

News From:
Advocates for a Clean Lake Erie



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Contact: Mike Ferner 419-729-7273

LAKE ADVOCATES PREPARE TO RETURN TO FEDERAL COURT

TOLEDO – Advocates for a Clean Lake Erie (ACLE) yesterday sent a formal “Notice of Intent (NOI) to sue” letter to U.S. EPA Administrator, Andrew Wheeler, stating that it will return to Federal Court and file a citizen suit if the agency does not decide within 60 days whether or not the Ohio EPA is abiding by the Clean Water Act by not developing a Total Maximum Daily Load (TMDL) for western Lake Erie. A TMDL would establish the sources and amounts of pollution and set legally-enforceable limits to clean up the lake.

Yesterday’s NOI letter was sent to Administrator Wheeler and the U.S. Department of Justice by the Environmental Law & Policy Center, the public-interest law firm that represented ACLE in a previous suit in Federal District Court.

“We are simply not going away until Lake Erie’s polluters are held accountable for cleaning it up,” said Mike Ferner, ACLE coordinator. “We believe there are sufficient grounds to file a new action after Federal District Judge Carr dismissed our earlier complaint in October.”

ACLE’s letter cited the following reasons for giving notice to sue again.

- In its 2016 “Integrated Report” to the USEPA, the Ohio EPA stated “...the western basin (of Lake Erie) in particular is one of the highest, if not the highest, priority for Ohio to address.”
- But in its 2018 report, instead of implementing a legally-enforceable TMDL, the OEPA instead cited ongoing voluntary measures under the Great Lakes Water Quality Agreement, an approach it admitted was not working, and said that the “priority for Ohio EPA-initiated TMDLs is assigned a low priority for these waters.”

ACLE’s letter to Wheeler stated, “Although Ohio EPA has paid lip service to the need to establish a TMDL for western Lake Erie at some undetermined point in the future, its statements and conduct in altering the priority ranking for western Lake Erie show that the state is doing its best to make sure it can never be held to that statutory obligation...In short, Ohio is manipulating its priority ranking system in order to avoid its obligation to establish a TMDL...under the Clean Water Act section 303(d).”

The letter concluded that if the USEPA doesn’t rule by February 1, 2019 whether or not the Ohio EPA is refusing to abide by the Clean Water Act, ACLE and the Environmental Law & Policy Center will be back in Federal Court.

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