

Mill Creek Alliance

Chairman Koehler, Vice Chair Creech, Ranking Member Brent and Members of the Ohio House Agriculture and Conservation Committee

Background Information

Thank you for the opportunity to submit these comments on HB 175.

Mill Creek Alliance has worked since 1995 to protect and restore Mill Creek and its watershed in southwestern Ohio (Hamilton and Butler Counties). In 1997, Mill Creek was described as “the most endangered urban stream in North America” by the national river conservation group American Rivers. Since that time, Mill Creek has made an amazing comeback and today its water quality is vastly improved and is supporting a quickly rebounding aquatic ecosystem.

Mill Creek Alliance is steadfastly opposed to HB 175 because it will halt, and may reverse, the progress being made to restore Mill Creek and many other streams and watersheds in Ohio.

In 2020 at the **federal** level, the Trump administration changed the definition of Waters of the United States which drastically reduced waterways that are protected under the Clean Water Act (CWA). This change was made to the detriment of the citizens of not only Ohio, but of the entire nation.

The 2015 Obama administration’s “Clean Water Rule” clarified which streams and wetlands are protected under the CWA, in turn protecting drinking water for millions of Ohioans and 117 million Americans. The Trump administration rule, in contrast, completely removed federal pollution protections for certain streams and wetlands. In doing so, the rule ignored the vast amount of scientific data that shows that protecting these waters is essential to clean and safe water under a false pretense of “federalist concerns.”

This **federal** rule change did two main things

1. Removed protections for isolated wetlands that play an important hydrological role unless they are directly adjacent to a jurisdictional water.
2. Removed all ephemeral features from inclusion in the Waters of the United States, despite the science emphasizing the connectivity of many intermittent and ephemeral features with downstream waters.

The **federal** revised definition of “Waters of the United States” fails to protect the waters of Ohio and the country, ignores the U.S. EPA’s own science, and unreasonably fails to demonstrate the impacts of the revision.

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Ohio EPA's Role

Ohio as a state has the authority to cover the two types of waterways that the federal rule removed protections on by defining what is a "Water of the State" and therefore what has regulator protection in Ohio.

"Waters of the State" under Ohio Revised Code 6111.01 includes:

1. "all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs..." (Ohio EPA takes the position that "all streams" includes ephemeral streams that only receive water when it rains);
2. irrigation systems and drainage systems;
3. underground waters (i.e. groundwater)

Based on this definition of "waters of the state" more waterways, including groundwater, are protected under state law versus the Clean Water Act as defined in the Trump Administration's Navigable Waters Rule.

[House Bill 175 \(HB 175\)](#)

Even after the Trump administration rollbacks in 2020, Ohio waterways remained covered by regulatory protections to ensure water quality. HB 175 aims to remove ephemeral streams, or rain dependent streams, from regulatory coverage.

The Ohio EPA conservatively estimates that we have over 36,000 miles of these ephemeral streams in Ohio.

Surface water is a source of drinking water for the majority of Ohio communities so this bill would directly harm Ohioans drinking water by allowing pollution of these ephemeral, rain dependent, streams that will inevitably end up downstream in perennial, blue line streams. Our drinking water sources are increasingly threatened by the impacts of climate change, outdated and failing infrastructure, and growing pollution from unregulated contaminants and industrial sources. This bill will weaken protections for drinking water sources at the time when we need to do all we can to increase and strengthen enforcement of safeguards.

HB 175 makes no scientific, legal, or fiscal sense. Ephemeral streams play a crucial role in keeping our drinking water supplies safe.

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If these ephemeral streams lost state regulatory protections, the consequences could be dire. For example:

- Oil spills—such as pipeline breaks—into these streams or wetlands may no longer be considered violations by the Ohio EPA.
- Industrial facilities could discharge chemical waste into unprotected streams without fear of OEPA consequences.
- Developers may no longer need to obtain a permit before paving over or damaging an ephemeral stream—leading to a loss of important wildlife habitats and increase in flooding downstream.
- Water treatment plants might be able discharge partially treated sewage into streams without adhering to water quality standards;
- The state of Ohio may no longer be required to clean up polluted streams;
- Oil storage facilities near ephemeral streams may no longer have to develop oil spill prevention and response plans.
- When agencies fail to enforce the law against polluters of these waterways, the public could no longer hold polluters accountable through citizens' suits under HB 175.

Finally, it must be noted that the Biden Administration is seriously considering rolling back the former administration's changes to the Clean Water Rule. If that occurs, and HB 175 had become law, Ohio would find itself at odds with federal CWA regulations.

CONCLUSION

- Our sources of drinking water already face incredible stress -- from the impacts of extreme weather, toxic chemicals, plastic waste, and more. We should look for ways to improve protections. Instead, administration proposals will put drinking water across the state at increased risk of pollution by stripping safeguards from small streams and wetlands. Too many communities already face drinking water challenges--we can't go backwards.
- This is about corporate profits and avoiding accountability for pollution. The industries supporting HB 175 are trying to skirt responsibility for keeping our drinking water clean. No argument they make will convince the public that the health of some of our water bodies should be sacrificed for their profits.
- The laws protecting our water and health should be based on established science -- and should apply to everyone equally. Our laws stop working when we stop following science and create special rules for corporate polluters. The proposal to strip protections from streams and wetlands puts water resources across the state at risk because it ignores science and prioritizes the profits of well connected industries above our health.
- HB 175 is based on nothing more than talking points from industry and corporate special interests. Even school children understand that water flows downstream- to have healthy lakes and rivers, we must do more to protect the small streams that flow

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into them, not go backwards like HB 175 would do.

Thank you for your time and consideration.



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