

OHIO FINAL WLEB IMPLEMENTATION PLAN LETTER

July 27, 2015

Dear Governor Kasich:

Thank you for your commitment to reduce phosphorus entering the western Lake Erie basin by 40% by 2025. This paradigm-changing commitment is an extremely important first step that follows the scientific consensus that 40% reductions in phosphorus will significantly reduce the prevalence and impact of harmful algal blooms in the basin. Of course, commitments are only valuable to the point that they are implemented. Our organizations are ready to work with you to develop Implementation Plans that will achieve this goal. Our shared goal is to ensure that these reductions are achieved efficiently and effectively in the shortest possible time period with the maximum benefits to human health and natural resources.

As you know, the status of the Great Lakes as a globally unique fresh drinking water resource is at risk from harmful algal blooms caused by excess nutrient runoff. This threatens the quality of life and economic vitality that drives our region's leaders to champion the Great Lakes. Nowhere is this more obvious than in Lake Erie which generates \$12.9 billion in annual economic impact from tourism and recreation in Ohio alone.

The Great Lakes region has made a lot of progress toward protecting and restoring our Lakes by working together to address threats and garner critical public, state, provincial and federal support. Because of the Clean Water Act in the U.S., significant progress has been made in reducing nutrient pollution from point sources. Ontario's Nutrient Management Act and Clean Water Act have similarly reduced nutrient pollution. We, however, have failed to keep pace

with pollution threats like agricultural runoff. As a result, decades of work to revitalize our economy, environment and quality of life are at risk.

Our organizations are willing and able to work with you to achieve a 40% reduction of phosphorus entering western Lake Erie by 2025. We recognize and support the development of regulatory, voluntary and effective market based approaches and would support their inclusion in the Implementation Plans. We also applaud the commitment to developing these plans in “collaboration with stakeholder involvement” as specified in the memorandum of understanding, and we urge Ohio, Michigan and Ontario to fulfill this spirit of inclusiveness while still producing Implementation Plans in a timely manner by considering the following recommendations:

- Michigan and Ohio should each complete a draft Implementation Plan by October 15, 2015 and hold a 45-day public comment period accompanied by public hearings in key communities within the western Lake Erie basin. After considering public comment, these plans should be finalized by December 31, 2015.
- Ontario should release a timeline for completing its Implementation Plan by October 15, 2015. To inform the development of the plan, the province should convene a balanced, multi-party task force of key stakeholders to help build consensus on management actions necessary. The task force should produce a report within six months that identifies specific policy and management recommendations, funding needs, key aspects of a monitoring plan to track progress, and research and data needs to address remaining questions about phosphorus and its movement across the landscape.
- Each Implementation Plan should include provisions to adapt the plan based on specific events and new scientific information. For example, the results of efforts to identify and calculate specific phosphorus sources, and the release of the Great Lakes Water Quality Agreement Annex 4 Domestic Action Plans may change what needs to be included in the implementation plans.

In order to effectively achieve the goal of reducing phosphorus entering western Lake Erie by 40% and improve Lake Erie's water quality, as well as demonstrate progress, we urge each state and the province to:

- Set up a process to identify sources of phosphorus and nitrogen including locations, causes and amounts to the greatest extent possible using the best available science. In addition to the known point sources, this effort should differentiate between specific sources such as chemical fertilizers, livestock waste, biosolids, combined sewer overflows, and home septic systems.
- Build on existing monitoring work to develop and implement a measurable, reportable and verifiable water quality monitoring system with continuous sampling stations in locations that will provide data for the whole western Lake Erie basin watershed that can be used to determine whether reduction in phosphorus are being achieved.
- Report publicly on progress made under the implementation plan on a yearly basis.

Our organizations recognize that developing and deploying these Implementation Plans are critical to help each jurisdiction move toward the 40% phosphorus reduction goal. It is also critical that each jurisdiction enforce existing laws related to the ways nutrient pollution enters the western Lake Erie basin.

Through the enforcement of existing laws, deployment of voluntary conservation practices on agricultural lands, and the development of Implementation Plans that require additional, mandatory action to reduce all sources of phosphorus, we hope each jurisdiction can achieve a 40% reduction in phosphorus entering western Lake Erie by 2025.

Thank you for your consideration of our comments.

Sincerely,

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Attachment (Ohio Policy Requests)

Ohio Attachment:

Ohio, and especially Governor Kasich, has shown real leadership by enacting new laws last year and this year requiring training and certification for farmers that apply commercial fertilizer as well as manure received from certain livestock operations. This is in addition to limited restrictions placed on when farmers in the western Lake Erie basin can apply fertilizer and manure. With these new protections and certification requirements, Ohio has taken steps to reduce Lake Erie's nutrient pollution and the occurrences of harmful algal blooms.

These new laws represent Ohio's willingness to begin leveling the playing field with other industries that follow numerous rules to protect water quality. However, much more needs to be done. In addition to the items outlined above, the Ohio Implementation Plan should establish policies to decrease nutrient pollution from multiple sources by:

- Listing the open waters of western Lake Erie as impaired under the Clean Water Act.

- Developing a regional tri-state phosphorus total maximum daily load (TMDL) with the U.S. Environmental Protection Agency providing coordination and oversight and in consultation with Ontario to help meet the established limit.
- Implementing the TMDL by establishing programs as needed to address both nonpoint and point sources of phosphorus.
- Establishing and meeting numeric water quality phosphorus standards for all streams in the western Lake Erie watershed.
- Establishing rules for placement, construction and maintenance of Ohio county drainage ditches to ensure they do not degrade existing water quality in connected streams.
- Adopting rules that recognize and protect primary headwater streams and their habitat and nutrient assimilation functions.

In addition to these rules to help prevent nutrient pollution from many different sources, the Ohio Implementation Plan should include bold steps to better address agricultural pollution since it is the major source of phosphorus in the Maumee River watershed, which is the primary driver of harmful algal blooms in western Lake Erie. We strongly urge the following:

- Introducing legislation that requires agricultural producers (≥ 50 acres or CAFOs without a permit) to develop and follow plans that include the best management practices they will implement to prevent excess manure and fertilizer nutrient loss and properly manage nutrients. Rules implementing such plans should include, at a minimum, the following directives:
 - Requiring annual phosphorus soil testing for manure applications;
 - Using precision 2.5 acre grid or zone soil sampling or smaller;
 - Requiring nutrient applications do not exceed specific land grant university crop agronomic rates;
 - Prohibiting manure and chemical phosphorus fertilizer applications when soil tests exceed the agronomic rate needed for the crop. (e.g. 40 ppm phosphorus for corn and soybean); and
 - Developing and including specifications for manure applications that prevent excess loss through tile drains and surface runoff.
- Revising rules for permitted CAFOs to prevent excess manure applications and improve overall manure management, including

- Requiring that nutrient applications do not exceed specific land grant university crop agronomic rates;
- Prohibiting manure applications on soils that exceed the land grant university crop agronomic rate needed for the crop (e.g. 40ppm for corn and soybean).
- Requiring all livestock owners and operators, manure brokers and certified livestock managers to report the locations and amounts of manure they sell or transfer to other agricultural operations.
- Ensuring manure and fertilizer applications do not exceed specific crop agronomic rates by:
 - Calling for an update to the Tri-State Fertilizer Recommendations for corn, soybeans, wheat and alfalfa: Bulletin E2567; and
 - Developing statewide standardized soil testing protocols based on Mehlich-3 methods (appropriate for all soil types), and establishing uniform measurements used in all reporting from testing labs.
- Calling on the Natural Resource Conservation Service to update its 590 and 633 Field Office Technical Guides to prohibit manure applications on soils that exceed the land grant university crop agronomic rate needed for the crop (e.g. 40ppm for corn and soybean).
- Expanding the inspection and enforcement division within the Ohio Department of Agriculture to verify adherence to management plans and best management practices that includes random site inspection of records and field operations.
- Generally promoting the avoid, control, and trap approach to nutrient management, including following the seven strategies identified in the Ohio Lake Erie Phosphorus Task Force Report 2 (2013) updated with the specific changes listed here.

Finally, rules focusing just on the agricultural industry will not fairly or effectively achieve the 40 percent phosphorus reduction goal. Municipal sources of nutrient pollution are a significant factor in western Lake Erie's harmful algal blooms and the task of meeting the goal should not focus exclusively on farmers and livestock owners. Therefore the Ohio Implementation Plan should establish policies to decrease municipal nutrient pollution as well by:

- Directing Ohio EPA to place more stringent allowable phosphorus discharge limits (0.5 mg/L) from publicly owned treatment works (POTW) (1 million gallons per day & up);
- Directing Ohio EPA to apply phosphorus discharge limits on a broader class of POTWs;
- Directing Ohio EPA and local Boards of Health to use current authority to more strictly enforce home sewage treatment systems (HSTS) regulations;
- Directing local Boards of Health to impose more stringent standards when permitting installation, alteration, operation of HSTS;
- Providing funding for and direction to local Boards of Health to conduct inspections of HSTS to determine if they are creating a public nuisance; and
- Promoting green infrastructure solutions to reduce urban stormwater pollution by providing funding, regulatory direction and technical support to municipalities and urging the use of green infrastructure as an alternative to more expensive stormwater controls where feasible and appropriate.