



AUGLAIZE COUNTY

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COUNTY ENGINEER

TJ Place
Auglaize County SWCD

July 2, 2013

In re: Sims Run

The Sims Run open ditch crosses National Road in Logan Township, Auglaize County approximately ¼ mile west of Main Street Road and then runs generally north and east to the Auglaize River.

According to the drainage records found in the Auglaize County Court House the Sims Run at this location was reconstructed and cleaned by a ditch petition through the Auglaize County Commissioners in 1950 using Section 6131 of the Ohio Revised Code, therefore making the Sims Run an “historically channelized stream ” as defined in ORC 6111.

It is my understanding that a new petition is under consideration using Section 1515 of the Ohio Revised Code and there is some environmental concerns about construction of this same channel from National Road downstream to the Auglaize River.

Over the past 39 years while I have served as the Assistant and now County Engineer of Auglaize County, that portion of National Road immediately adjacent to the Sims Run has been subject to roadway flooding and on several occasions, to the point where the roadway has to be closed. National Road is one of the main east-west thoroughfares near the northern boundary of Auglaize County that runs from Allen County, over Interstate 75, west to the Village of Kossuth and SR# 66.

To not reconstruct the section of the Sims Run from National Road to the River would only exacerbate the flooding problem and diminish the safety to many of the citizens in the NW quadrant of Auglaize County. There are fire/rescue squads in Cridersville and the nearby Village of Buckland that utilize that portion of National Road due to their cooperative agreements of support.

Douglas Reinhart, P.E., P.S.
Auglaize County Engineer



Am. S.B. 20
123rd General Assembly
(As Passed by the Senate)

Sens. Cupp, White, Wachtmann, Carnes, Mumper, Nein, Latta, Armbruster,
Drake

BILL SUMMARY

- Defines "historically channelized watercourse" as a watercourse that has been the subject of specified types of improvements that are subject to the ditch statutes for at least 20 years.
- States that a historically channelized watercourse provides technical, social, and economic benefits, and precludes the Director of Environmental Protection from requiring further antidegradation review of a historically channelized watercourse upon making specified findings.

CONTENT AND OPERATION

Background

Pursuant to the requirements of the federal Clean Water Act, the Director of Environmental Protection has established an antidegradation policy that is applicable to surface waters of the state. The Clean Water Act requires each state to classify the waters within the state according to their intended use. The state then must establish policies to maintain and protect the level of water quality that is necessary to protect those existing uses. However, federal law authorizes a state to allow lower water quality under certain circumstances, provided that existing uses continue to be protected and certain procedural requirements are met. Ohio's antidegradation policy has been established pursuant to those provisions.

Under the antidegradation policy, the Director may allow an increase of pollutants into a receiving body of water following a review of the technical, social, and economic need to do so. The person who wishes to conduct the activity that will cause the increase must provide information for the Director to review.

Public notice of the antidegradation review is required. Any increase of pollutants into the body of water that is so approved cannot interfere with the water's existing use.

The bill

The bill defines "historically channelized watercourse" as a watercourse or portion of a watercourse that has been the subject of an improvement for at least 20 years. (Sec. 6111.01(M).) For purposes of the bill, "improvement" means all of the following:

- (1) The deepening, widening, or straightening or any other change in the course, location, or terminus of a river, creek, or run;
- (2) 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; and
- (3) The removal of obstructions such as silt bars, log jams, debris, and drift from any ditch, drain, watercourse, floodway, river, creek, or run.

For purposes of Ohio's antidegradation policy, the bill states that a historically channelized watercourse provides technical, social, and economic benefits. It then precludes the Director from requiring further antidegradation review during the review of an application for and 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 Water Pollution Control Act (i.e., Clean Water Act) if the Director makes certain findings. 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:

- (1) Work is necessary to restore or maintain a drainage or other improvement provided by a historically channelized watercourse;
- (2) The work is subject to requirements established by the supervisors of the local soil and water conservation district or is the subject of a petition filed under the ditch statutes;
- (3) Without the work, flooding threatens public health and safety or may result in significant damage to public or private property;

(4) The work will not result in the loss of designated or existing beneficial uses as those are described in rules adopted under the Water Pollution Control Law;

(5) The work will not harm or interfere with the protection of federal or state designated endangered species;

(6) The historically channelized watercourse is not designated in rules adopted under the Water Pollution Control Law as coldwater habitat, exceptional warmwater habitat, or a state resource water;

(7) If information is available concerning resident fishery or macroinvertebrate communities, or both, in the historically channelized watercourse, the historically channelized watercourse does not support a particularly diverse or unique warmwater habitat as defined in rules adopted under the Water Pollution Control Law;

(8) Plans for the work have been submitted to the applicable soil and water conservation district; and

(9) A storm water runoff plan has been developed for the watershed during planning and design of the work. (Sec. 6111.12(C).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 20
Reported, S. Energy, Natural Resources, & Environment	03-25-99	p. 241
Passed Senate (32-0)	04-13-99	pp. 277-278

S0020-PS.123/rss

Chapter 6111: WATER POLLUTION CONTROL**6111.01 Water pollution control definitions.****As used in this chapter:**

- (A) "Pollution" means the placing of any sewage, sludge, sludge materials, industrial waste, or other wastes in any waters of the state.
- (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.
- (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.
- (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.
- (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.
- (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.
- (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 industrial waste; or reducing, controlling, or eliminating the discharge into a disposal system of industrial waste or what would be industrial waste if discharged into the waters of the state.

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

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

(M) "Historically channelized watercourse" means the portion of a watercourse on which an improvement, as defined in divisions (C)(2) to (4) of section 6131.01 of the Revised Code, was constructed pursuant to Chapter 1515., 6131., or 6133. of the Revised Code or a similar state law that preceded any of those chapters and authorized such an improvement.

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

(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.

6111.12 Antidegradation policy applicable to surface waters of the state pursuant to applicable federal laws and regulations.

(A) The director of environmental protection shall establish an antidegradation policy applicable to surface waters of the state pursuant to applicable federal laws and regulations. The purpose of the policy shall be to maintain levels of water quality that are currently better than prescribed by applicable standards except in situations when a need to allow a lower level of water quality is demonstrated based on technical, social, and economic criteria. Not later than March 31, 1994, the director shall revise the existing antidegradation policy established in rules adopted under section 6111.041 of the Revised Code and revise any necessary implementation procedures to conform them to the following principles and any mandatory regulations adopted under the Federal Water Pollution Control Act:

(1) The use of existing effluent quality as a method of calculating antidegradation-based limits shall be imposed only to the extent that the use is explicitly required by federal law or regulation as the only means available to implement antidegradation.

(2) No degradation shall be allowed in waters for any pollutant that currently does not meet applicable standards. For all remaining waters, there shall be provisions requiring federal antidegradation requirements to be met and provisions ensuring that waters of exceptional recreational or ecological value are maintained as high quality resources for future generations. There shall be at least two categories of surface waters identified in the state for that purpose and for the purpose of establishing priorities for the administrative and technical resources expended on antidegradation reviews.

(3) Whenever current ambient water quality is determined to be of a higher quality than prescribed in the standards, on a pollutant-by-pollutant basis, and the water body lacks exceptional recreational or ecological value, the director may allocate to existing sources eighty per cent of the pollutant assimilative capacity as determined by appropriate total maximum daily load procedures without further antidegradation review. The permittee for any existing source may receive an effluent limitation based on not more than one hundred per cent of the mass or concentration levels necessary to meet applicable water quality in the receiving water body as determined by appropriate total maximum daily load procedures, provided that there has been a satisfactory demonstration of the need to allow lower water quality based on technical, social, and economic criteria and the action is preceded by a public notice. Sources other than existing sources that result in ten per cent or greater change, that is, degradation, of ambient chemical water quality shall require a demonstration of technical, social, and economic need and shall be the subject of a public notice.

(4) Degradation of waters identified as possessing exceptional recreational or ecological value shall be determined through an analysis of the expected perceptible change in ambient concentrations of pollutant or alternatively through an analysis of the expected change in the biological condition of the water body. Either determination shall constitute a lowering of water quality and shall require an antidegradation review. The director shall establish, by rules adopted in accordance with Chapter 119. of the Revised Code, a definition of perceptible change that shall be applicable to those waters identified in rule as possessing exceptional recreational or ecological value. Antidegradation reviews shall be required for any activity resulting in a perceptible change in ambient chemical or biological quality on waters identified as possessing exceptional recreational or ecological value. Allowances shall

be made for existing sources to retain their current permit limits with no requirement to demonstrate technical, social, and economic need.

(5) The director shall establish reasonable protocols for completing technical, social, and economic need demonstrations based on existing federal guidance and on input from the department of development, the regulated community, and the general public.

(B) Effluent limitations established by the director for any existing source in any permit issued under division (J) of section 6111.03 of the Revised Code prior to July 1, 1993, shall continue in effect unless the permit is modified by the director. A discharger seeking modification of antidegradation-based limitations that were based on existing quality of discharge when the permit was issued shall apply to the director for modification of the permit, consistent with rules adopted under division (A) of this section, not later than one hundred eighty days after July 1, 1993. If the permittee has filed such a timely application for modification, the director shall not pursue administrative or judicial enforcement actions for violations of antidegradation-based limitations based on the existing quality of effluent that occur after July 1, 1993.

(C) A historically channelized watercourse provides technical, social, and economic benefits. Therefore, with regard to a historically channelized watercourse, the director shall not require further antidegradation review during the review of an application for and the issuance or denial of a permit under this chapter or a water quality certification under section 401 of the Federal Water Pollution Control Act if the director finds, after public notice and opportunity for comment, and a public hearing if significant public interest is shown, that all of the following apply:

(1) Work is necessary to restore or maintain a drainage or other improvement provided by a historically channelized watercourse.

(2) The work is performed pursuant to section 1515.08 of the Revised Code or a petition filed under section 6131.04 or 6133.02 of the Revised Code.

(3) Without the work, flooding threatens public health and safety or may result in significant damage to public or private property.

(4) The work will not result in the loss of designated or existing beneficial uses as those uses are described in rules adopted under section 6111.041 of the Revised Code.

(5) The work will not harm or interfere with the protection of federal or state designated endangered or threatened species.

(6) The historically channelized watercourse is not designated as coldwater habitat, exceptional warmwater habitat, or a state resource water in rules adopted under section 6111.041 of the Revised Code.

(7) If information is available concerning resident fishery or macroinvertebrate communities, or both, in the historically channelized watercourse, the historically channelized watercourse does not support a particularly diverse or unique warmwater habitat as that term is defined in rules adopted under section 6111.041 of the Revised Code.

(8) Plans for the work have been submitted to the applicable soil and water conservation district organized under Chapter 1515. of the Revised Code.

(9) 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.

(D) As used in this section:

(1) "Existing sources" means any treatment works that were built and operational under the terms of an NPDES permit prior to July 1, 1993, but does not include expansions or upgrades of existing treatment works authorized in rules adopted under section 6111.03 of the Revised Code after that date.

(2) "Appropriate total maximum daily load procedures" means the procedures, policies, and guidelines used by the director prior to July 1, 1993, or subsequent revisions to those procedures established in rules adopted in accordance with Chapter 119. of the Revised Code.

(3) "Antidegradation review" means the consideration by the director of the technical, social, and economic need demonstration completed by any person requesting to lower water quality as provided in this section, including the public notice of the application and, at the discretion of the director, a public hearing on it.

Effective Date: 10-20-1999

Sims Run No. 24 COUNTY DITCH PETITION

Single or Joint

Gen'l Code, Sec. 6444

Wapakonata, Ohio, December 18th, 1945

Petition for Location, construction, reconstruction, straightening, deepening, widening, etc.

To the Honorable Board of County Commissioners, Auglaize County, Ohio:

The undersigned hereby petition your honorable body for the Location, construction, reconstruction, straightening, deepening, widening, etc.

on the course hereinafter set forth.

The construction of the improvement is necessary and will be conducive to the public welfare.

The following is the course and termini of said proposed improvement, to-wit: Commencing on the north side of State Route No. 137 approximately four hundred (400) feet west of the east side of section 4, Logan Township, Auglaize County, Ohio, thence in a north-easterly direction thru sections 4, 33, 34 and 7; Town 4, South, Range 5 East, to the intersection with the Auglaize River and there terminate.

also a branch, commencing on the north side of the Monroe Road, near the south east corner of section 33, Logan Township, Auglaize County, Ohio; thence in a northerly direction to its intersection with the main ditch and there terminate.

The following is the nature of the work petitioned for: Open work.

