



February 5, 2015

The Honorable John Shimkus  
Chairman  
Environment and the Economy Subcommittee  
Energy and Commerce Committee  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Paul Tonko  
Ranking Member  
Environment and the Economy Subcommittee  
Energy and Commerce Committee  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Shimkus and Ranking Member Tonko,

AMWA appreciates the opportunity to submit comments for the record of today's hearing on H.R. 212, the "Drinking Water Protection Act," as well as the larger issue of pollution of drinking water supplies by cyanotoxins. AMWA believes H.R. 212 represents an important step toward helping communities protect their water supplies from cyanotoxins, but that Congress should also explore additional measures to protect public health and the quality of our drinking water.

### **Background**

The risks posed by cyanotoxins attracted renewed attention last summer when an algal bloom in Lake Erie caused 400,000 people in northwestern Ohio to lose access to drinking water for three days. It is common for algal blooms to develop each summer in the shallow western end of Lake Erie, as algae feed on nutrient-rich runoff that washes into the lake. As the algae multiply and form a green scum on the water surface, they release cyanotoxins into the surrounding waters.

The algal bloom that occurred last summer was concentrated around the drinking water intake of the city of Toledo. High concentrations of microcystin – a common class of cyanotoxins – were soon detected in the drinking water, and led the city to issue an urgent water notice directing the public to not drink or boil their tap water. The notice warned that consuming water with high levels of algal toxins "may result in abnormal liver function, diarrhea, vomiting, nausea, numbness or dizziness."<sup>1</sup> Normal water service was restored several days later.

### **Assistance Needed from EPA**

While the human health risks of excessive cyanotoxins exposure are well known, there is no federal drinking water standard for it. EPA has included cyanotoxins on the agency's three drinking water Contaminant Candidate Lists (CCL1 in 1998, CCL2 in 2005, and CCL3 in 2009), but to this point the lack of standardized analytical methods for individual toxins like microcystin has prevented the contaminant's advancement to the next phase of the regulatory process –

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<sup>1</sup> City of Toledo, Ohio. "Urgent Water Notice!" August 2, 2014. <http://toledo.oh.gov/news/2014/08/urgent-water-notice/>.

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monitoring under the Unregulated Contaminant Monitoring Rule (UCMR). This issue must be resolved before the process can move forward.

AMWA appreciates that EPA has stepped up its efforts to develop scientifically sound standardized analytical methods for microcystin and other algal toxins. We believe EPA should continue to act with a sense of urgency in these efforts, with the goal of developing appropriate analytical methods in time for the agency to include cyanotoxins on EPA's list for monitoring under UCMR 4. Collection of such occurrence data under the UCMR will provide a vital foundation for the additional risk analyses that must be performed in accordance with Safe Drinking Water Act (SDWA) mandates. These analyses will, in turn, properly inform future policy decisions from EPA and other local, state and federal agencies intended to ensure microcystin and other algal toxins do not pose human health risks if they reach drinking water supplies.

In the meantime, the lack of specific information from EPA presently causes utilities to rely on a 1 part-per-billion safe level for microcystin suggested by the World Health Organization. But this is not a long-term solution, so AMWA believes EPA should independently evaluate all the latest available science and perform its own rigorous analyses of the potential health effects of microcystin and other algal toxin exposures.

### **H.R. 212, the "Drinking Water Protection Act"**

Just as we appreciate EPA's ongoing efforts to advance cyanotoxins through the regulatory evaluation process, we also appreciate legislation introduced by Representative Bob Latta to ensure this process stays on track. H.R. 212 provides a 90-day timeframe for the agency to send Congress a strategic plan for addressing cyanotoxins. The plan must establish processes for the agency to evaluate human health risks associated with cyanotoxins, publish public health advisories for such toxins, develop additional analytical methods to measure the presence of cyanotoxins in water, and issue guidance on feasible water treatment options to mitigate the identified human health risks. This information, when available, will provide water utility managers with additional tools to protect the public from algal pollution.

We are also pleased to see that H.R. 212 does not direct EPA to promulgate drinking water regulations for any particular class of cyanotoxins by any particular deadline. A mandate that sets arbitrary deadlines for regulation would ignore the careful, science-based process established by the Safe Drinking Water Act, and could leave unanswered important questions about the degree of treatment necessary to neutralize the human health risks of cyanotoxins.

### **A Comprehensive Plan to Protect Drinking Water Sources**

While defining science-based safe human exposure levels for cyanotoxins is critically important, it is only one piece of the puzzle to ensure comprehensive protection of drinking water sources. The best, and most cost-effective, long-range strategy to protect the public from algal pollution is to prevent bloom-causing nitrogen and phosphorus from entering waterways in the first place. Doing so would deliver measurable benefits, as an analysis of state water quality reports carried

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out in 2013 by the Healthy Waters Coalition found that 80,000 miles of rivers and streams, 2.5 million acres of lakes, reservoirs and ponds, 78 percent of the assessed continental U.S. coastal areas and more than 30 percent of estuaries in the United States are impaired due to excessive levels of nitrogen and phosphorus.<sup>2</sup> If left unaddressed, these pollutants can find their way to drinking water intakes and cause the type of public health emergency that Toledo experienced last year.

Similarly, any meaningful reduction in algal blooms must begin with the agricultural sector. We understand that this issue may lie beyond the jurisdiction of this subcommittee, but the exemption from federal Clean Water Act regulation of nonpoint runoff such as nutrient-laced agricultural pollution poses a significant challenge for the nation's drinking water utilities. The United States Geological Survey has estimated that roughly 90 percent of nitrogen and 75 percent of phosphorus in U.S. waters originates from nonpoint sources.<sup>3</sup> While subjecting nonpoint source runoff to federal oversight would be the most effective solution, other helpful measures could include policies that discourage over-application of farm fertilizers and incentivize farmers to capture runoff before it leaves their fields. Without these steps, algal bacteria living in warm waters will continue to feed on this unregulated nutrient-rich runoff – thus allowing algal blooms to grow and multiply while fouling the sources of communities' drinking water.

AMWA has actively worked with Congress to address this issue. We supported a new Regional Conservation Partnership Program (RCPP) as part of the 2012 Farm Bill that allows water utilities to partner with nearby farmers to apply for funding assistance to implement “nutrient management and sediment reduction” projects, among other objectives. Backed by this funding, utilities and farmers are incentivized to develop mutually acceptable measures that reduce farm runoff and keep algal-fueling nutrients out of sources of drinking water. To ensure the success of the RCPP Congress should commit to funding the program while also considering new measures promoting agricultural accountability for nutrient management.

Finally, while prevention is important, we also know it will not be possible or effective in every situation. Therefore Congress should utilize existing water infrastructure financing assistance programs to help water utilities rid their drinking water of contaminants. One such project is underway in Columbus, Ohio, where the city is building a \$70 million treatment system that will help protect against algal pollution beginning in 2016.<sup>4</sup> Another example of utility investment to combat agricultural runoff is in Iowa, where in the early 1990s Des Moines Water Works built a \$4.1 million nitrate removal facility to prevent runoff from elevating the city's water above the SDWA standard for nitrate. Des Moines operated the facility for 74 days in 2013, with the \$7,000 per day operation cost borne by its ratepayers.

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<sup>2</sup> Healthy Waters Coalition, January 28, 2014. [http://www.amwa.net/sites/default/files/FarmBillConfLetter\\_1-28-14.pdf](http://www.amwa.net/sites/default/files/FarmBillConfLetter_1-28-14.pdf).

<sup>3</sup> United States Geological Survey, *U.S. Geological Circular 1225: The Quality of Our Nation's Waters – Nutrients and Pesticides*, 1999. <http://pubs.usgs.gov/circ/circ1225/html/sources.html>

<sup>4</sup> Arensfield, Laura. “Toledo bearing full brunt of Lake Erie algae bloom.” *The Columbus Dispatch*, August 4, 2014. <http://www.dispatch.com/content/stories/local/2014/08/04/this-bloom-is-in-bad-location.html>.

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Congress could help ease these costs on local ratepayers by expanding access to low-cost water infrastructure financing assistance. This could be achieved by boosting funding for EPA's Drinking Water State Revolving Fund (as the President proposed in his FY16 budget request, though it was paired with a reduction in Clean Water SRF funding that could aid projects to protect source waters), and delivering robust appropriations for EPA's new Water Infrastructure Finance and Innovation Act (WIFIA) loan program for large-scale water infrastructure improvements. Strong appropriations for each of these programs will help communities invest in defenses against algal pollution that are necessary to protect the integrity of drinking water supplies and avoid future algal-related water service interruptions.

Finally, Congress should reject efforts to impose new taxes on interest earned on municipal bonds, which are the predominant source of infrastructure financing for local water systems. One such proposal – made as part of the President's FY16 budget request – would phase out the tax exemption on municipal bond interest for certain high-income taxpayers. While the plan is framed as making high-earners pay their fair share of taxes, the current tax exemption for municipal bond interest causes investors to accept lower interest payments on tax-exempt bonds – meaning lower financing costs for local communities investing in infrastructure. Removing the tax exemption would lead investors to demand higher interest rates – and translating into higher borrowing costs for communities and water utility ratepayers.

### **Conclusion**

Again, AMWA appreciates the opportunity to submit these comments on the risks of cyanotoxins to drinking water supplies, and Congressman Latta's legislation to respond to the challenge they pose. We hope to continue working with you on this issue.

Sincerely,



Diane VanDe Hei  
Executive Director