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Algae Law

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Microcystis, Stone Lab, 8/10/10



Public Drinking Water: Microcystin

- No MCL under federal Safe Drinking Water Act
- USEPA Health Advisory (6/15)
 - 0.3 ppm for young children
 - 1.6 ppm for older children and adults
- Drinking Water Protection Act (8/15)
- Ohio EPA Draft Rules (9/15)

Point Sources

- “[A]ny discernible, confined and discrete conveyance” Clean Water Act § 502(14)
 - Ex: POTW
- Discharge of pollutant from point source to waters of U.S. (Clean Water Act) or state (ORC ch. 6111) requires NPDES permit

Nonpoint Sources

- Undefined – essentially, diffuse sources that are not defined as point sources
 - Ex: agricultural runoff
- Point sources are heavily regulated; nonpoint sources not so much
- Clean Water Act §§ 208, 319

Ohio Agricultural Nonpoint Source Authorities

- ORC ch. 1511 – crop growing and smaller animal feeding operations
 - “Distressed watershed” rules
- ORC ch. 903 – Concentrated Animal Feeding Facilities (CAFFs)
- SB 150 of 2014, ORC ch. 905 – fertilizer applicator certification

New Ohio Senate Bill 1

- General Assembly passed unanimously 3/25/15, Governor signed 4/2/15
 - Restricts application of fertilizer and manure in western basin of Lake Erie
 - Application of manure from CAFF needs certification
 - More monitoring/study by POTWs
 - Restricts disposal of dredged material in Lake Erie starting 2020

Select Recommendations: Ohio Agencies

1. Stricter phosphorus limit for major POTWs
2. Some phosphorus limit for smaller POTWs
3. Numeric water quality criteria for phosphorus
4. TMDL for western basin of Lake Erie
5. Declare Maumee River watershed “in distress”
6. Minimum BMPs for farming operations
7. HSTS enforcement

Select Recommendations: Ohio General Assembly

8. Require Ohio agencies to regulate point & nonpoint sources to achieve 40% reduction in phosphorus loading to Lake Erie (and provide additional statutory authority, if necessary)
9. Restrict phosphorus-containing lawn fertilizer
10. Authorize regulation of commercial fertilizer

Shameless Plug

- Moving Forward: Legal Solutions to Lake Erie's Harmful Algal Blooms (April 2015), available at ssrn.com/abstract=2667107