



John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Craig W. Butler, Director

**Director Craig W. Butler Testimony**  
**U.S. Army Corps Public Hearing on Cleveland Harbor Dredging**  
**February 17, 2015**

I am Craig Butler, director of Ohio EPA, and I am here today to express the concerns I have about the Army Corps' proposed plan to place contaminated dredge material from Cleveland Harbor into the open waters of Lake Erie. In particular, I am here to ask the Army Corps to rethink this ill-conceived strategy based solely on economics, not environmental and public health protection, and partner with Ohio in protecting Lake Erie, a state and national treasure.

I first want to point out that Ohio has been very clear in our concerns to the Corps regarding their proposal to dispose of the contaminated sediments from the Cuyahoga River. Since 2012 when discussions began about whether dredged sediment would be clean enough to be placed in the lake, Ohio raised concerns about the material and suggested, at a minimum, the Army Corps should plan for a possibility that we would not concur with a determination that risks were acceptable. This did not occur and we have been in strong disagreement ever since, despite continued technical discussions between Ohio and the Army Corps.

The heart of this disagreement can be summed up as follows:

1. Ohio believes the Corps data demonstrates the sediment from the Cuyahoga River is toxic and will have an unacceptable impact on the aquatic food web in Lake Erie.
2. Ohio believes the Army Corps continues to misapply federal guidance and ignored key data in order to obtain their desired outcome, which is to save money and dump the material in Lake Erie.
3. Ohio believes the Army Corps is inappropriately requiring us to pay for alternative safe disposal, which absolutely is the obligation of the Army Corps.
4. Finally, Lake Erie has ongoing impairment due to PCB contamination in fish, which the Army Corps inexplicably refuses to acknowledge and still is recommending disposal of contaminated sediments laced with PCBs in Lake Erie.

Relative to the points above I offer a bit more detail.... In other Ohio harbors, the Army Corps uses the Great Lakes Testing Manual to evaluate dredge material. The Great Lakes Testing Manual was co-authored by the Corps and U.S. EPA, recognizing that the ecosystem of the Great Lakes is unique and needs to be more protective. However, in Cleveland the Corps has purposefully deviated from the Great Lakes Testing Manual because the sediments from the Cuyahoga River do not meet the Manual's technical criteria. Instead, the Corps has used the Inland Testing Manual and internal draft Army Corps guidance to evaluate Cleveland Harbor sediment because they are more lenient.

Ohio EPA has consistently expressed concerns with this approach in letter after letter and in conversation with senior Army Corps officials and believes that the Corps' application of the Inland Testing Manual and internal draft guidance is inappropriate, especially when the Great Lakes Testing Manual showed the sediment did not meet the established formal federal guidelines for open lake disposal in the Great Lakes.

We also believe that despite using this less stringent standard, the dredge material is still too contaminated for Lake Erie disposal.

Lastly, while I'm not surprised because we heard the same thing last year when debating the same issue, the Army Corps has suggested that if they are not allowed to dispose of the contaminated material in the lake, or if Ohio doesn't pay the increased costs associated with proper disposal, they will defer, or not do, most of the needed dredging to keep this federal navigation channel open for commerce. They say this, but also recognize when asked that they have in fact budgeted for this possible increased cost and would defer as a matter of policy or as a means to win the debate about who pays rather than avoid the environmental and economic consequences of disposal in the lake or deferral of dredging.

And while all of the issues about flawed analysis should dissuade the Army Corps from dumping contaminated sediment in Lake Erie, there is an even more fundamental and important reason, which should resonate with the Corps. Because of long ago contamination, Ohio currently has fish consumption advisories established in-part for PCB contamination. Walleye – the king of sport fish in Lake Erie and has given rise to Lake Erie being called the Walleye Capital of the World – currently have an advisory to not eat more than one meal per week. Based on updated information, PCB levels in walleye have inexplicably increased and we are dangerously close to exceeding the one meal per week threshold. If exceeded, Ohio would have to recommend thousands of anglers only eat King Walleye once per month. This is simply not acceptable.

To be clear, the Army Corps' position is that contaminated sediment material will result in no impact to the lake or is inconsequential. In fact their exact verbiage is the placement of the material "will represent an acceptably low risk". I am sorry, but given the human health, environmental and economic consequences at stake, this is not a risk that the Army Corps should be willing to take simply to save money on appropriate disposal of this contaminated sediment.

Can I say for sure that their proposal to dispose of contaminated sediment in Lake Erie will "the straw that breaks the camel's back" and put us into the one meal per month advisory? No, I cannot. But I can tell you that Ohio, the Corps, U.S. EPA and everyone else in this room must do everything we can and not take any unnecessary risks and ensure that Lake Erie does not undergo any additional impairments due to PCBs. It would be a sad story for the entire nation if the "Walleye Capital of the World" backslid to the point that citizens had to question whether it was safe to eat the fish. This is not an "acceptably low risk" and the Army Corps should not treat it as such.

In support for our concerns regarding PCBs in Lake Erie and the grave concern they pose, I point out there is a strong weight of state, federal and international policy which seeks to eliminate the discharge of PCBs to the Great Lakes, including the following:

- Governor Kasich's executive order, signed on Feb. 11, 2015, requires Ohio EPA to prohibit the open lake disposal of dredge material in Lake Erie if the dredge material could result in higher levels of a chemical in fish that bioaccumulates throughout the food chain, such as PCBs, or the disposal of

dredge material would violate any international treaties or compacts. These requirements will be part of the state's Coastal Management Program, which is enforced through the federal Coastal Zone Management Act.

- Ohio EPA's current antidegradation rule, which is based on the federal Clean Water Act, specifies that actions that are anticipated to lead to new or increased loading of bioaccumulative chemicals of concern (BCCs, including PCBs) to waters of the Lake Erie basin are considered to be a significant lowering of water quality.
- The Lake Erie Lakewide Management Plan (LaMP) Management Committee has designated PCBs as a critical pollutant for priority action, as defined by the Great Lakes Water Quality Agreement (GLWQA), citing the presence of PCBs in open waters, the ability for PCBs to cause or contribute to a failure to meet GLWQA objectives, and the ability to bioaccumulate.
- The North American Regional Action Plan sets a goal of no measurable release of PCBs to the environment, as agreed by the intergovernmental (including Mexico, Canada and the U.S.) Commission for Environmental Cooperation.
- The Great Lakes Binational Toxics strategy, as ratified by U.S. EPA and Environment Canada, classifies PCBs as a Level I Substance indicating the highest degree of concern, stating that current levels of PCBs are currently exhibiting toxic effects to aquatic, animal, or human life, and, "represent the primary focus around which the governments will concentrate and lead actions and effort.
- Both the Great Lakes Restoration Initiative (GLRI) and the Great Lakes Water Quality Agreement (GLWQA) strive to protect the Great Lakes. The GLRI specifically works to reduce pollution to the Great Lakes and protect human health by reducing levels of toxins in fish, safeguard drinking water and prevent releases of chemicals of concern. As a matter of general agreement within both the GLRI and GLWQA, pollution within the Great Lakes should be reduced as much as practical.

So as I boil all of this down, it seems logical that because of the current status of Lake Erie relative to fish consumption and nutrient issues it is not prudent to add any additional material to the lake which may further result in degradation of the lake.

Likewise, it is our position that until all parties – U.S. EPA, USACE and Ohio EPA agree that the sediments meet the criteria for open lake disposal and do not pose a risk to Lake Erie, all sediment should be disposed of in the Cleveland confined disposal facility at full federal expense as supported by the Army Corps Federal Standard.

We have consistently expressed and I will reiterate again our willingness to work toward a short- and long-term solution other than open-lake placement of the dredge material. The State of Ohio is committed to keeping the port of Cleveland open for business. We have provided \$10 million through the state's Healthy Lake Initiative to fund pilot projects in Toledo and Cleveland that explore how dredge material can be used in a beneficial way and used as a commodity.

My hope is that the Corps shares this willingness to work in good faith toward a solution that has our Great Lake and this community in mind and reconsiders its current proposal and places the contaminated sediments in the confined disposal facility.