



Opponent Testimony of
Toledo Metropolitan Area Council of Governments
House Bill 175
Presented to the Agricultural and Conservation Committee
May 19, 2021

Chairman Koehler, Vice Chair Creech, Ranking Member Brent and Members of the Ohio House Agriculture and Conservation Committee, thank you for the opportunity to testify before this committee today on House Bill 175 (HB 175). My name is Kari Gerwin and I am the Director of Water Quality Planning with the Toledo Metropolitan Area Council of Governments (TMACOG).

TMACOG would like to express our strong opposition to this legislation that would leave 36,000 miles of ephemeral streams unprotected under Ohio's core water quality protection programs. This legislation, driven by the mining and construction industries, prioritizes short-term financial benefits to a handful of companies at the expense of Ohio's water resources.

As a Council of Governments, TMACOG's membership is composed of 5 counties, 14 cities, 28 villages, 14 townships, and 23 other governmental districts and educational institutions. Our members also include 55 private sector stakeholder organizations of all sizes from businesses to non-profits representing a diverse set of interests. TMACOG's members are the local governments responsible for providing safe and reliable drinking water for their citizens and they have also been working hard to meet Clean Water Act Requirements as they treat the wastewater generated by our region's 500,000 citizens. The taxpayers of these communities have been asked to fund the infrastructure improvements necessary to treat the water.

In two separate incidents in 2013 and 2014, our local governments were unable to fulfill one of their key functions - providing drinking water to residents in northwest Ohio. In 2013, Carroll Township on the shores of Lake Erie told 2,000 citizens that they could not drink their tap water due to the presence of algal toxins. This event sickened 6 people. The following year, the City of Toledo experienced a now infamous water emergency when the algal toxin microcystin contaminated drinking water for around 500,000 people and made 110 people sick. This second incident spurred Governor Kasich to declare a state of emergency and the National Guard and Red Cross assisted communities with water distribution to citizens.

In response to these events that made national and international news as well as documented the widespread impairment of waterways across northwest Ohio, TMACOG members, led by water quality experts, have worked to develop a comprehensive list of recommendations for improving Lake Erie in a consensus-based policy document - the Agenda for Lake Erie. I would ask the members of this committee to review this document and consider it a resource in your decision-making. Within the Agenda for Lake Erie, TMACOG members have made the following statement with regards to the federal redefinition of regulated waters, which is especially relevant to HB 175-

“The federal redefinition of “Waters of the United States” eliminates protections for 50 percent of the nation’s remaining wetlands and approximately 18 percent of the nation’s stream miles. States must work quickly to ensure that language in permitting programs which protect water resources and limit pollutants in waters of the state remain in effect as intended.”

Ohio EPA estimates that there are more than 36,000 miles of ephemeral streams throughout Ohio. While ephemeral streams do not flow continuously, they are important to aquatic ecosystems and public health because they help control run-off and erosion, reduce flooding potential, and help filter pollutants. Because they are connected hydrologically to the tributaries that feed into larger water bodies like the Maumee River and Lake Erie, activities that contaminate, destroy, or fill in these ephemeral streams will pollute our waterways with sediments, nutrients, and other contaminants. Ohio must continue to oversee the protection of ephemeral streams to prevent impacts to larger water bodies.

“Waters of the State” are waterways that the State of Ohio has long considered important for water pollution controls and protection. Ohio oversees the protection of waters of the state by setting water quality standards and developing and enforcing regulatory programs. HB 175 seeks to redefine this term “Waters of the State” by explicitly removing ephemeral features from the state’s definition of “Waters of the State”. According to the Legislative Services Commission bill analysis, if HB 175 is signed into law, the Ohio EPA will no longer be required to issue permits for impacts to Ohio’s ephemeral features and discharging sewage or other pollutants into an ephemeral stream will no longer be a prohibited act. TMACOG maintains that construction, mining, industry, and waste discharges within ephemeral streams should not be excluded from the various permitting programs under Ohio’s Water Pollution Control Program.

A review of the Revised Code and Administrative Code provides insight to the extent of the state’s oversight of “Waters of the State”. The following are just a few references to “waters of the state” as the basis for protection of Ohio’s water resources -

- Section 6111.04 of the Revised Code states that people cannot pollute waters of the state with sewage, sludge, industrial waste, or other wastes.
- Section 6111.041 of the Revised Code states that the director of the Ohio EPA “shall adopt standards of water quality to be applicable to the waters of the state” and that these standards “shall be designed to improve and maintain the quality of such waters for the purpose of protecting the public health and welfare, and to enable the present and planned use of such waters for public water supplies, industrial and agricultural needs, propagation of fish, aquatic life, and wildlife, and recreational purposes.”
- Section 3745-1-04 of the Administrative Code describes specific water quality criteria that apply to all waters of the state. Under this rule all waters of the state should be free from suspended solids, floating debris, oil, scum, materials producing color or odor, toxic substances, nutrients that create nuisance growths of algae, and poorly treated sewage creating public health risks
- Section 6111.03 covers the powers of the Director of Ohio EPA, who is charged with protecting waters of the state through the development of plans and programs for the prevention, control, and abatement of new or existing pollution of the waters of the state. The director is expected to issue orders to prevent, control, and abate water pollution by prohibiting discharges of sewage, industrial waste, or other wastes into the waters of the state and to issue and revoke

permits for the discharge of sewage, industrial waste, or other wastes into the waters of the state.

Ohio must not exempt ephemeral streams from these water quality standards and rules that were put in place specifically to protect public health and enable current and future generations to use our waterways as sources of drinking water, for agricultural uses, for recreation, and to support a healthy aquatic ecosystem. Removing streams that flow directly into our larger waterways from the state's water quality standards and permitting programs without conducting in-depth analysis to understand the impacts to water quality in Ohio is short-sighted and irresponsible. As a state, we have a responsibility to ensure that our rivers, streams, and Lake Erie continue to provide benefits to the citizens of Ohio now and into the future. The effects of removing ephemeral streams from the state's oversight will increase local government costs to treat harmful algal toxins and other pollutants in drinking source water, diminish the recreational and scenic value of our larger rivers and Lake Erie, and add unknown costs to business, agriculture, and industry as the waters they depend on to do business are no longer under the protection of Ohio's permitting programs.

Testimonies provided two weeks ago by proponents of deregulating ephemeral streams would like the members of this committee to believe that Ohio's current laws cause a burden and unjustified expense to business by regulating every small rivulet of erosion on the landscape, but this is simply not true. Ohio EPA's website is very clear about what is currently regulated under its Ephemeral Streams Permit. It stated explicitly that "channel-like features on the land surface created by water erosion that are not tributaries, such as agricultural ditches, roadside ditches and grass swale waterways would not meet the definition of ephemeral streams."

Proponents of this legislation are also incorrectly touting this bill as a win for water quality. In his May 4 testimony, Dr. Richard Warner stated that that "Ohio's environment will substantially benefit from the passage of HB 175" and that "The solution is not to replace and expand ephemeral stream pathways as Ohio EPA is now requiring in its Ephemeral Streams General Permit." but rather we would "benefit from professionally engineered stormwater best management practices (BMPs) to replace the unstable ephemeral stream channels and gullies encountered at development sites." What Dr. Warner did not mention is that this bill would eliminate ephemeral streams from the very permitting programs that would require developers and industry to implement these stormwater best management practices. The state will be relinquishing its permitting authority over ephemeral streams and will instead trust that mining operations and builders will *voluntarily* increase their project costs to install these stormwater BMPs.

Finally, TMACOG would like to acknowledge the incredible investments made by the state of Ohio, local governments, and the federal government to address Ohio's water quality impairments. The Ohio General Assembly invested \$172 million in the H2Ohio program that has funded 1 million acres of nutrient management plans and agricultural best management practices in the western Lake Erie watershed, has installed or restored 5,700 acres of wetlands to filter 90,000 acres of land across Ohio, and has made improvements to small community drinking water systems.

Through the Great Lakes Restoration initiative alone, the Federal government has invested \$67 Million in projects addressing non-point sources of pollution in Ohio.

Local governments in the TMACOG region have made large investments to continue to provide water and wastewater services in the face of growing water quality challenges. To address the ongoing threat of annual harmful algal blooms caused by nutrient inputs from across the watershed, the City of Toledo has invested \$24 million to treat for microcystin, with another \$54 million projected in the future. Toledo has also invested \$527 million to eliminate combined sewer overflows and prevent 80% (or 650 million gallons) of untreated sewage from entering our waterways. Over the next 10 years, local governments of all sizes across TMACOG's four-county planning area will invest \$520 million in capital improvements to upgrade wastewater systems, eliminate combined sewer overflows, and extend sewer lines to unsewered areas.

HB 175 will add to an already immense governmental burden as all levels of governments respond to the future increases in pollutant loads and increased flooding that will undoubtedly result from removing 36,000 miles of ephemeral streams from Ohio's oversight. While the goal of HB 175 is to reduce costs to the construction and mining industries, its impacts to Ohio's water quality and the ultimate costs to taxpayers far outweigh any financial benefit to private industry.

In closing, the state of Ohio has the responsibility to protect our waterways, not just to meet the requirements of the Federal Clean Water Act, but more importantly for the health of our citizens, Lake Erie, and the economy. The state has a responsibility to implement programs that will mitigate the impacts of construction and mining and that prevent pollution and spills into our rivers and streams – and this must include state's 36,000 miles of ephemeral streams.

TMACOG recognizes the weight of the legislature's responsibility in passing laws for the benefit of Ohio's citizens, our economy, and our natural resources. As such, we respectfully request that members of this committee prevent HB 175 from moving forward.

Chairman and Members of the committee, thank you for considering TMACOG's perspective and our recommendations.

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