

**As Passed by the House**

**134th General Assembly**

**Regular Session**

**2021-2022**

**Am. H. B. No. 175**

**Representative Hillyer**

**Cosponsors: Representatives Seitz, Stoltzfus, Kick, Young, T., Creech, Fowler  
Arthur, Jones, Callender, Carruthers, Click, Cross, Cutrona, Edwards, Ginter, Hall,  
Jordan, Lampton, LaRe, Merrin, Riedel, Stephens, Wiggam**

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**A BILL**

To amend sections 3745.114 and 6111.01 and to enact 1  
section 6111.011 of the Revised Code to 2  
deregulate certain ephemeral water features 3  
under various water pollution control laws. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 3745.114 and 6111.01 be amended 5  
and section 6111.011 of the Revised Code be enacted to read as 6  
follows: 7

**Sec. 3745.114.** (A) A person that applies for a section 401 8  
water quality certification under Chapter 6111. of the Revised 9  
Code and rules adopted under it shall pay an application fee of 10  
two hundred dollars at the time of application plus any of the 11  
following fees, as applicable: 12

(1) If the water resource to be impacted is a wetland, a 13  
review fee of five hundred dollars per acre of wetland to be 14  
impacted; 15

(2) If the water resource to be impacted is a stream one 16

of the following fees, as applicable: 17

~~(a) For an ephemeral stream, a review fee of five dollars~~ 18  
~~per linear foot of stream to be impacted, or two hundred~~ 19  
~~dollars, whichever is greater;~~ 20

~~(b)~~ For an intermittent stream, a review fee of ten 21  
dollars per linear foot of stream to be impacted, or two hundred 22  
dollars, whichever is greater; 23

~~(e)~~ (b) For a perennial stream, a review fee of fifteen 24  
dollars per linear foot of stream to be impacted, or two hundred 25  
dollars, whichever is greater. 26

(3) If the water resource to be impacted is a lake, a 27  
review fee of three dollars per cubic yard of dredged or fill 28  
material to be moved. 29

(B) One-half of all applicable review fees levied under 30  
this section shall be due at the time of application for a 31  
section 401 water quality certification. The remainder of the 32  
fees shall be paid upon the final disposition of the application 33  
for a section 401 water quality certification. The total fee to 34  
be paid under this section shall not exceed twenty-five thousand 35  
dollars per application. However, if the applicant is a county, 36  
township, or municipal corporation in this state, the total fee 37  
to be paid shall not exceed five thousand dollars per 38  
application. 39

(C) All money collected under this section shall be 40  
transmitted to the treasurer of state for deposit into the state 41  
treasury to the credit of the surface water protection fund 42  
created in section 6111.038 of the Revised Code. 43

(D) The fees established under this section do not apply 44  
to any state agency as defined in section 119.01 of the Revised 45

Code or to the United States army corps of engineers. 46

(E) The fees established under this section do not apply 47  
to projects that are authorized by the environmental protection 48  
agency's general certifications of nationwide permits or general 49  
permits issued by the United States army corps of engineers. As 50  
used in this division, "general permit" and "nationwide permit" 51  
have the same meanings as in rules adopted under Chapter 6111. 52  
of the Revised Code. 53

(F) Coal mining and reclamation operations that are 54  
authorized under Chapter 1513. of the Revised Code are exempt 55  
from the fees established under this section for one year after 56  
~~the effective date of this amendment~~ March 30, 2006. 57

(G) As used in this section: 58

(1) "Ephemeral streamfeature" means ~~a stream that flows~~ 59  
surface water flowing or pooling only in direct response to 60  
~~precipitation in the immediate watershed or in response to the~~ 61  
~~melting of a cover of, such as rain or snow and ice and that has~~ 62  
~~channel bottom that is always above the local water table.~~ 63  
"Ephemeral feature" does not include a wetland as defined in 64  
section 6111.02 of the Revised Code. 65

(2) "Intermittent stream" means a stream that is below the 66  
local water table and flows for at least a part of each year and 67  
that obtains its flow from both surface runoff and ground water 68  
discharge. 69

(3) "Perennial stream" means a stream or a part of a 70  
stream that flows continuously during all of the calendar year 71  
as a result of ground water discharge or surface water runoff. 72  
"Perennial stream" does not include an intermittent stream or an 73  
ephemeral ~~stream~~feature. 74

<b>Sec. 6111.01.</b> As used in this chapter:	75
(A) "Pollution" means the placing of any sewage, sludge, sludge materials, industrial waste, or other wastes in any waters of the state.	76 77 78
(B) "Sewage" means any liquid waste containing sludge, sludge materials, or animal or vegetable matter in suspension or solution, and may include household wastes as commonly discharged from residences and from commercial, institutional, or similar facilities.	79 80 81 82 83
(C) "Industrial waste" means any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade, or business, or from the development, processing, or recovery of any natural resource, together with such sewage as is present.	84 85 86 87 88
(D) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, and other wood debris, lime, sand, ashes, offal, night soil, oil, tar, coal dust, dredged or fill material, or silt, other substances that are not sewage, sludge, sludge materials, or industrial waste, and any other "pollutants" or "toxic pollutants" as defined in the Federal Water Pollution Control Act that are not sewage, sludge, sludge materials, or industrial waste.	89 90 91 92 93 94 95 96
(E) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting water-borne sewage, industrial waste, or other wastes to a point of disposal or treatment, but does not include plumbing fixtures, building drains and subdrains, building sewers, and building storm sewers.	97 98 99 100 101 102 103

(F) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, building sewer connected directly to treatment works, incinerator, or other works used for the purpose of treating, stabilizing, blending, composting, or holding sewage, sludge, sludge materials, industrial waste, or other wastes, except as otherwise defined.

(G) "Disposal system" means a system for disposing of sewage, sludge, sludge materials, industrial waste, or other wastes and includes sewerage systems and treatment works.

(H) "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, that are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters. "Waters of the state" does not include an ephemeral feature.

(I) "Person" means the state, any municipal corporation, any other political subdivision of the state, any person as defined in section 1.59 of the Revised Code, any interstate body created by compact, or the federal government or any department, agency, or instrumentality thereof.

(J) "Industrial water pollution control facility" means any disposal system or any treatment works, pretreatment works, appliance, equipment, machinery, pipeline or conduit, pumping station, force main, or installation constructed, used, or placed in operation primarily for the purpose of collecting or conducting industrial waste to a point of disposal or treatment;

reducing, controlling, or eliminating water pollution caused by 134  
industrial waste; or reducing, controlling, or eliminating the 135  
discharge into a disposal system of industrial waste or what 136  
would be industrial waste if discharged into the waters of the 137  
state. 138

(K) "Schedule of compliance" means a schedule of remedial 139  
measures including an enforceable sequence of actions or 140  
operations leading to compliance with standards and rules 141  
adopted under sections 6111.041 and 6111.042 of the Revised Code 142  
or compliance with terms and conditions of permits set under 143  
division (J) of section 6111.03 of the Revised Code. 144

(L) "Federal Water Pollution Control Act" means the 145  
"Federal Water Pollution Control Act Amendments of 1972," 86 146  
Stat. 886, 33 U.S.C.A. 1251, as amended by the "Clean Water Act 147  
of 1977," 91 Stat. 1566, 33 U.S.C.A. 1251, and all other 148  
amendments to that act. 149

(M) "Historically channelized watercourse" means the 150  
portion of a watercourse on which an improvement, as defined in 151  
divisions (C) (2) to (4) of section 6131.01 of the Revised Code, 152  
was constructed pursuant to Chapter 940., 6131., or 6133. of the 153  
Revised Code or a similar state law that preceded any of those 154  
chapters and authorized such an improvement. 155

(N) "Sludge" means sewage sludge and a solid, semi-solid, 156  
or liquid residue that is generated from an industrial 157  
wastewater treatment process and that is applied to land for 158  
agronomic benefit. "Sludge" does not include ash generated 159  
during the firing of sludge in a sludge incinerator, grit and 160  
screening generated during preliminary treatment of sewage in a 161  
treatment works, animal manure, residue generated during 162  
treatment of animal manure, or domestic septage. 163

(O) "Sludge materials" means solid, semi-solid, or liquid materials derived from sludge and includes products from a treatment works that result from the treatment, blending, or composting of sludge.

(P) "Storage of sludge" means the placement of sludge on land on which the sludge remains for not longer than two years, but does not include the placement of sludge on land for treatment.

(Q) "Sludge disposal program" means any program used by an entity that begins with the generation of sludge and includes treatment or disposal of the sludge, as "treatment" and "disposal" are defined in division (Y) of section 3745.11 of the Revised Code.

(R) "Agronomic benefit" means any process that promotes or enhances plant growth and includes, but is not limited to, a process that increases soil fertility and moisture retention.

(S) "Sludge management" means the use, storage, treatment, or disposal of, and management practices related to, sludge and sludge materials.

(T) "Sludge management permit" means a permit for sludge management that is issued under division (J) of section 6111.03 of the Revised Code.

(U) "Sewage sludge" has the same meaning as in division (Y) of section 3745.11 of the Revised Code.

(V) "Ephemeral feature" means surface water flowing or pooling only in direct response to precipitation, such as rain or snow. "Ephemeral feature" does not include a wetland, as defined in section 6111.02 of the Revised Code.

Sec. 6111.011. (A) The exclusion of ephemeral features 192  
from the definition of waters of the state under section 6111.01 193  
of the Revised Code does not affect the director of 194  
environmental protection's authority to do all of the following: 195

(1) Administer and enforce Chapter 3734. of the Revised 196  
Code with regard to any discharge, deposit, dumping, or 197  
placement of wastes regulated under that chapter in an ephemeral 198  
feature; 199

(2) Administer and enforce Chapter 3714. of the Revised 200  
Code with regard to any discharge, deposit, dumping, or 201  
placement of construction and demolition debris in an ephemeral 202  
feature; 203

(3) Take any other authorized actions under the Revised 204  
Code, other than Chapter 6111. of the Revised Code, that apply 205  
to the discharge, deposit, dumping, or placement of waste, 206  
debris, or other materials in an ephemeral feature. 207

(B) The exclusion of ephemeral features from the 208  
definition of waters of the state under section 6111.01 of the 209  
Revised Code does not affect the authority of any state agency, 210  
other than the environmental protection agency, to take any 211  
authorized actions under the Revised Code, other than Chapter 212  
6111. of the Revised Code, that apply to the discharge, deposit, 213  
dumping, or placement of waste, debris, or other materials in an 214  
ephemeral feature. 215

**Section 2.** That existing sections 3745.114 and 6111.01 of 216  
the Revised Code are hereby repealed. 217