



City of Toledo voters pass the Lake Erie Bill of Rights, potentially affecting Lake Erie watershed dischargers

March 20, 2019

Update: On March 18, 2019, an [injunction](#) was entered in *Drewes Farm Partnership v. City of Toledo*. Judge Zouhary of the Federal District Court in Toledo issued the injunction blocking the LEBOR from going into effect while the case is litigated. Both the City of Toledo and farmer Mark Drewes, who filed the suit, agreed to the injunction. The City of Toledo is still at liberty to incorporate the LEBOR into its City Charter if it so chooses, even while the lawsuit is ongoing. Also on March 18, 2019, environmental group Toledoans for Safe Water asked Judge Zouhary to let them and the “Lake Erie Ecosystem” intervene in the lawsuit, as intervening defendants. This motion has not yet been ruled upon. We will continue to monitor developments in this case and provide updates as they arise.

In a February 26, 2019, special election, Toledo’s voters passed the [Lake Erie Bill of Rights](#) (LEBOR). The LEBOR is an amendment to the City of Toledo’s Charter that creates a new cause of action for the violation of the right of Lake Erie and its watershed to “exist, flourish, and naturally evolve.”

The entities that could be impacted by the LEBOR’s enactment range far and wide. Generally, entities that have an Ohio EPA-issued water discharge permit



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authorizing them to discharge into surface waters within the Lake Erie watershed could be affected.

No additional regulatory oversight will be created by the LEBOR. The LEBOR's language does not create regulations that must be followed, nor does it attempt to give any regulatory authority to any office or organization. It purports to be "self-executing." On its own, it would only allow the City of Toledo or citizens of Toledo to bring a legal action for an alleged violation of Lake Erie's legal rights.

The LEBOR would, however, affect permits, licenses and other authorizations made by the state and even the federal government. Section 2(b) states that "[n]o permit, license, privilege, charter, or other authorization issued to a corporation, by any state or federal entity, that would violate the prohibitions of this law or any rights secured by this law, shall be deemed valid within the City of Toledo." All permits issued by the federal EPA, the Ohio EPA, or the federal or state departments of agriculture would be deemed invalid to the extent they conflict with a citizen's conception of the LEBOR's provisions. If one presently holds existing permits that he or she anticipates may run afoul of the LEBOR, it would be best to carefully monitor this situation.

Also, on February 27, 2019, [Drewes Farm Partnership v. City of Toledo](#) was filed in federal court in Toledo, asserting many challenges to the LEBOR, including the argument that the LEBOR exceeds Toledo's limited authority to pass legislation and is in violation of state and federal preemption laws. Drewes seeks a preliminary injunction to stop the LEBOR from going into effect before its defects are litigated. Numerous legal challenges to the LEBOR are anticipated in the near future on the basis of its overreach and broad declarations.