet this limit, most operate at discharge rates of around 0.5-0.6 mg/L already so that their monthly averages remain below the limit. Reducing the limit would mean that the treatment plants would have to install additional equipment, which typically costs in the millions of dollars and translates into rate increases for users. Since community sources generally, and point sources in particular, are not the most significant source of nutrients, making this a requirement would not be the most efficient use of resources.

Add requirement for Ohio MS4 permits to monitor nutrient load information (1)

The MS4 permit does require the permittee to evaluate any pollutant loading to the municipally owned storm sewer systems which is identified in a corresponding TMDL (Total Maximum Daily Load) study. The permittee is required to evaluate the implementation of the six minimum control measures with consideration to reduce the specific pollutant(s) which may be introduced into the MS4 that are identified in the TMDL. All six minimum control measures are monitored by the permittee. If you wish to address your comment further for consideration, the MS4 permit will expire September 10, 2019. There will be a public notice of the draft permit approximately 60 to 90 days prior to the termination date of this permit where you can submit your comment for further consideration. Please refer to http://epa.ohio.gov/dsw/permits/GP_MS4StormWater.aspx on updates with respect to this permit and subsequent renewals.

Develop water management BMPs for heavy rains. (1)

More emphasis will be placed on non-point BMPs that help address water management and that will also reduce the “spike” in flows which often result in higher nutrient levels. The goal is to achieve multiple benefits from BMPs to address not only nutrients but water management. These considerations will be part of the MS4 and Rain Water Manual revision process.

Ban phosphorus fertilizer in residential and commercial use (1)

Soils in this part of the country typically contain sufficient phosphorus to support the growth of lawn grasses. Most fertilizer sold for residential use in northern Ohio, except some seed starter fertilizer, is already formulated as phosphorus free to protect water quality. Commercial fertilizer is important for supporting agricultural production, and if needed is typically applied by farmers at crop removal rates based on soil test values and needs of specific types of crops.

Fee system for new and existing septic system installations or modifications, to support related nutrient reduction activities. (1)

Ohio Department of Health rules for sewage treatment systems require that all new and existing systems are issued an operation permit with an identified maintenance schedule, and for discharging systems, a sampling schedule to ensure the system is meeting discharge standards. As of January 1, 2015, all new and modified systems are issued an operation permit by the local health jurisdiction. Health districts are in the process of conducting inventories and issuing operation permits to existing systems, and addressing system problems or nuisance conditions.

Explain method of targeting and prioritize inspections in areas that lack adequate data on the status of HSTS; provide reporting (1)

Ohio Department of Health rules for sewage treatment systems effective January 1, 2015, require that all new and existing systems are issued an operation permit with an identified maintenance and

sampling schedule. Local health districts are in the process of conducting inventories of existing systems, and are provided guidance in the rules to prioritize system inventories in areas of known surface or ground water contamination from failing systems, or areas of high density failing sewage systems. As systems are inventoried and issued an operation permit, local health districts will work with system owners to correct system problems or nuisance conditions. Local health districts are required to report on operation permits issued to the Ohio Department of Health.

Provide additional funds to assist homeowners with failing HSTs (1)

Starting with the passage of the American Recovery and Reinvestment Act in 2009, and continued funding support from Congress to date, Ohio EPA, in coordination with the Ohio Department of Health, has provided between \$1 million and \$15 million annually (over \$35 million) to local counties and health districts to repair or replace failing home sewage treatment systems for low to moderate income homeowners. Ohio EPA recently released the application for funding for 2018 to continue this program.

Restoration of Ecosystem Services

Add increasing acres of protected, restored, and enhanced coastal and inland wetlands in targeted sub-watersheds (1)

These efforts are primarily privately led; there are no existing state programs that could implement such an action. However, we have listed some of the private efforts in the most recent edition of the Ohio DAP.

Additional response under development

Monitoring, Tracking

There are not enough sample sites to provide adequate nutrient source analysis in the Maumee watershed. (5)

The Ohio DAP identifies several new monitoring sites that are intended to provide refinements to our source loading analysis. In addition to these stations, Ohio EPA rotates through subsets of the watersheds each year as part of the routine assessment activity. Where assessments suggest use impairments and TMDLs are developed or revised, additional studies are conducted to look at sources and suggest reductions as part of TMDL development. TMDL studies in Annex 4 priority watersheds will be doing nutrient source analyses as described in Appendix A of the Ohio DAP. Although these additional analyses will not be conducted in every watershed in every year, this will provide additional information throughout the Annex 4 priority watersheds over time using existing resources and capacity. If additional resources become available, the schedule and number of stations can be revisited.

Clear goals and milestones must be outlined for each subwatershed and project to ensure accountability and progress toward the 20% and 40% goals. (2)

Additional goals and milestones will be under development for subwatersheds on a rolling basis, once a methodology is developed as expected in spring 2018.

Incorporate the Lucas County Nutrient inventory in this reporting; (1) include an effort to inventory privately implemented practices, which could be accomplished through third party data collection efforts (1)

The Lucas County Nutrient Inventory is a local initiative and is informational in nature. We have incorporated a listing of local and non-governmental actions to reduce nutrient loads, such as this example, into the latest edition of the Ohio DAP.

Further identify sources of N and P (1)

Exploration of ways to further refine the source identification for nutrients will be conducted as part of the next round of the Nutrient Mass Balance Study underway at Ohio EPA (expected publication December 2018).

Determine and state the economic costs for water treatment, capital, monitoring, and user impacts caused by harmful algae. (1)

Independent researchers have been studying various components of this question. We expect that information on public costs will continue to be a question for researchers in public policy and that more information will be published in coming years.

Universal metrics of success, used throughout the watershed, must be identified (1)

A methodology to consistently measure success based on actual water quality monitoring will be utilized throughout the Annex 4 priority watersheds as identified in both the Ohio and USEPA Domestic Action Plans.

The role of modeling should be more explicitly outlined in the final plan (1)

Modeling has been and will continue to be a component for addressing the nutrient management issue. It is recognized that modeling does have its limitations but there are time and situations where modeling can play an important role, especially in evaluating different policy and practice scenarios. When possible, actual field verification and monitoring will be utilized for determining outcomes and progress toward established goals.

Needs better verification and documentation guidelines in the plan. (1)

As previously stated, verification and documentation will be utilized when practical and possible. The objective is to have specific results /outcome verification processes developed and incorporated into programs and funding initiatives.

General Support

Recommend that programs and practices be based on sound science with quantified financial-environmental impacts determined through cost-benefit analysis; prioritize nutrient reductions by determining the reduction amount and cost for various options (6)

As part of the adaptive management process, we expect to further develop priorities for nutrient reduction as more research information becomes available about costs, effectiveness, and barriers to adoption of practices.

Strategies must be developed prior to 2020 in preparation for the 20% goal not being met. The strategies for not meeting the targets must be executed in 2020. (3) Development of Adaptive Management Process “trigger mechanisms” should be inclusive (1)

We intend to have the Advisory Committee address these issues once it is formed in 2018.

The final DAP should include specific, measurable, and timely goals, objectives, and tactics tied to a timeline and estimates of load reductions. (3)

We have attempted to be as specific as possible, but we agree that further work needs to be done to continue to refine timelines and milestones. The Ohio DAP is intended to be updated and revised on a regular basis through the ongoing work of the Ohio Lake Erie Commission in conjunction with the proposed Advisory Committee once it is formed in 2018.

Declare impairment (3)

The nearshore waters of Lake Erie, including the area around the Toledo water intake, have already been listed as Impaired in the Integrated Report (2016). Ohio EPA is working on developing use attainment metrics that could be used to determine attainment status for the open waters of Lake Erie (i.e. whether the open waters of the Western Basin of Lake Erie would be listed as Impaired in a future Integrated Report).

Ensure that subwatersheds’ nutrient contributions to Lake Erie are considered in WIPs; expand coverage of WIPs (2)

Achieving nutrient load and flow weighted mean concentration targets as established by the Annex 4 process and documented in specific watersheds will be central to the development of watershed implementation plans. As of February 2018, there are 26 nine-element Nonpoint Source

Implementation Strategic (NPS-IS) plans (at HUC-12 scale) approved in Lake Erie Watershed. There is one (1) currently under review. There are an additional 25 *Equivalent* NPS-IS Lake Erie watersheds (HUC-12s) approved for Lake Erie Watershed (that were included was part of approved plans developed with Indiana watersheds). Additional funding to expand the coverage of nine-element plans has been made available, and there are over a dozen new plans (at HUC-12 scale) in development in the Lake Erie watershed.

The current listing of approved plans can be found here:

Ohio Approved NPS-IS plans at HUC-12 scale:

<http://www.epa.state.oh.us/dsw/nps/index.aspx#1789310196-current-list-of-watersheds-with-approved-9-element-nonpoint-source-implementation-strategies> ;

Equivalent plans: <http://www.epa.state.oh.us/dsw/nps/index.aspx#1789310197-current-list-of-watersheds-with-equivalent-nonpoint-source-implementation-strategies>-

Form an agreement with neighboring states for consistent programs and policies throughout the watershed, not just in Ohio. (1)

The Western Basin of Lake Erie Collaborative between Ohio, Michigan, and Ontario provides a framework for state and province level coordination. Ohio is also working closely with the states on the US side and with the province though the Great Lakes Water Quality Agreement Annex 4 Subcommittee (and with the two federal governments) to address consistency in nutrient reduction programs much as feasible, given governance needs and constraints. The Annex 4 Subcommittee has regular monthly conference calls and meets in person twice a year.

Promote water infrastructure funding and projects. (1)

As detailed in the Collaborative Framework for Ohio, Ohio EPA has already made a significant amount of additional funding available for water and waste water treatment plants through existing funding sources. The State of Ohio agrees that additional funds for water infrastructure generally would be very beneficial. The state is advocating for additional federal funding of these projects through various channels including multi state, regional Great Lakes organizations (for example, the Great Lakes Commission) as well as directly with our federal partners.

Tax or fee to support nutrient reduction efforts generally (1)

This would require action on the part of the legislature, and we do not know of any efforts to implement a tax or fee for this purpose at this time. The Ohio Legislature has already allocated (\$3M) funds to support nutrient reduction in the state budget (of 2016) as the Ohio Clean Lake Initiative. The Ohio Department of Higher Education has also allocated funds from its budget to support research on Harmful Algae Blooms (HABRI).

Adamantly oppose any attempt (via OLEC oversight) to prevent organizations from receiving federal funding. (1)

The intention of OLEC interacting with federal funding groups is not to prevent the awarding of funds for any particular project, but to provide state informed advice on how individual projects may or may not meet state needs as identified in the Ohio DAP and the Ohio Lake Erie Commission's Lake Erie Protection and Restoration Plan, and to better coordinate federal opportunities with state led efforts.