



Lake Erie Waterkeeper Inc.
3900 N. Summit Bldg 2
Toledo, Ohio 43611

Lake Erie
WATERKEEPER

Lake Erie has the Great Lakes Warmest, Shallowest, Fishiest Waters
lakeeriewaterkeeper.org 800-551-1592 sandylakeerie@aol.com

May 17, 2021

Chairman Kyle Koehler
77 S. High Street, 13th Floor
Columbus, OH 43215

Re: House Bill 175, Deregulate certain ephemeral water features

Dear Chairman Koehler, members of the Ohio Agricultural and Conservation Committee, and legislative leaders,

Lake Erie Waterkeeper strongly opposes House Bill 175 which seeks to remove protections for ephemeral streams which are small rain dependent streams that flow downstream to larger rivers, lakes and wetlands. These streams play a critical ecosystem role in many of the ditches and streams in Northwest Ohio – the Lake Erie Watershed.

Lake Erie depends on the upstream systems that slow down flow. Especially after heavy rains. Testing in these ephemeral streams, with water quality rules, are at the essence of H2O Ohio. By removing water laws for these streams, Ohio is effectively paying for phosphorus reductions to Lake Erie while at the same time removing rules that would measure and determine the effectiveness of how much phosphorus runoff is actually occurring.

Even after the previous presidential administration went against science and rolled back key portions of the Clean Water Act in 2020, Ohio waterways remained covered. The State of Ohio used its legal authority to continue regulatory protections for ephemeral streams to ensure runoff protection for Lake Erie which HB 175 seeks to remove and therefore open ephemeral streams to pollution and degradation.

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 restricting pollution and degradation. “Waters of the State” under current 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; and
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 previous presidential administration’s Navigable Waters Rule. Unfortunately, however, HB 175 would undo that protection while lacking any scientific, legal, or fiscal case for doing so.

Losing regulatory protections of the ephemeral streams will be dire for the Lake Erie watershed and the Ohio River watershed. For example:

- Reducing the few permitting requirements for Confined Animal Feeding Operations manure management
- Reducing requirement for NPDES permits and discharge rules
- Impacting drinking water sources
- Jeopardizing the right of Ohio to require clean up of polluted ephemeral streams.
- If these ephemeral streams have fish, this law would mean it is ‘legal’ to kill the fish
- 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.

Ephemeral streams play a crucial role in keeping our drinking water supplies safe. According to the US EPA, 6,978 miles, or 60% of all streams that provide drinking water are intermittent, ephemeral, or headwater streams and over 5.2 million Ohioans receive their drinking water from systems that rely on those water features.

As we speak, the H2Ohio program is proposed to invest hundreds of millions more through the budget bill to improve drinking water quality across the state. In order to see a return on that significant investment and ensure cost-effective use of taxpayer money, this bill should not become law.

All of the opponents’ concerns are over protection of the waters of the State of Ohio. While Ohio purports to seek to protect Ohio’s greatest natural resource – water in the Lake Erie and Ohio River watershed.

Do the waters of Lake Erie and the Ohio River benefit from this HB 175? NO.

Will Confined Animal Feeding Operations land application of massive amounts of manure have increased protections to allow for runoff into ditches and streams that flow to Lake Erie and the Ohio River . YES

This is an anti-water pro manure application bill. Voting against this bill is voting for Lake Erie and Ohio River watersheds of the State of Ohio.

Thank you for considering these comments.

Sandy Bihn
Executive Director
Lake Erie Waterkeeper
sandylakeerie@aol.com

c.c. Governor DeWine

