



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JAN 12 2018

Mr. Craig Butler, Director
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

OFFICE OF WATER

~~Craig~~
Dear Mr. Butler:

I write regarding the State of Ohio's 2016 Section 303(d) List, which the State submitted to the United States Environmental Protection Agency ("EPA") on October 20, 2016, and EPA Region 5 approved on May 19, 2017. In the intervening months, EPA has reevaluated the State's submission and determined that the submission is incomplete and thus not fully consistent with the requirements of Section 303(d) of the Clean Water Act and EPA's regulations. Specifically, the State's submission does not demonstrate that the State has satisfied its statutory and regulatory obligations to assemble and evaluate all existing and readily available data and information regarding nutrients in the open waters of Lake Erie within the State's boundaries. Therefore, by this letter, EPA is withdrawing the May 19, 2017 approval specifically with respect to the open waters of Lake Erie. EPA requests that the State assemble and evaluate all existing and readily available data and information regarding nutrients in the open waters of Lake Erie, consistent with applicable statutory and regulatory requirements, by April 9, 2018, and submit to EPA the results of that evaluation for EPA's consideration.

As you know, Section 303(d)(1)(A) of the Clean Water Act requires each State to "identify those waters within its boundaries for which the effluent limitations required . . . are not stringent enough to implement any water quality standard applicable to such waters." This process results in the generation of a Section 303(d) List. Section 303(d)(2) requires that each state submit its list to EPA for approval or disapproval. EPA's regulations at 40 C.F.R. § 130.7(d)(2) provide that EPA "shall approve a list developed under § 130.7(b) . . . only if it meets the requirements of § 130.7(b)." One of those requirements directs states to "assemble and evaluate all existing and readily available water quality-related data and information." 40 C.F.R. § 130.7(b)(5). Section 130.7(b)(6)(iii) provides that a state may decide not to rely on particular sources of data or information in determining whether to include particular waters on the Section 303(d) List, subject to EPA approval. However, a state's decision not to rely on such data or information for a listing decision is separate from its threshold obligation to assemble and evaluate all existing and readily available water quality-related data and information.

The EPA acknowledges that the EPA Region 5 previously approved Ohio's 2016 List in full. The EPA, however, is now exercising its inherent authority to reconsider prior decisions in order to ensure conformity of this action to the applicable statutory and regulatory requirements with respect to the open waters of Lake Erie within Ohio's boundaries. After further evaluation, the EPA has determined that part of the State's 2016 Section 303(d) List submission was incomplete

and thus not consistent with the requirements of Section 303(d) and the EPA's regulations. Specifically, the State's submission did not demonstrate that it assembled and evaluated all available data and information regarding nutrients in the open waters of Lake Erie within the State's boundaries. EPA is not modifying any other aspect of its May 19, 2017 approval.

Section 101(b) of the Clean Water Act explains that one of the Act's foundational principles is "to recognize, preserve, and protect the primary responsibilities and rights of States." In recognition of that principle and to the broader structure of cooperative federalism that the Act embodies, the EPA strongly prefers that the State take the lead in the first instance to assemble and evaluate the readily available data and information regarding algal growth for all of its jurisdictional waters in Lake Erie. Accordingly, the EPA requests that the State, consistent with its responsibilities and obligations under Section 303(d)(1)(A) of the Clean Water Act and 40 C.F.R. § 130.7(b)(5), "assemble and evaluate all existing and readily available water quality-related data and information" for the open waters of Lake Erie within its boundaries and submit the results of that evaluation to the EPA, including, if appropriate, an assessment of whether the waters are meeting the applicable water quality standards, by April 9, 2018, for the EPA's consideration. I understand that our agencies are already engaged in solving the challenges of water quality in Lake Erie and I look forward to becoming more personally involved in that effort.

Thank you for your attention to this matter. If you have any questions, please contact John Goodin at (202)564-5700.

Sincerely,

A handwritten signature in blue ink that reads "D. Ross". The signature is written in a cursive, flowing style.

David P. Ross
Assistant Administrator