



## Ohio Strengthens Efforts to Further Protect Lake Erie While Ensuring Dredging of Navigational Channel in Cleveland

*Lake Erie supports Ohio's fishing industry, travel and tourism industry and significant economic development opportunities.*

Over the past four years, Ohio has made significant progress in protecting the lake, including:

- Restricting water withdrawals and prohibiting diversions out of Lake Erie's watershed;
- Enacting new regulations on fertilizer application to reduce the nutrient runoff that contributes to algal blooms;
- Reducing open lake dumping of Maumee River dredge material through beneficial use programs and prohibiting open-lake dumping of Cuyahoga River dredge material in 2014;
- Banning oil and gas production under Lake Erie; and
- Helping combat invasive species via mutual aid agreements with the seven other Great Lakes states and two Canadian provinces.

Ohio will now build on these efforts by prohibiting contaminated dredge material from the Cleveland Harbor from being dumped in the open waters of Lake Erie to better protect the lake, its aquatic life and fishing industry while ensuring shipping that is important to our economy can continue.

### **What it Takes to Keep the Cleveland Harbor Navigational Channel Open**

In order to keep the Cleveland Harbor navigational channel open, the U.S. Army Corps of Engineers must perform a maintenance dredging of the river each year. In order to do this, they must receive a water quality certification from Ohio EPA under Section 401 of the Clean Water Act and a Federal Consistency Concurrence from the Ohio Department of Natural Resources (ODNR) that the Corps' plan is consistent with the applicable policies of the federally approved Ohio Coastal Management Program (OCMP) from NOAA.

In the past, the sediment from the Cuyahoga River was too contaminated to be dumped into the open waters of Lake Erie, so the Corps placed it in a confined disposal facility (CDF). However, in 2014 the Army Corps decided that the sediment was no longer too contaminated and informed Ohio of its intentions to dispose of the dredge material in the open waters of Lake Erie. After reviewing the Corps' data, Ohio EPA disagreed. Ohio EPA issued a 401 water quality certification that only permitted the Corps to dispose of dredged material in a CDF and not in the open lake. With significant objection the Corps finally disposed of dredge material in a CDF as required by the Ohio EPA 401 water quality certification.

### **Kasich's Executive Order will keep Contaminated Dredge Material out of the Lake and the Port Open**

This year, even after lengthy discussions and Ohio EPA written guidance to the contrary, the Corps submitted the same proposal in its water quality certification application as it did in 2014. ODNR intends to issue a Conditional Concurrence identical to the one it issued last year. Governor Kasich's executive order gives the Ohio EPA Director additional tools through rules needed to place conditions on the water quality certification for the placement of dredged material in Lake Erie, including an outright prohibition on open lake dumping if the material could result in higher levels of a chemical in fish that bioaccumulates throughout the food chain, such as PCBs, or if it would violate any international treaties or compacts. The U.S. Army Corps of Engineers own sampling data shows sediment disposal in Lake Erie would result in an increased PCB bioaccumulation in the impacted region of Lake Erie and contribute to higher lakewide PCB levels, which is unacceptable. Likewise, adding PCBs or other bioaccumulative toxins may be in violation of the Great Lakes Water Quality Agreement between the United States and Canada as administered by the International Joint Commission.

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Under this scenario, these rules would influence how Ohio EPA will review any request to dispose of contaminated dredge material from the Cuyahoga River and only authorize CDF disposal if the emergency rule conditions are met. Further, because it is determined to be contaminated and not environmentally suitable for disposal in the lake by both Ohio EPA and ODNR via its federally approved costal management plan, it is Ohio's determination that disposal of all dredge material in a CDF must be at full federal expense.

If the Army Corps refuses to comply with Ohio EPA's condition to dispose of the dredged material in a CDF at full federal expense, then ODNR's Conditional Concurrence will become an Objection. At that point, several options to resolve disagreements could be pursued. ODNR, Ohio EPA and the Corps could informally discuss the project and seek resolution. Additionally, either ODNR or the Corps could request mediation with the Corps through the federal Coastal Zone Management Act (CZMA) process. Finally, ODNR could join with Ohio EPA to file an injunction action in federal court requiring that the Corps deposit the dredged material in a CDF at full federal expense.

### **Background on ODNR's Coastal Management Program**

All of the nation's coastal states (meaning states that border oceans or Great Lakes) can apply to receive federal approval of their Coastal Management Program (CMP) under the federal Coastal Zone Management Act (CZMA). A coastal state's CMP is a networked program made up of "Enforceable Policies" that are supported by provisions of that state's statutory and regulatory law that apply to that state's "coastal zone." The CZMA requires that Federal actions – meaning primarily projects conducted by federal agencies (like the Corps) or projects requiring federal permits – that have reasonably foreseeable impacts on any land use, water use or natural resource a state's coastal zone must be consistent with the enforceable policies of that state's federally approved CMP. Ohio's program was federally approved on May 16, 1997, and has been updated several times, most recently in April 2007. ODNR is the designated "state agency" for Ohio under the CZMA.