



CLEAN WATER IS OUR RIGHT!
2975 113TH ST. TOLEDO, OH 43611

Howard Learner, Executive Director
Environmental Law and Policy Center
35 East Wacker Drive Suite 1600
Chicago, IL 60601

(via email)

November 29, 2021

Dear Howard,

At the October general meeting of Advocates for a Clean Lake Erie (now known as Lake Erie Advocates), our members had a lengthy discussion about the federal lawsuit in which ELPC has ably represented us since July of 2017.

Specifically, our conversation focused on the limitations of the Clean Water Act and the role of the Ohio EPA in setting TMDLs that are supposed to result in bringing Lake Erie back to health. For the reasons specified below, we concluded we have no confidence this process will result in anything near what Lake Erie needs, and we can't in good conscience hold out to the public that it will by continuing to be a plaintiff in this lawsuit. We see the law upholding a status quo that is bad for the lake and expensive for taxpayers. Pursuant to the following section of our representation agreement this letter serves as our written notice that we are withdrawing.

Termination of Representation

- 1. Subject to court approval when required, ACLE may at any time discharge ELPC and its attorneys or may withdraw from the proceedings specified in paragraph 1, by giving notice in writing to ELPC. ELPC may, subject to court approval when required, withdraw from its representation of ACLE if, in ELPC's judgment any of the following has occurred: (a) further proceedings would be frivolous, unreasonable, moot or groundless; (b) continued representation by ELPC would result in a violation of ethical rules; or (c) continued representation would require taking a position contrary to ELPC's policies.*

2. *If ACLE decides to discharge ELPC or to withdraw from the proceedings, or if ELPC decides to terminate its representation of ACLE, then ELPC will promptly move for an order terminating ELPC's representation of ACLE.*

Our decision is not at all based on the quality of the job ELPC has done in this case. To the contrary, we have high regard for the work done by attorneys Madeline Fleisher and Rob Michaels throughout this case.

Lake Erie Advocates has taken part as fully as possible in what we feel has been a four-year deep dive into the inner workings of the Clean Water Act, the regulatory system and the realities of politics in Ohio. We've concluded that the CWA, the regulatory system and Ohio politics have been corrupted to the point that the government's primary goal in this case is not – as its representatives stipulated to Federal District Judge Polster in Cleveland – to find a way to clean up Lake Erie but rather, to allow animal factory operators to evade their cost of doing business as long as possible by using Lake Erie as a free toilet for the 25,000,000 animals they have confined.

Our reasons for withdrawing include:

- 1) The OEPA stated at the mediation hearing and in public filings that they intend to use only reductions in Total Phosphorus (TP), not Dissolved Reactive Phosphorus (DRP) to determine progress in reducing the flood of excess nutrients going into Western Lake Erie. That decision is as unacceptable as it is scientifically outdated and by itself is sufficient to question the validity of this TMDL process.
- 2) Lake Erie Advocates has previously investigated “best management practices” (BMPs) funded by state taxpayers through the H2Ohio program and found that several of them – grassed waterways, buffer strips and no-till – not only fail to reduce DRP, but actually increase the amount going into waterways. TMDLs the OEPA has drafted so far continue to rely solely on H2Ohio practices.
- 3) Since the mediation session, we have researched the efficacy of other BMPs and found that cover crops should also be added to the above list of “worse than useless.” Taken together, these practices constitute a significant amount of the acreage OEPA recommends for remediation. What we learned about the few remaining BMPs does not inspire confidence.
- 4) From the statements made by the U.S. EPA and the U.S. Department of Justice at the mediation hearing, it is also clear their modus operandi is to do as little as possible and protect the polluters for as long as possible.

I've wanted to believe in the TMDL process and for the last four years Lake Erie Advocates has touted it in public presentations and news releases. In addition to agreeing to be plaintiffs in this lawsuit we pushed hard locally and at the state level to have Western Lake Erie declared impaired so the TMDL process could begin. It sounded like it was what the lake needed. However, after becoming familiar with the reality of how the Clean Water Act works, we have no confidence it will do what's needed to protect the rights of Lake Erie as a living entity.

We know ELPC will continue to actively pursue whatever can be considered a success within the limits of this system and we wish you the most success possible. But we believe withdrawing from this case is the principled thing for Lake Erie Advocates to do and hope it sends a clear message to the public that we must go far beyond relying on what the law provides if we are serious about protecting the systems we depend on for life.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Ferner". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mike Ferner, coordinator
Lake Erie Advocates

Cc: Rob Michaels