Pandemic Costs May Dry Up Ohio’s Plan to Fight Lake Erie Algae

By Alex Ebert
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Budget cuts endanger grants to fight toxic phosphorus
Grants were to help state comply with Clean Water Act

The coronavirus pandemic is endangering a $900 million program that underpins Ohio Gov. Mike DeWine’s long-term strategy for shrinking the annual massive toxic algae blooms in Lake Erie’s western basin.

The 10-month-old grant program, called H2Ohio, is the state’s primary way to improve quality in so-called impaired waters in Lake Erie near Toledo, where annual algae blooms devastate tourism and endanger water for more than 500,000 people.

H2Ohio fell victim to roughly $775 million in budget cuts that DeWine (R) is imposing in May and June due to plummeting tax revenue during the virus outbreak.

Ohio has halted new grant applications, DeWine said Tuesday. Future funding also isn’t certain, potentially exposing the state to greater legal scrutiny over whether the program will meet federal Clean Water Act requirements.

“The state, having relied exclusively on the H2Ohio fund, appears to be cutting the funding to it,” Howard Learner, president and executive director of legal advocacy group Environmental Law & Policy Center, said in an interview.

Learner’s organization is suing the U.S. EPA, alleging federal regulators are required under law to force Ohio to impose tighter restrictions on polluters under the Clean Water Act.
“The U.S. Environmental Protection Agency and state of Ohio need to step up with much more serious enforceable regulatory standards and other measures that will be sufficient to achieve their goal of reducing phosphorus pollution into Lake Erie by 40% by 2025,” he said.

Funds Dry Up

H2Ohio is a 10-year plan that aims to funnel $90 million annually to water quality grants across the state. The largest amount of cash would go to developments at farms in the state's northwest corner.

Those grants, which totaled $30 million this year, can help pay for ditches, field buffers, and various fertilizer applications that are less prone to runoff. All of those measures decrease farm runoff that the Ohio EPA said accounts for roughly 80 percent of Lake Erie's phosphorus pollution.

The plan received broad bipartisan support during budget negotiations in 2019, due to the state's overflowing coffers, and legislators provided $172 million for H2Ohio. But the fund, fed with budget surpluses, now must contend for scarce dollars among hundreds of other state programs, because Ohio anticipates it will run a deep deficit next year and have to dip into its rainy-day fund to balance the budget.

Office of Budget and Management Director Kimberly Murnieks couldn't confirm that H2Ohio grants would make it into the state's 2021 budget during a press call Wednesday.

“It will continue to be a priority,” she said. “We will continue to provide as many resources as we can.”

Litigation Risks

The tenuous nature of H2Ohio funding may affect litigation in the U.S. District Court for the Northern District of Ohio where environmentalists argue Ohio should be forced to impose new regulations on farmers and crack down on pollution.

The state determines what pollution levels it will accept in impaired waters under the Clean Water Act's total maximum daily load, or TMDL. It then imposes restrictions to meet those targets.
The Ohio EPA under DeWine has said it will create a TMDL in two or three years. But during a February meeting with Ohio Farm Bureau leaders, DeWine said state environmental regulators instead can meet federal phosphorus reduction requirements through the voluntary H2Ohio program.

Environmentalists argue that the looming funding cuts for H2Ohio shows the state can't be relied on to meet its responsibilities through voluntary measures.

“Ohio's new TMDL statement is simply words on a page—not a cessation of wrongdoing or a cure for years of legal violations,” the Environmental Law & Policy Center said in an April 28 brief in the case.

When asked how a lack of H2Ohio funding could impact state regulators' cleanup plans, Ohio EPA spokeswoman Heidi Griesmer said in an email, “Ohio EPA's development of a TMDL will be proceeding forward as indicated in our Integrated Report and in accordance with obligations under the Clean Water Act.”

U.S. EPA didn't immediately return requests for comment. Both agencies have said that they're following the requirements of the Clean Water Act.

In April, the U.S. EPA filed a motion asking the court to throw out the complaints filed by the environmentalists and officials in Lucas County, which encompasses Toledo.

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