



Press Advisory

March 26, 2018

FEDERAL COURT OVERSIGHT OF ERIE CLEANUP DOES NOT MEAN DELAY

A recent Toledo Blade story, “[What will Lake Erie’s impairment mean for NW Ohio?](#)” included a statement that the designation “*is only a ‘key first step’ in litigation that may keep the state of Ohio tied up in court for years over cleanup strategies...*” As the old saying goes, “ain’t necessarily so.”

Howard Learner, Director of Environmental Law & Policy Center, the group that brought a lawsuit on behalf of ACLE, said ELPC wants the Federal court to retain jurisdiction of the case to make sure remedies and enforceable timetables are part of the cleanup plan. If anything, that should result in more speed, not more delay.

As the timeline below shows, left to its own devices the Ohio and US EPAs used voluntary guidelines to play a shell game to the benefit of factory "farm" operators who have used the lake as a no-cost, public toilet since the mid 90's. Voluntary agreements like the [1995 Great Lakes Water Quality Initiative](#) and the [1987 Great Lakes Water Quality Agreement](#), while full of thoughts and prayers, have given us the Lake Erie we have today: sick all year and toxic every summer.

Responsible farmers using commercial fertilizer steadily reduced the amount of dissolved phosphorus their operations put into western Lake Erie from the [mid 70's to the mid 90's](#). Then CAFOs (concentrated animal feeding operations) [appeared on the scene](#) and took advantage of voluntary guidelines to avoid accountability and have the public subsidize their cost of doing business. If we are serious about cleaning up our lake we must have legally enforceable pollution limits and deadlines, backed by court order if necessary.

-end-

Declaring Western Lake Erie Impaired: A Legal Timeline

The Clean Water Act (CWA) requires state EPAs to put heavily polluted or “impaired” bodies of water on a “303.d” list sent biannually to the USEPA. Doing so begins an inventory of pollution sources and amounts, followed by mandatory timetables and pollution limits or Total Maximum Daily Loads (TMDLs). For several years prior to 2016, organizations like Lake Erie Waterkeeper submitted information to the Ohio and USEPA detailing why the lake’s western basin should be declared impaired. OEPA routinely refused and the USEPA refused to step in. In 2017, the Environmental Law & Policy Center and ACLE filed a complaint in U.S. District Court, asking the court to order the USEPA to list the open waters of western Lake Erie “impaired.”

2011

Environment Canada and USEPA report that “measurements of microcystin in Lake Erie were 50 times higher than the World Health Organization (WHO) recommendation for safe recreation, and 1,200 times higher than the WHO safe drinking water limit.” Large blooms of microcystis bacteria and algae recur every summer.

2014

March: Ohio EPA, in its biannual “Integrated Report” to the USEPA, refuses to list western Lake Erie impaired, pending collection of additional data.

August: Elevated microcystin levels in Toledo's water supply prompt a "Do Not Drink" emergency for 400,000 people for nearly three days.

2015

August: USEPA finally approves Ohio's March, 2014 303.d list that omits western Lake Erie, but "...expects Ohio EPA to fully assess...and to assemble and evaluate all existing and readily available data, including EPA data, for the 2016 Integrated Report and listing cycle."

2016

July: OEPA's draft Integrated Report (due in April) refuses to assess the open waters of western Lake Erie, asserting that the USEPA should be responsible for doing so.

August: USEPA responds to OEPA's draft report, rejecting it as inconsistent with the Clean Water Act.

September: OEPA responds, repeating that it will not "unilaterally develop assessment methods" for its portion of Lake Erie, stating, "we will not discuss or propose further listings until there are [such] scientific tools" available to assess impairment.

2017

March: USEPA sends OEPA a letter recognizing that "Ohio has yet to assess the open waters of Lake Erie for algal impairment."

May: Regardless of its March letter, USEPA formally approves Ohio's 2016 impairment list, stating it "has deferred to the State's judgment not to assess the open waters of the Western Basin of Lake Erie for the 2016 list," thereby delaying the assessment of the open waters for two more years.

July: Environmental Law & Policy Center, Advocates for a Clean Lake Erie, Mike Ferner and Susan Matz file a complaint challenging USEPA's approval of OEPA's 2016 impairment list.

2018

January 15: One day before Plaintiffs' Motion for Summary Judgment was due to be filed and on a federal holiday – USEPA provided Plaintiffs with its "Withdrawal Letter" in which it admits that its May 2017 approval of OEPA's refusal to list the open waters of western Lake Erie as impaired was not consistent with the Clean Water Act.

January 31: Plaintiffs file a supplemental Motion for Summary Judgment, stating the USEPA's inaction "subverts the very purpose of the Clean Water Act: to promptly recognize and address the type of serious water quality problems currently plaguing Lake Erie," adding, "The remedy for an admittedly illegal delay is not more delay."

March 6: Oral arguments scheduled before U.S. Judge James Carr, U.S. District Court in Toledo.

March 22: In its 2016 Draft Integrated Report to the USEPA, the OEPA includes western Lake Erie on the "impaired" list, with the peculiar statement that, "This first-time assessment of Lake Erie was completed because the Kasich Administration requested input from representatives from The Ohio State University Sea Grant College Program, Bowling Green State University, University of Toledo, National Oceanic and Atmospheric Administration (NOAA) and U.S. EPA to identify a science-based process for assessing impairment in Ohio's Western Basin open waters for harmful algae. To date, no such process has existed, so Ohio has not been able to determine if the open waters of Lake Erie should be listed..."

despite all the evidence like shutting off water for a half-million people and more than a decade of satellite photos like these:

