



**Division of Surface Water
Response to Comments**

**Project: Cleveland Harbor Dredging 2016, 401 Water Quality Certification
Ohio EPA ID #: 154844**

Agency Contacts for this Project

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Ohio EPA held a public hearing on March 10, 2016, regarding an application by the U.S. Army Corps of Engineers (USACE) to perform maintenance dredging in the Cleveland Harbor and Cuyahoga River federal navigation channels. This document summarizes the comments and questions received at the public hearing and during the associated comment period, which ended on March 17, 2016.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health. Often, public concerns fall outside the scope of that authority. For example, concerns about zoning issues are addressed at the local level. Ohio EPA may respond to those concerns in this document by identifying another government agency with more direct authority over the issue.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format.

Comment 1: We keep doing this year in and year out...same thing in 2014, 2015 and again this year. We need a permanent resolution. USACE keeps applying a short-term fix without considering the long-term costs.

Response 1: The dredging of the Cleveland Harbor is an annual event to keep the shipping channel open to navigation. Ohio EPA's review of USACE's application and the authorization of the 401 Water Quality Certification occur annually. Soliciting input from the public is an important part of the process. In each of the last three years, new sediment sampling

information has been considered as part of the application. Ohio EPA shares similar frustrations and believes that USACE needs to develop a long term plan for managing dredged material from Cleveland Harbor that does not involve open lake disposal. By 2020, this will be a requirement regardless of the contaminant levels in the dredged material.

Comment 2: There are many other options for disposal of the potentially contaminated dredged Cleveland Harbor and Cuyahoga River material, so we are greatly saddened and disappointed that the USACE again threatens the economic and healthy viability of this region by suggesting this dredge disposal plan. We have to find a way through this quagmire in dealing with these comprehensive issues related to Lake Erie and other Great Lakes. Many people, agencies, and organizations have worked long and hard to develop a system of policies, practices, and regulations to protect the lakes. We need to find a better way to integrate implementation of our efforts. If we can't, we risk losing the benefits of the living systems of the lakes upon which we all depend for our health, our economy and our enjoyment. Thanks to the changes in policy and funding brought about by state leaders, the Port Authority is positioned in Cleveland to manage sediments in a safe, sustainable, and cost effective manner. USACE's least costly disposal practice ignores the commodity value of harvested sediments. If the sediments are as clean as USACE asserts, the sediments have economic value and should not be discarded, or they could never be recovered.

Response 2: Ohio EPA will continue our partnerships with the Cleveland-Cuyahoga County Port Authority, USACE and others to find beneficial uses for dredged material. For example, the Port Authority has installed bed load interceptors upstream of the shipping channel to capture clean sediment before it moves downstream and reaches the shipping channel. The Port Authority has demonstrated there is a market for this material and has begun to implement a program to harvest clean material from the confined disposal facilities (CDFs). Before reusing the sediment, it is tested to ensure it meets applicable criteria for commercial, industrial or residential use.

Comment 3: If the dredged material is not as clean as USACE asserts, it must not be placed in Ohio's drinking water source and the aquatic food chain. USACE must not be allowed to rely solely on their controversial approach to "sound science" when the health of Lake Erie, the fish and the people who eat the fish and drink the water is at stake. The State and the Port have worked closely together in partnership and have developed and successfully implemented an alternative set of

approaches for managing sediments and keeping it out of Lake Erie. These techniques include upstream bed load interception, planned harvest and beneficial reuse of the cleaner sediments, and permanent storage of unclean sediments at the existing CDFs we operate. For these reasons I think you have the grounds to issue extensive qualifications on any 401 certification.

Response 3: To protect Lake Erie, Ohio EPA will continue to work with our local, state and federal partners to ensure that dredged material is managed responsibly.

Comment 3: If PCB levels in fish tissue were to increase from their current levels, fish consumption advisories for Lake Erie may change from once a week to once a month. This could have a devastating impact on an \$800 million sport fishery that supports 7,000 jobs and contributes more than \$208 million in wages and salaries to Ohio's economy.

Response 3: As part of the antidegradation review, the director of Ohio EPA is required to consider and weigh a number of factors including how the proposed lowering of water quality could impact important commercial and recreational sport fish species, and other aquatic life. The director must also consider the effects of lower water quality on the economic value of the water body for recreation, tourism and other commercial activities. All of this was considered prior to this final permitting decision.

Comment 4: Ohio EPA contends that high levels of PCBs and residual amounts of pesticides, including DDT, found in the dredged sediment could pose an unacceptable risk to humans, wildlife and birds that eat fish such as walleye and perch. You've heard that—you can eat one serving of walleye a week, but what you didn't hear is that pregnant women cannot eat many of the fish in Lake Erie during their pregnancy. If you are not pregnant, there are fish in Lake Erie that you can't eat more than one serving every two months. There are many more fish that you can't eat more than one serving every month. My patients are more likely to eat those fish than they are to eat the walleye that you can eat every week and are more likely to get sick. I know that -- so I know that the waters of Lake Erie are contaminated with PCBs and mercury because of these fish advisories. Don't tell me about nine miles offshore. Secondly, they are all concerned about walleye. The whole fish analysis was walleye. That's not what people are catching and eating. That's not what the people in my neighborhood are catching every day, and they are eating a lot more of it than they are supposed to. It is a real problem.

- Response 4:** USACE limited its analysis to impacts on Lake Erie walleye and yellow perch. Ohio EPA would like other species assessed as part of the Corps' analysis. To date, that has not happened.
- Comment 5:** With regard to open lake disposal, the Ohio Department of Natural Resources (ODNR) is concerned that subsequent resuspension of contaminated materials may adversely impact fish spawning and the survival of larval and juvenile fish.
- Response 5:** In other Lake Erie harbors, where dredged material was found to be clean enough for open lake disposal, Ohio EPA worked with ODNR to place conditions on the timing of disposal operations. The conditions were put in place to minimize impacts to fish spawning. In cases where open lake disposal is considered an environmentally acceptable option, Ohio EPA will continue to work with ODNR on appropriate conditions.
- Comment 6:** I would like to urge the EPA and ODNR to make fish advisories more available to the public. It is difficult. There are so many people who don't know what you can eat from our lake and what you can't eat from our lake.
- Response 6:** Ohio distributes paper copies of its annual fish consumption advisories to all of the state's WIC (Women, Infant, Children) clinics each year, and paper copies can be received at no cost by contacting Ohio EPA's Public Interest Center at (614) 644-2160 or web.requests@epa.ohio.gov. ODNR also distributes the advisories with the materials included in fishing licenses. The advisories are also available online at www.epa.state.oh.us/dsw/fishadvisory/index.aspx.
- Comment 7:** There were numerous comments regarding the protection of Greater Cleveland's drinking water. One cited Lake Erie as a sole source of drinking water. Many cited the proximity of the dumping site CLA-1 to Cleveland's drinking water intakes.
- Response 7:** USACE's proposed open-lake disposal site, CLA-1, is approximately six miles from Cleveland's drinking water intakes. USACE's modeling showed dispersion or settling would not be an issue at this distance; however, based on consultations with experts in this field, Ohio EPA believes the material moves more freely than USACE's modeling indicated. Ohio EPA performed additional sediment sampling, which showed that bottom sediments are mobile. Ohio EPA is not authorizing open-lake disposal of Cleveland Harbor sediment; therefore, there will be no impact to the city's drinking water intakes.

Comment 8: Should open lake disposal of dredged sediments cause adverse impacts, does the Corps have a way to take it back out?

Response 8: Lake Erie is approximately 60 feet deep at this proposed disposal area. Removal of any dredged material dumped into the Lake is unlikely. The Water Quality Certification does not authorize open lake disposal of Cuyahoga River sediment.

Comment 9: In Northeast Ohio, we have to pay for the Northeast Ohio Regional Sewer District to address combined sewer overflows, but then USACE will be allowed to dump this stuff into the Lake. Why would we allow them to pollute the lake after all the cleanup that has been done or is being done?

Response 9: Ohio EPA is concerned about any pollutant source entering Lake Erie and the associated water quality impacts. The Water Quality Certification does not authorize open lake disposal of Cuyahoga River sediment.

Comment 10: USACE is not above or apart from the law. USACE asserts they have unreviewable authority to determine environmentally acceptable practices and we believe this is incorrect.

Response 10: USACE believes it has the authority to determine what is environmentally acceptable as it relates to the "federal standard," which then drives what they will pay to manage the material. However, Ohio EPA has the ultimate legal authority as part of the 401 Water Quality Certification to determine what is allowed to lawfully be placed in Lake Erie for this project.

Comment 11: USACE used bottom sites in the lake, which had previously been used pre-1970s as a dumping site by USACE, as reference locations for comparing sediment cleanliness. Evaluation manuals require the use of undisturbed lake bottom sites as reference locations. And, USACE reference sites are some of the most contaminated locations in Lake Erie. After failing to achieve outcomes to justify its desired results, USACE used an unpublished evaluation manual and seemed to ignore specified evaluation protocols. Ohio EPA scientists are unable to replicate USACE's conclusions. Placement of known toxins, PCBs, PHAs and metals in Lake Erie is a violation of the International Great Lakes Water Quality Agreement. With regard to nutrients, Ohio EPA sampling shows the Cuyahoga ship channel sediments are very nutrient rich, largely as a result of combined sewer overflows to the lake. Adding additional nutrients to Lake Erie has a risk of expanding harmful algae blooms.

- Response 11:** Ohio EPA maintains the position that a former disposal site is not an appropriate background reference site for evaluation of harbor sediments. Additional Lake Erie sediment sampling was conducted by Ohio EPA in 2015 re-affirming our position.
- Comment 12:** Even if the USACE is correct that the dredged sediment has the same level of PCBs that are already in the lake, it doesn't make sense, because you are still adding more contaminants to the lake. You are not decreasing, you are increasing the amount of PCBs and mercury that is in the lake.
- Response 12:** Ohio EPA agrees that old contamination should not be an excuse to allow new contamination.
- Comment 13:** What role does the 2012 Great Lakes Water Quality Agreement have in Ohio EPA's decision-making.
- Response 13:** The 2012 Great Lakes Water Quality Agreement does not affect the permitting requirements set forth in state law for Ohio's 401 Water Quality Certification program. However, Ohio EPA's review and decision on this application is consistent with the principles and objectives set forth in that agreement; namely, ensuring that the Great Lakes are free from pollutants in quantities or concentrations that could be harmful to human health, wildlife or aquatic organisms, through the direct exposure or indirect exposure through the food chain.
- Comment 14:** There is a new U.S.-Canadian agreement, which seeks to reduce nutrient levels in Lake Erie by 40 percent. USACE's proposal does not adequately address nutrients as a pollutant of concern.
- Response 14:** Because Ohio EPA is prohibiting open lake disposal of sediments dredged from the Cuyahoga River, there will be no additional nutrient impacts to Lake Erie as a result of the dredging.
- Comment 15:** Ohio EPA and the Port assert WRDA Section 404(b)(1) requires that USACE must comply with the authority granted to states in the Resource Development Act. USACE is ignoring language inserted in the omnibus appropriations bill, which states in Section 106, "None of the funds in this Act shall be used for an open-lake placement alternative of dredged material after evaluating the least costly environmentally acceptable manner for the disposal or management of dredged material originating from Lake Erie or tributaries thereto unless it is approved under a state water quality certification pursuant to 33 U.S. Code 1341."

- Response 15:** Whether USACE is violating this provision of WRDA by spending funds in advancing an application for the open lake disposal option for Cleveland Harbor is a question of both fact and federal law beyond the scope of Ohio's 401 Certification requirements. However, this new provision is further evidence of Congress' clear legislative recognition of a state's authority to make the ultimate call on the environmental permissibility of proposed disposal options in the context of a 401 Water Quality Certification.
- Comment 16:** USACE's proposed open-lake disposal of contaminated sediment from the Cuyahoga ship channel into Lake Erie does not comply with the requirements of ODNR's federally-approved coastal zone management program. Federal law requires agency compliance with the enforceable authorities.
- Response 16:** Relative to ODNR's federally-approved coastal zone management policies, ODNR's conditional consistency determination is tied to Ohio EPA's 401 Certification. To be consistent with ODNR's enforceable coastal zone policies, USACE must adhere to the conditions of the state's 401 Water Quality Certification. Accordingly, in the absence of a 401 Water Quality Certification that allowed open lake placement, such an option would not be consistent with ODNR's policies.
- Comment 17:** It is way past time for U.S. EPA to weigh in.
- Response 17:** On March 17, 2016, Ohio EPA sent a letter to U.S. EPA asking them to provide assistance to Ohio EPA in completing an analysis of the potential threats to drinking water due to the contamination in the sediments in and around CLA-1.
- Comment 18:** USACE cut their own budget "in order to attempt to get their way is particularly disingenuous and devious."
- Response 18:** Ohio EPA is aware and concerned that the Corps requested a budget reduction for Cleveland Harbor that would only support their selected alternative of open lake disposal. USACE was allocated \$273 million in discretionary funds as part of the Consolidated Appropriations Act (Omnibus). USACE's current position is that open-lake dumping is the least costly environmentally acceptable disposal method for the dredged material. USACE has taken the position that requires the cost difference between open lake disposal and CDF placement to be covered by a local sponsor. Ohio EPA maintains that open lake placement is not environmentally acceptable and USACE should fund the entire project.

- Comment 19:** Dredging the shipping channel is important to Cleveland's economy. The Corps' recent proposal to dredge only 45,000 cubic yards from the lower five miles of the navigation channel and to defer dredging of the rest of the navigation channel if a nonfederal sponsor is not found would result in severe economic harm to industries that depend on direct water access to Lake Erie.
- Response19:** The state of Ohio recognizes the economic importance of maintaining navigable waterways for the ports of our Lake Erie cities. In just this past year, the state has committed \$10 million to find solutions to reduce and safely manage materials dredged from the Cleveland and Toledo Harbors in ways that do not negatively impact Lake Erie water quality.
- Comment 20:** The problem of dredging is not just a Cleveland Port Problem. It is much larger. The Corps is responsible for fifteen harbors in Ohio. There are contaminants entering the lakes: storm runoff of sewage during heavy rains, fertilizer and pesticide runoff into streams, manure runoff into creeks and streams, latex paints flushed down sinks, under sink disposal output into the sewer system, medicines in human sewage flushed down toilet, water from burning houses entering sewers, byproducts of laundry detergents, bleach, spot removers, micro-fibers from clothing, blankets, released during washing, micro-beads from facial cleansing products go into flesh of fish and industrial waste, treated to maximum allowable contaminants. Add the burden of dumping dredged material of harbors in the lake. How can Lake Erie possibly maintain itself, much less recover?
- Response 20:** Ohio recognizes there are many potential sources of water quality degradation to Lake Erie. Ohio has banned open-lake disposal of dredged material by 2020. U.S. Senator Rob Portman has co-authored federal legislation that was signed into law to stop the sale of products containing micro beads by July 1, 2018. Ohio is also working diligently with municipalities to address combined sewer overflows and assist communities that have chronic failing septic systems. Ohio has invested over one billion dollars in water quality improvements to our wastewater treatment systems and work addressing agricultural runoff in the western basin.
- Comment 21:** During its review of the USACE application, Ohio EPA has expressed concerns about PCB concentration in sediments, bioaccumulation, and PAH toxicity related to the proposed open lake placement of sediments dredged from the Upper Cuyahoga River Channel. These concerns pertain to CWA Section 404(b)(1) Guidelines and the

applicable formal guidance. Compliance with CWA Section 404(b)(1) Guidelines is administered by USACE. The concerns presented by Ohio EPA are outside the regulatory purview of Section 401 of the CWA, which is focused on compliance with applicable federally approved numeric and narrative water quality standards (WQSs) as they apply to the water column.

Response 21: The comment fails to recognize that in addition to federally approved numeric and narrative water quality standards, federally approved water quality standards also include antidegradation requirements. See 40 CRF 131.12. Ohio has adopted and U.S. EPA has approved Ohio's antidegradation requirements found in OAC 3745-1-05. Per Ohio's antidegradation requirements, all 401 Water Quality Certifications must undergo an antidegradation review and it is clear that Ohio's federally approved antidegradation requirements are not as narrowly tailored as the commenter suggests

Comment 22: The USACE is requesting that Ohio EPA please specify the applicable federally approved water quality standard that open lake placement of the channel sediment could violate, along with the accompanying criteria for compliance.

Response 22: The comment would seem to imply that the project would be approvable based on simply not violating a numeric water quality standard. This is a fundamental misunderstanding of antidegradation which, as discussed above, is a federally approved water quality standard. Antidegradation strives to avoid lowering water quality in the first instance, but allows it in some cases if it can be adequately justified after weighing various environmental and socio-economic factors as well as public comment. In this instance, the material includes PCBs which, under Ohio's federally approved antidegradation rule is defined as a significant lowering of water quality because of its persistence in the aquatic ecosystem. Against this backdrop the director has clear authority in relying on the federally approved antidegradation rule as a part of his decision making on this application.

End of Response to Comments