



**Association of Ohio Metropolitan Wastewater Agencies**  
**John Newsome, President**  
**H.B. 175 Opponent Written Testimony**  
**Before the House Agriculture and Conservation Committee**  
**May 24, 2021**

Chairman Koehler, Vice Chair Creech, Ranking Member Brent, members of the committee, thank you for the opportunity to present written testimony on behalf of the Association of Ohio Metropolitan Wastewater Agencies (“AOMWA”). My name is John Newsome and I serve as President of AOMWA; AOMWA opposes House Bill 175, which will deregulate ephemeral features from coverage under the Ohio Water Pollution Control Act, threatening water quality throughout watersheds statewide and imposing costs on other regulated entities.

AOMWA represents the interests of Ohio’s public wastewater agencies, serving more than 4 million Ohioans and successfully treating more than 320 billion gallons of wastewater each year. AOMWA members include the cities of Akron, Avon Lake, Bowling Green, Canton, Columbus, Dayton, Fairfield, Hamilton, Lancaster, Lima, Marysville, Middletown, Newark, Portsmouth, Springfield, Wadsworth, and Warren, and Butler County, Greene County, Hamilton County, Summit County, the Metropolitan Sewer District of Greater Cincinnati, and the Northeast Ohio Regional Sewer District. A fundamental purpose of our organization and its members is to protect the water resources on which Ohio’s communities depend.

As a result, AOMWA and its members are concerned with the proposal in HB 175 to deregulate ephemeral features, which will degrade the water quality in the watersheds where AOMWA members operate. It would also lead to other unintended consequences that ultimately impose significant costs on the public.

**1. The relationship between ephemeral streams and larger water bodies**

Ephemeral streams are streams that flow only in response to precipitation, such as rain or snow. Ohio EPA estimates that there are 36,405 miles of ephemeral streams throughout Ohio, which serve as headwaters for larger streams and rivers throughout the State. Ephemeral streams serve a supporting role as to larger downstream water bodies. **First**, ephemeral streams are important because they contribute flow during precipitation events to downstream waters. Accordingly, contaminants that are disposed of or discharged into ephemeral features can and likely would be transported to downstream water bodies (i.e., through erosion). Under current Ohio law, R.C. 6111.04(A)(1) prohibits the pollution of “waters of the state” with industrial wastes or other wastes/substances, unless that person obtains a permit to discharge the substance pursuant to R.C. 6111.04(A). Ephemeral streams are defined as “waters of the state” and therefore are subject to this permit requirement. However, if ephemeral streams are removed from the definition of “waters of the state,” then such a permit would no longer be required. As a result, individuals and businesses would be free to pollute these streams with industrial wastewaters or other contaminated substances. The long-term effects of eliminating all such regulatory oversight will result in significant degradation of Ohio’s waterways.

**Second**, ephemeral streams provide an important filtering service for waters farther downstream. When runoff or other water containing elevated concentrations of nutrients reaches a headwater such as

an ephemeral stream, these pollutants are filtered within the ephemeral feature to reduce the concentration before the water reaches a larger water body, such as a major navigable river. In this manner, an ephemeral stream can provide a similar function as a wetland and protect other valuable water resources. However, if HB 175 is enacted and these ephemeral streams become unregulated, then ephemeral streams would likely be filled in many cases, and this protective function would be lost.

**Third**, ephemeral streams serve an important role in stormwater management. Streams of any type provide a natural reduction or slowing of flow because of the following:

- Increased streambed roughness (flow is slowed by sediment, gravel, or boulders);
- Woody debris (flow is slowed during both small and larger storms);
- Floodplains (flow is slowed during larger storms);
- Wetlands (reduced runoff due to depression storage, etc.); and
- Stream meanders (flow is slowed for longer flow paths and reduced channel slopes).

When a stream is replaced with an engineered stormwater system (e.g., curbs & gutters, catch basins, pipes, and detention basins), the result is usually increased runoff volumes (due to the reduced depression storage, soil infiltration, or evapotranspiration) and increased peak flow rates downstream.

Most remaining ephemeral streams in urban regions are typically located near the headwaters of watersheds. Consequently, without proper regulation of these ephemeral streams, both increased stormwater runoff volume and peak flow rates will occur downstream, rapidly delivering pollutants downstream and potentially leading to downstream flooding.

For each of these reasons, high-quality ephemeral streams are the capillaries that deliver clean water to numerous creeks, streams, and rivers across Ohio.

## **2. The deregulation of ephemeral streams will impose costs on other third-party regulated entities, such as public wastewater and stormwater management facilities.**

If enacted, HB 175 is likely to trigger a variety of unintended consequences that would be costly not only for public wastewater agencies, but also for private industry that discharges wastewater.

Primarily, HB 175 could impose increased or prolonged regulatory obligations on public wastewater agencies and others, because Ohio EPA would be required to implement regulatory restrictions to address impacts to water quality. Under the federal Clean Water Act, states are required to identify lists of waters that are not meeting water quality standards (basically, waters in poor condition). § 303(d)(1)(A), 33 U.S.C. § 1313. For these waters in poor condition, federal law requires that Ohio EPA develop a “Total Maximum Daily Load,” which is a restoration plan designed to achieve water quality standards. These Total Maximum Daily Loads are sometimes referred to as “pollution diets” because they attempt to set limits on the discharge of certain substances from a variety of sources to meet water quality. Ohio EPA implements the “diet” by evaluating the maximum load a receiving water body or watershed can tolerate to meet water quality criteria. Ohio EPA then determines what level of pollutants can be allocated to each source of the substance within the area. As a result, if ephemeral streams become exempt from regulation to the detriment of larger rivers and streams, then other third-party regulated entities likely would be forced to compensate for problems caused by others. Furthermore, it may well be impossible for these remaining regulated entities to offset these negative impacts caused by unregulated entities.

In addition, excluding ephemeral streams from regulation will further exacerbate existing stormwater problems, and will result in increased stormwater management impacts and costs. As a

result, costly and complex construction projects will be forced on local governments, communities, private businesses, and stormwater management utilities. If headwater streams are degraded further or removed, then this will cause considerable downstream damage from flooding and erosion. Lack of oversight for these resources would cause increased stormwater management impacts and costs, which the public will bear. Although it may at first blush seem unnecessarily onerous, review and regulation of ephemeral channels is actually essential to protect Ohioans and their water quality.

**3. The deregulation of ephemeral streams will negatively impact watersheds that have been the subject of billions of dollars of public investment**

Ohio's public wastewater agencies have been and continue to expend billions of dollars on infrastructure and treatment technologies as part of federally-mandated consent decrees and existing permitting and regulatory requirements. Likewise, many of these communities are making significant investments in green infrastructure and other innovations to address water quality issues associated with stormwater discharges. Finally, Ohio's flagship policy for improving water quality, H2Ohio, currently envisions significant public investment to improve water quality in the Lake Erie watershed and elsewhere. If enacted, HB 175 would authorize negative impacts to the headwaters of the same streams and rivers that have been the subject of billions of dollars of public ratepayer investment designed to improve water quality.

As a result, AOMWA opposes HB 175's proposal to deregulate ephemeral features from the Water Pollution Control Act. Mr. Chairman, members of the committee, your attention and consideration in this matter are very much appreciated.