



Division of Surface Water Response to Comments

Rule: Water Quality Standards Program Use Designation Rules
OAC Chapter 3745-1

Agency Contact for this Package

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Ohio EPA held an interested party comment period from May 28, 2015 to July 1, 2015 regarding the Water Quality Standards program beneficial use designation 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 this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

General/Overall Concerns

Comment 1: **By refusing to adopt categories of aquatic life use applicable and appropriate to primary headwater streams (PHWH), the State of Ohio has failed to adopt water uses which are consistent with the requirements of the Clean Water Act.**

Therefore, the USEPA should reject the State of Ohio's proposed WQSs (beneficial use designations) and specify as changes necessary to meet CWA requirements: the inclusion by rule of categories of aquatic life use appropriate to Ohio's primary headwater streams.

69% of Ohio's stream miles are small headwaters. Despite this fact, the State of Ohio has refused to recognize categories of aquatic life use that correspond

to these streams. In 2013, Ohio's current administration abandoned a formally proposed and highly refined set of years-in-the-making state rules that would have recognized these streams and conferred protections on them for the first time. The ill-fated rules were the result of more than a decade of scientific research by the Ohio EPA that established the vital importance of headwater streams to overall water quality in the state. Today, Ohio's headwater streams remain largely unprotected.

PHWH streams provide vital habitat to numerous wildlife species and they are essential to downstream water quality. Primary headwaters fulfill an important role of filtering the sort of nutrient pollution that has culminated in the City of Toledo's 2014 water crisis and in the nitrate contamination of a third of the City of Columbus' water supply this summer.

The Ohio EPA and the U.S. EPA have both accumulated mountains of evidence that demonstrate the importance of primary headwater streams. There is no question, scientifically, that these small streams need to be recognized in Ohio's WQSs and protected.

As USEPA, Region V pointed out in its earlier comments on this proposed rulemaking, the Ohio EPA is legally required to designate aquatic life uses for its primary headwaters:

EPA notes that for some waters such as Kyger Creek, Ohio declined to designate an AL use because the appropriate AL use is Primary Headwater Habitat and Ohio lacks that use classification in its rules. EPA notes that OH is required by the CWA to designate aquatic life uses for all its surface waters, including primary headwaters and that adoption of the PHWH aquatic life use would give Ohio a useful tool for recognizing differences in the biological communities between headwaters and other rivers and streams. In addition, EPA recommends that Ohio revise its existing definition of "coldwater habitat, native fauna" at 3745-1-07(B)(1)(f)(ii) to recognize that coldwater fish species may not be present in all waters capable of supporting populations of native coldwater vertebrate and invertebrate organisms and plants.

The OEC respectfully requests that the Ohio EPA adopt aquatic life use categories that are applicable to and appropriate to primary headwater streams (PHWH). In the event that the Ohio EPA fails to do so, the OEC respectfully requests that the USEPA reject Ohio EPA's proposed rulemaking and further specify the inclusion of PHWH aquatic life uses as changes necessary to meet the requirements of the Clean Water Act. (Ohio Environmental Council)

Response 1:

The purpose of this rulemaking is to assign new or revised beneficial uses to specific waterbodies (streams) located in selected river basins in Ohio. The rules currently under review assign (a.k.a. designate) beneficial use(s) for streams based upon the suite of established uses found in Ohio Administrative Code (OAC) rule 3745-1-07 using the most recent results from water quality surveys. Ohio EPA cannot act on comments regarding Primary Headwater Habitat (PHWH) in the context of the current rulemaking because a beneficial use must first be defined elsewhere in the water quality standards rules. Ohio EPA will consider the comments made regarding headwater streams when the appropriate rule is open for the purpose of addressing the suite of available aquatic life uses.

However, we disagree with the statement that currently small streams are "largely unprotected". All unlisted surface waters of the State (including small headwater streams) are required to meet chemical and physical water quality criteria that fully protect public health and aquatic life.

..... The "Inside Mixing Zone Maximum" and "Outside Mixing Zone Maximum" water quality criteria identified for the warmwater habitat use designation apply to water bodies not assigned an aquatic life use designation.

[OAC 3745-1-07(A)(4)(a)]

Further, under the antidegradation rule OAC 3745-1-05, these small, undesignated streams are considered general high quality waters and, in the context of a permit review, the Director is required to consider the water quality implications of proposed impacts.

End of Response to Comments