



**17 South High Street, Suite 310  
Columbus, Ohio 43123**

**Ohio Coal Association Testimony on Substitute HB 175  
Ohio Senate Agriculture & Natural Resources Committee  
November 30, 2021**

Chairman Schaffer, Vice Chairman Huffman, and Ranking Member Fedor, thank you for allowing me to provide written testimony in support of HB 175, which would reduce burdensome permitting requirements by removing ephemeral streams from the definition of “Waters of the State.” The Ohio Coal Association (OCA) is a trade association collectively representing every aspect of the regional coal industry, including coal production, equipment manufacturing and supply, electric power generation, engineering, coal transportation, blasting and other similar enterprises.

In 2020, the U.S. Environmental Protection Agency (U.S. EPA) developed the Navigable Waters Protection Rule, which replaced the 2015 Clean Water Rule and provided a consistent definition of “Waters of the United States” (WOTUS). The new federal rule expressly excludes “ephemeral features” from the definition of WOTUS and thus, they will no longer be regulated under the Clean Water Act. This new federal rule took effect in June 2020. In response to the federal action, the Ohio Environmental Protection Agency (Ohio EPA) developed a new “General Permit for Isolated Wetlands and Ephemeral Streams” (General Permit) to cover impacts to ephemeral streams within Ohio that are no longer regulated under the Navigable Waters Protection rule. This General Permit was released for stakeholder comments on May 18, 2020. The deadline for public comments was just 30 days later on June 17<sup>th</sup>, 2020. Although the Ohio EPA received over 160 comments, the Agency allowed the General Permit to become effective on June 22, 2020. The General Permit is currently being appealed at the Ohio Environmental Review Appeals Commission (ERAC).

As you heard in sponsor testimony, ephemeral streams consist mostly of erosional features (erosion gullies) that are dry beds for most of the year and only flow during and after a rainfall or snow melt. The members of OCA expected regulatory relief when the Navigable Waters Protection Rule took effect. They were upset to find out that due to the General Permit, they would be required to obtain a separate permit when they impact ephemeral streams. This additional permitting burden adds delays and increase costs to projects, often making them uneconomical to pursue.

HB 175 would create clarity as to what types of features are regulated, which will bring consistency to Ohio’s permitting requirements. HB 175 is not intended to be anti-environment, as Ohio’s wetlands and waterways would continue to be protected by existing state and federal regulations. Developers and entities impacting wetlands would continue to obtain Section 401 and Section 404 certification under the federal Clean Water Act. Further, the bill was amended in the House to clarify that the Ohio EPA, under existing law, will have the authority to regulate the deposit of solid, hazardous, or infection waste into an ephemeral feature. Instead of forcing unnecessary bureaucratic regulations on projects, the state should encourage entities involved with land development to have their professional

engineers use watershed storage mechanisms known as best management practices (BMPs) to lessen stream bank erosion, reduce sediments in streams, and improve water quality.

We would like to thank Rep. Hillyer for his diligent work on HB 175. We look forward to continuing to work with lawmakers, state regulators, and other stakeholders on efforts to reduce unnecessary government regulation, while also ensuring that our state's waterways are protected.

Sincerely,

A handwritten signature in black ink, appearing to read "M. D. Cope". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael D. Cope  
President, Ohio Coal Association