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# COUNTY ADVISORY BULLETIN

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**BULLETIN 1999-11**

**OCTOBER 1999**

## **SENATE BILL 20 OF 123<sup>rd</sup> GENERAL ASSEMBLY MODIFIES EPA ANTIDegradation PERMIT PROCESS FOR PETITION DITCH PROJECTS**

**Effective Date:** October 20, 1999.

**Revised Code Sections Affected:** 6111.01, 6111.12, and 6131.14.

**Lead Sponsor:** Cupp (R-Lima).

**House Co-Sponsors:** Brading (R-Wapakoneta), Core (R-Rushsylvania), Krebs (R-Camden), Harris (R-Ashland), Metzger (R-New Philadelphia), Haines (R-Xenia), Buehrer (R-Delta), Damschroder (R-Fremont), Jordan (R-Urbana), Terwilleger (R-Maineville), Distel (D-Conneaut), Hartnett (D-Mansfield), Taylor (R-Norwalk), Ogg (D-Sciotoville), Householder (R-Glenford), Stapleton (R-Washington Court House), Hollister (R-Marietta), Buchy (R-Greenville), Hoops (R-Napoleon), Williams (R-Akron), Netzley (R-Laura), Vesper (R-New Richmond), Williamowski (R-Lima), Hood (R-Canfield).

**Senate Co-Sponsors:** White (R-Manchester), Wachtmann (R-Napoleon), Carnes (R-St. Clairsville), Mumper (R-Marion), Nein (R-Middletown), Latta (R-Bowling Green), Armbruster (R-North Ridgeville), Drake (R-Solon).

### **OVERVIEW**

Senate Bill 20 (SB 20) was introduced by Senator Robert Cupp (R-Lima) in response to concerns from county commissioners, county engineers and others in his district. These individuals were seeking to streamline the Ohio Environmental Protection Agency's (Ohio EPA) antidegradation permitting process for work that has been petitioned by the property owners to be done on well-established ditches. Ditches, particularly in northwest Ohio, aid in draining water and combating flooding.

Ohio EPA has established an "antidegradation" policy pursuant to requirements of the federal Clean Water Act. The premise of the "antidegradation" policy is to pose the question of how much, if any, lowering of water quality should be allowed **within** the boundaries of the beneficial use assigned to that water body. The "beneficial use"

assigned by Ohio EPA sets the target for cleaning up pollution and provides the absolute “floor” that protects aquatic life, recreational or water supply uses of the water.

Antidegradation regulations apply whenever a proposed project or discharge would lower water quality **within** the beneficial use category. The regulations prohibit lowering the water from one beneficial use category to another. In order for a lowering of water quality within a category to be allowed, there must be a finding that the lowering of water quality cannot be avoided and that it is necessary for important social and economic reasons.

## **ANTIDEGRADATION REVIEW**

SB 20 provides that “(a) ‘historically channelized watercourse’ provides technical, social, and economic benefits.” Therefore, the bill precludes Ohio EPA director from conducting further antidegradation review during the review of an application for the issuance or denial of a permit under the state Water Pollution Control Law or a water quality certification under section 401 of the federal Clean Water Act. Specifically, after public notice and opportunity for comment, and after a public hearing if significant public interest is shown, the director must find that **all** of the following apply:

- Work is necessary to restore or maintain a drainage or other improvement provided by a historically channelized watercourse.
- The work is performed pursuant to requirements established by the supervisors of the local soil and water conservation district or a petition filed under the ditch statutes.
- Without the work, flooding threatens public health and safety or may result in significant damage to public or private property.
- The work will not result in the loss of designated or existing beneficial uses as those uses are described in the Water Pollution Control Law (Ohio Revised Code (ORC) section 6111.041.
- If information is available concerning resident fishery or macro invertebrate communities, or both, in the historically channelized watercourse, the historically channelized watercourse does not support a particularly diverse or unique warm water habitat as that term is defined in the rules adopted under ORC section 6111.041.
- Plans for the work have been submitted to the applicable soil and water conservation district.
- A storm water runoff plan has been developed for the watershed prior to or during planning and design of the work and the work is consistent with the plan.

It is important to recognize how SB 20 defines a “historically channelized ditch” and the scope of improvements to these ditches. According to the bill, a “historically channelized ditch” means the portion of a watercourse on which an improvement was constructed pursuant to the following:

(1) to existing soil and water conservation or ditch laws; **or**

(2) to a similar state law that preceded any of the existing soil and water conservation or ditch laws that authorized such an improvement. An improvement, in this case, means all of the following:

- The deepening, widening, straightening or any other change in the course, location, or terminus of a river, creek, or run.
- A levee or any wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for the protection of lands from the overflow from any stream, lake, or pond, or for the protection of any outlet, or for the storage or control of water.
- The removal of obstructions such as silt bars, log jams, debris, and drift from any ditch, drain, watercourse, floodway, river, creek, or run.

## **BEST MANAGEMENT PRACTICES**

SB 20 also requires, where appropriate, that the Ohio Department of Natural Resources and the Ohio Department of Transportation, and the board of directors of a conservancy district make recommendations to a county engineer regarding the use of best management practices in the construction of an improvement under the ditch statutes.

Current law requires the engineer to prepare plans and maps for petition ditch improvements and to share copies of these plans with the Department of Natural Resources and the Department of Transportation when a state highway is affected. Copies of the plan also must be shared the board of directors of any conservancy district within which any part of the lands or streams affected by the proposed improvement may lie.

These officials must review the plans and file a report with the county engineer indicating approval or file a report with recommendations. SB 20 requires the approval or report with recommendations to include, where appropriate, recommendations regarding the use of best management practices that are consistent with the original prayer of the petition for the improvement.

**If you have any questions or need further information about SB 20, please contact CCAO Policy Analyst Cheryl Subler at (614) 221-5627 or [csubler@ccao.org](mailto:csubler@ccao.org).**