



Clean Water Is Our Right

2975 113th St. Toledo, OH 43611

FOR IMMEDIATE RELEASE

Contact: Mike Ferner 419-729-7273

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ENVIRONMENTAL GROUP PULLS OUT OF LANDMARK FEDERAL LAWSUIT

Lake Erie Advocates: “We believe it’s the principled thing for us to do.”

TOLEDO – The organization that has been co-plaintiff for over four years in major lawsuits to force the U.S. EPA to clean up Lake Erie has withdrawn from that action as it nears a mediated settlement.

The Chicago-based Environmental Law and Policy Center (ELPC) filed an initial suit in Federal District Court here in July 2017 and [refiled February 7, 2019](#), on behalf of Advocates for a Clean Lake Erie, now known as [Lake Erie Advocates](#) (LEA). Judge James Carr has presided over it from the outset and requested mediation by another federal judge in Cleveland that was held September 20 of this year. A proposed settlement is expected to be approved in December. Lake Erie Advocates informed ELPC of its decision to withdraw in a [letter](#) Monday which means the case will proceed without its participation.

The goal of the suit which affects the Ohio portion of the 8,300 square-mile Western Lake Erie watershed, is to compel the U.S. EPA to enforce the Clean Water Act and require the Ohio EPA to draft Total Maximum Daily Loads (TMDLs) to identify pollution sources and amounts, set binding limits and recommend remediation actions. The OEPA refused to do so for over a decade but started drafting them recently under pressure from the lawsuit. After Chesapeake Bay, this would be one of the nation’s largest cleanup efforts under the Clean Water Act.

Dissolved Reactive Phosphorus (DRP) from the feces and urine of some [25,000,000 confined animals](#), is a contentious issue in the suit and the main driver of toxic algal blooms which have plagued the lake annually for over a decade. An August 2014 bloom was so severe [national](#) and [international](#) news media reported on the City of Toledo telling 400,000 water customers not to drink, cook or bathe with city water for three days.

“We hoped we were finally on track to bring Lake Erie back to health since the Clean Water Act helped rescue the lake in the 1970’s,” said Mike Ferner, LEA coordinator, “but after examining over 30 of the OEPA’s draft TMDLs, it’s clear their approach is environmentally bankrupt on two major points.”

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“First, they reject widely accepted science by denying the essential role of Dissolved Reactive Phosphorus and leave it out of their calculations. Secondly, their [draft TMDLs only recommend warmed-over H2Ohio ‘fixes’](#) like [cover crops, buffer strips and grassed waterways](#) that [dozens of studies](#) show do little good and often *increase* the DRP going into waterways.”

“After taking this deep dive into the inner workings of the Clean Water Act and Ohio politics we can only conclude the government agencies we pay to protect our environment instead protect the status quo so animal factory operators can keep using Lake Erie as a free toilet for millions of confined animals. The flood of [liquid manure](#) they spread on fields directly over the [highest concentration of drainage tile](#) in the country is what’s poisoning Lake Erie and the operators are getting away with ecocide.”

Ferner concluded that, **“We appreciate the honest efforts of ELPC attorneys but we have zero confidence that justice for Lake Erie and protecting her rights as a living entity can be won in the courts. Withdrawing is the only principled thing to do, and we hope it sends a clear message to the public that indignant, tenacious citizens are our only hope to protect the systems we depend on for life.”**

Following are LEA’s specific reasons for withdrawing stated in the letter to ELPC:

- 1) The OEPA has said 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 above the lake. The TMDLs drafted so far as a result of this case continue to require only H2Ohio practices.
- 3) Since the mediation session, we have researched the effectiveness 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. And what we learned about the 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 clear their modus operandi is to do as little as possible and protect the polluters for as long as possible.

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