



January 17, 2017

**VIA HAND DELIVERY**

Ohio Environmental Protection Agency  
Division of Surface Water – Permits Processing Unit  
50 West Town Street, Suite 700  
P.O. Box 1049  
Columbus, OH 43216-1049

Re: **Written Comments to Ohio's General Permit for Storm Water Discharges Associated with Industrial Activity (NPDES Permit No. OHR000006)**

Dear Sir/Madam:

Pursuant to Ohio EPA's Public Notice, issued on November 24, 2016, The Ohio Manufacturers' Association ("OMA") is hereby providing Ohio EPA with written comments to Ohio's General Permit for Storm Water Discharges Associated with Industrial Activity ("GSWP"). OMA also attended Ohio EPA's public hearing on January 9, 2017 and provided oral comments related to the GSWP. The following written comments are in support of, and in addition to, OMA's oral comments provided at the public hearing.

The OMA is dedicated to protecting and growing manufacturing in Ohio. The OMA represents over 1,400 manufacturers in every industry throughout Ohio. For more than 100 years, the OMA has supported reasonable, necessary and transparent environmental regulations that promote the health and well-being of Ohio's citizens.

A. **Exemption for "Non-Industrial" Pollutant Sources**

Ohio EPA's proposed GSWP contains a provision that allows permittees, that may exceed a benchmark due to a neighboring facility's storm water run-on, to document and account for this situation (see Part 6.2.1.2). OMA appreciates the Agency's recognition of these off-site storm water influences in accounting for a permittee's storm water discharge from its facility and its industrial activity conducted on its premises.

Part 6.2.1.2 provides, in pertinent part, as follows:

Ideally your storm water samples will contain only runoff from your site. However, storm water from a neighboring facility can run-on

and comingle with your regulated storm water discharge, possibly adding contaminants not found at your facility. The SWPPP site description shall document the locations and sources of any run-on. If you feel your discharge is exceeding a benchmark value due to run-on from neighboring properties you can collect and analyze samples of the run-on for purposes of evaluating impacts to your regulated storm water discharge and notify your Ohio EPA District Office. All sample data and findings shall be maintained with your SWPPP.

So as not to overload Ohio EPA District Officers with these “run-on” notice situations, we recommend that such notices be reported in the comment section when reporting the benchmark monitoring data in eDMR.

While it appears that Ohio EPA is acknowledging that storm water run-on from a neighboring facility may influence the storm water run-off from a permittee’s facility, the GSWP does not contain any specific language that such run-on influence may be deducted from a facility’s discharge in determining whether a benchmark has been exceeded. As a result, we recommend that the following language be added to Part 6.2.1.2: “If samples of run-on from neighboring properties demonstrate that such run-on impacts a facility’s storm water run-off discharge, the contaminants from the run-on may be deducted from the facility’s storm water run-off discharge in determining whether a benchmark has been exceeded.”

While Part 6.2.1.2 allows for the recognition of “natural background pollutants” in determining whether a benchmark has been exceeded, there is no likewise recognition for “non-industrial” pollutant sources, which are commonly part of a facility’s building materials (e.g., zinc from galvanized steel roofing and siding, galvanized roof gutters and painted surfaces; copper from copper or brass water pipes and fittings), road traffic on or off the industrial property (e.g., zinc in tire dust), or in items beyond the control of the industrial facility (e.g., zinc in potable city water).

These sources are common to all industrial sites, whether in or out of the storm water permit program. They are present with or without the industrial activity, at all industrial sites regardless of their Standard Industrial Classification (“SIC”) codes or whether exempted or not. Moreover, there is no feasible “corrective action” or reasonable “control measure” to address contamination from these ubiquitous “non-industrial” sources. Because of this anomaly, OMA recommends that Part 6.2.1.2 also include a provision that contamination from a facility’s “non-industrial” sources can also be deducted for purposes of determining whether a benchmark has been exceeded, similar to the provision and procedures for “neighboring run-on.” We recommend that the following language be included in Part 6.2.1.2:

Ideally your storm water samples will contain only runoff from the industrial activities at your site. However, storm water may come into contact with building materials and other non-industrial sources at your facility, possibly adding contaminants not found in the industrial activities at your facility. The SWPPP site description shall document the locations and sources of any non-industrial sources, such as building materials. If you feel your discharge is exceeding a benchmark value due to contact with non-industrial sources, you can account for non-industrial sources for purposes of evaluating impacts to your regulated storm water discharge and report these non-industrial source impacts in the parameter comment section when reporting the benchmark monitoring data in eDMR. All sample data and findings shall be maintained with your SWPPP. If samples of storm water from non-industrial sources demonstrate that such sources impact a facility's storm water run-off discharge, the contaminants from the non-industrial sources may be deducted from the facility's storm water run-off discharge in determining whether a benchmark has been exceeded.

#### B. Sampling After Measurable Storm Event

Part 6.1.4 of the GSWP requires that a grab sample from a discharge resulting from a measurable storm event be collected within the first 30 minutes of a measurable storm event ("first flush"). If it is not possible to collect the sample within the first 30 minutes, then the sample must be collected as soon as practicable and rationale for such failure be documented in the SWPPP.

Because of ongoing operational demands, often times it is not feasible to grab samples within the first 30 minutes of a rain event. Manufacturing facilities are conducting ongoing operations with personnel busy performing operational duties. The thought to grab a storm water sample within the first 30 minutes of a rain event is probably not the top priority on the manufacturing floor. Ohio EPA needs to recognize this real world timing demand and balance this time restriction with the need for the information within the first 30 minutes.

The current benchmarks in the GSWP are based on very conservative assumptions, resulting in very low values that are difficult to achieve under most circumstances. Coupled with the requirement to compare these strict benchmarks against the "first flush" storm water, that typically reflects the worst storm water quality, makes complying with the benchmarks very difficult, if not impossible.

For example, the current benchmarks included in the GSWP for the metals that are based on hardness reflect the lower Outside Mixing Zone Maximum ("OMZM") in Ohio's aquatic life water quality values. Instead the OMA suggests that these benchmarks reflect higher Inside Mixing Zone Maximum ("IMZM") in Ohio's aquatic life water quality

values. The IMZM values should be considered since the current storm water sampling requirement is the “first flush” which takes place within 30 minutes of the start of the discharge, which is more akin to a wastewater point source discharge with IMZM requirements. One additional benefit of raising the metals benchmarks to the IMZMs would be to account for the contributions from non-industrial sources of these metals, such as zinc, while being protective of Ohio’s water quality.

If Ohio EPA does not think it feasible to move to IMZM values then Ohio EPA should consider moving to a longer sampling window, which would better reflect the purpose of using the lower OMZM as the benchmark. Other states (e.g., California, Washington, and Oregon) have moved to much wider 12-hour sampling windows with justified reasoning.

A longer period of time (at least 4 hours) will adequately balance the purpose behind the sampling with the operational demands of a facility, allowing personnel time to grab the sample while not rushing off from the job at hand. Allowing for more than 30 minutes provides for better coordination with operational responsibilities and planning that will improve the quality of the sampling procedure.

As a result, we recommend that Part 6.1.4 be revised to allow up to 12 hours after the measurable rain event to grab the storm water sample. As an alternative, we would recommend that at least 4 hours be provided.

### C. Re-evaluation of Benchmarks

In the last GSWP, Ohio EPA included a provision that benchmarks could be re-evaluated based on sampling data collected during the 5-year period of the previous GSWP. At the time of the last GSWP, neither Ohio EPA nor permittees had any sampling data on storm water run-off because such information was not required in the previous GSWP. Now that Ohio EPA has 5-years’ worth of data, that data should be analyzed to identify if any benchmarks are unreasonably achievable and may need to be revised accordingly.

Our review of the data for the past five years indicates that several benchmarks are not realistic, including but not limited to at least the zinc and the Nitrate plus Nitrite Nitrogen benchmarks monitoring concentrations. Based on the zinc numbers, facilities are experiencing benchmark exceedances in the range of a 20-70% failure rate, which means that almost half of Ohio’s industrial activity facilities are experiencing exceedances of the zinc benchmark. As stated previously, zinc is not even present in the industrial activities at most of the facilities, and most zinc is coming from building components at the facility, or from sources beyond the control of the facility.

The problem is compounded when the facility is required to undertake “corrective action” to address the zinc exceedances. What “corrective action” can address this issue short of reconstruction of the building components? It is imperative from a regulatory perspective to avoid a situation of “perpetual non-compliance” even when all reasonable control measures have been undertaken.

As mentioned previously, using the IMZM levels for zinc, as well as for other benchmarks based on OMZM values, would be a great start to addressing this low benchmark issue.

Specific concerns related to Nitrate plus Nitrite Nitrogen benchmark monitoring concentrations are further detailed in Comment E below.

**D. Monitoring “Outfalls”**

There is confusion in the field with Ohio EPA inspectors and facility personnel as to what constitutes an “outfall” for purposes of storm water monitoring. There is no definition or guidance in the GSWP as to what is an “outfall.” We recommend that the GSWP include a definition of “outfall” similar to that found in Indiana’s general storm water permit for industrial activity (see IAC 15-6-4). We recommend that the following definition of “outfall” be added to the GSWP:

“Outfall” means the point of discharge from a discernible, confined, and discrete conveyance including a pipe, ditch, channel, tunnel or conduit.

**E. Ohio EPA Should Revise the GSWP’s Benchmark Monitoring Reference Values for Nitrate Plus Nitrite Nitrogen**

The Draft GSWP establishes sector-specific benchmark monitoring concentrations for Nitrate plus Nitrite Nitrogen for a number of Sectors (including but not limited to Subsector C1 -- Agricultural Chemicals, SIC 2873-2879, except 2874 and 2875). For example, Subsector C1 of Table 8.C-1 is shown below in Table 1 for reference.

**Table 1**

| <b>Table 8.C-1</b>  |                               |   |
|---|-------------------------------|---|
| <b>Subsector</b>  | <b>Parameter</b>              | <b>Benchmark Monitoring Concentration</b> |
| <b>Subsector C1. Agricultural Chemicals (SIC 2873-2879, except 2874 and 2875)</b> | Nitrate plus Nitrite Nitrogen | 0.68 mg/L                                 |
|   | Total Lead                    | Hardness Dependent                        |
|   | Total Zinc                    | Hardness Dependent                        |
|   | Phosphorus                    | 2.0 mg/L                                  |

The Nitrate plus Nitrite Nitrogen value above is identical in all Sectors that include this benchmark parameter. These benchmark monitoring parameters, apart from lead, have concentrations that are identical to the benchmark monitoring concentrations presented in the 2015 Multi-Section General Permit developed by USEPA. USEPA’s Fact Sheet associated with the 2015 Multi-Sector General Permit identifies the basis for the benchmark monitoring concentrations, which are summarized below in Table 2.

**Table 2**  
**EPA’s Basis for Benchmark Monitoring Concentrations**

| <b>Parameter</b>              | <b>Basis</b>   |
|-------------------------------|--|
| Nitrate plus Nitrite Nitrogen | National Urban Runoff Program (NURP) median concentration  |
| Total Lead                    | “National Recommended Water Quality Criteria.” Chronic Aquatic Life Freshwater (EPA-822-F-04-010 2006-CCC) |
| Total Zinc                    | “National Recommended Water Quality Criteria.” Acute Aquatic Life Freshwater (EPA-822-F-04-010 2006-CMC)   |
| Phosphorus                    | North Carolina storm water benchmark derived from NC water quality standards                               |

As summarized in Table 2, although all the other benchmarks are based on water quality criteria, the benchmark for Nitrate plus Nitrite Nitrogen is set using a reference value unrelated to water quality criteria compliance and in fact is unrelated to storm water discharges from industrial facilities (including, in particular, Agricultural Chemical facilities). Specifically, the Nitrate plus Nitrite Nitrogen benchmark is based on the median values from a nationwide assessment of urban runoff, conducted by USEPA between 1979 and 1983, without any reference to Ohio water quality standards.

Ohio EPA has relied upon this 30-year old NURP study without demonstration that this study has relevance under Ohio law or applicability to industrial facilities (and specifically Agricultural Chemical facilities) in Ohio. Ohio EPA has established no record of its evaluation of this historical data or the necessity of such a benchmark parameter (based on a 30-year old data set) to protect water quality or indicate the effectiveness of industrial storm water best management practices (“BMPs”). The NURP values are essentially anthropogenic background values that assume zero discharge of the constituents, a scenario that would not even necessitate a storm water permit to begin with. Additionally, an exceedance of these median NURP levels does not pose any water quality concern and, consequently, should not serve as the basis for triggering enhanced monitoring and BMP evaluation. Such a requirement would go well beyond the authority of the Ohio Water Pollution Control Act, O.R.C. § 6111 et seq.

Accordingly, the proposed benchmark value is arbitrary and capricious and Ohio EPA must revise the Nitrate plus Nitrite Nitrogen benchmark monitoring concentrations, including those in Subsector C1, to meet the standards of Ohio law.

In developing a Nitrate plus Nitrite Nitrogen benchmark value, Ohio EPA needs to consider the concentration of Nitrate plus Nitrite Nitrogen expected due to natural conditions as well as incidental increases in concentration attributed to the type of industrial facilities being regulated, where such facilities have implemented reasonable and appropriate BMPs and do not impair the designated uses of the receiving stream. As described in Section 6.2.1 of the Draft GSWP, benchmark monitoring data are for the permittee's use to determine the overall effectiveness of control measures and to assist the permittee in knowing when additional corrective action(s) may be necessary to comply with the control measures and best management practices. We believe that the proposed Nitrate plus Nitrite Nitrogen concentration is so stringent that it would not serve as a functional threshold for evaluating control measures or BMP performance in Ohio. This belief is further supported by the Nitrate plus Nitrite Nitrogen data collected by Ohio during the last GSWP permit cycle. The median Nitrate plus Nitrite Nitrogen concentration was 0.66 mg/L, just slightly below the benchmark concentration of 0.68 mg/L. Therefore, nearly half the Nitrate plus Nitrite Nitrogen results achieved by the regulated community resulted in benchmark exceedances. Additionally, this data set included data collected by all Sectors, and does not represent the higher values reasonably and appropriately expected from Agricultural Chemical facilities covered under Section C1.

Without these adjustments, the Draft GSWP will not be consistent with Ohio law and industrial facilities covered under the GSWP will needlessly and unnecessarily embark on enhanced monitoring campaigns and costly documentation that pollutant reductions are not technologically available and economically practicable and achievable in light of best industry practice.

F. In Addition, and Consistent With Other State General Permits, the GSWP Should Be Revised to Include a Provision for Demonstrating Alternative Benchmark Concentrations

OMA requests that Ohio EPA add a provision to the Draft GSWP for permittees to have the option to develop alternative benchmark concentrations for Ohio EPA review. If authorized, the alternative benchmark concentration would be in lieu of the default benchmark concentrations listed in the Draft GSWP. For Ohio EPA's convenience, OMA has included draft language below. This language is based off of the alternative benchmark analysis, which has been a component of the Georgia GSWP since 2012.

*Proposed Language, Section 6.2.1.2, new third paragraph:*

Permittees have the option of establishing their own alternative benchmark for any or all of the sector-specific benchmark pollutants. Alternative benchmarks shall be for the same pollutants as the benchmarks in this permit. An alternative benchmark must be documented in the SWPPP, which must contain any supporting data used to develop the alternative benchmark, and submitted to Ohio EPA. Unless notified by the Ohio EPA in writing to the contrary within 90 days of Ohio EPA's receipt of the alternative benchmark submittal, permittees who submit such documentation are authorized to use the alternative benchmark for discharge of storm water associated with industrial activity under the terms and conditions of this permit. An alternative benchmark shall be based on the following:

- i. A study by qualified person(s) published within 5 years of the effective date of this permit that establishes the industry standard; or
- ii. A site-specific study by a professional engineer registered in the State of Ohio. The study must be signed, dated and sealed; or
- iii. Ohio's Water Quality Standards or EPA's Water Quality Criteria value multiplied by the ratio of the combined drainage areas for the receiving waterbody and the storm water discharge to the drainage area for the storm water discharge. The value of this ratio shall not be less than one (1) nor greater than one hundred (100). If the facility is in one of the industrial sectors subject to benchmark concentrations that are hardness-dependent, include in the SWPPP with the first benchmark result a hardness value, established consistent with the procedures in Appendix J, which is representative of the storm water discharge combined with the receiving waterbody.
- iv. Use of alternative benchmarks cannot cause or contribute to an exceedance of a Water Quality Standard.

This alternative benchmark provision would allow regulated parties to use either the default benchmark values as the target reference for BMP evaluation, or to develop one of these specific parameters to allow for a more thorough, detailed and accurate evaluation of BMPs. Because many of the benchmark parameters in the Draft GSWP

are equal to the in-stream water quality standards, a value far more stringent than required by law, the alternative benchmark provisions would ensure that regulated facilities are not required to implement unnecessary BMPs. Without such an alternative benchmark provision, the Draft GSWP would impose arbitrary and capricious requirements by imposing continuous BMP evaluations where they are not necessary to maintain water quality standards.

G. Remaining References to Section 4.3

Though Section 4.3 regarding comprehensive site inspections was removed, there remain some references to Section 4.3, as follows which should be corrected:

- Section 8.D.3.1 (page 44)
- Section 8.E.4.1 (page 46)
- Section 8.J.8.1 (Page 58)

The OMA appreciates the opportunity to comment on the GSWP. We look forward to the Agency's incorporation of our recommendations in the final GSWP (OHR000006). If Ohio EPA has any questions regarding the foregoing, please do not hesitate to contact me or OMA's environmental counsel, Frank Merrill at Bricker & Eckler LLP (614-227-8871).

Regards,



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