

ORDINANCE NO. 2009-30

AN ORDINANCE ADOPTING THE RULES AND REGULATIONS
FOR THE HAMILTON COUNTY STORM WATER DISTRICT;
AND DECLARING AN EMERGENCY

WHEREAS, pursuant to the Storm Water Phase II Permit Program (the "Phase II Program") of the National Pollutant Discharge Elimination System ("NPDES") of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq., 40 C.F.R. Parts 122.30 through 122.37); the Ohio Water Pollution Control Act (Ohio Revised Code Chapter 6111); and Ohio Administrative Code Chapter 3745-39, referred to as Phase II Storm Water Rules for Small Municipal Separate Storm Sewer Systems ("MS4"); dischargers of storm water from Small MS4s must obtain a NPDES permit from the Ohio Environmental Protection Agency; and

WHEREAS, the Phase II Program, as administered by U.S. EPA and the Ohio EPA, requires designated communities, including the County of Hamilton (the "County") and various local independent jurisdictions which own and/or operate an MS4, to develop a Storm Water Management Program under the Phase II Permit to address the quality of storm water runoff within their jurisdictions; and

WHEREAS, The Board of County Commissioners of Hamilton County (the "Board") has created the Hamilton County Storm Water District ("HCSWD") under Chapter 6117 of the Ohio Revised Code to address the requirements of the Phase II Program in the unincorporated regions of Hamilton County ("County"), and within those incorporated municipal corporations within the County which have assented to the formation of the HCSWD and consented and committed to its operation within their corporate limits ("Member Municipalities" or "Members"); and

WHEREAS, the attached Rules and Regulations which have been established by the Board in order to carry out the responsibilities of MS4's under the Phase II Permit Program, are intended to apply to non-storm water discharges, storm water discharges generated by construction and/or earth disturbing activities, and post-construction storm water discharges from development and redevelopment sites within the unincorporated regions of the County and within municipal corporations which are Members of the HCSWD and co-permittees under the MS4 permit; and

WHEREAS, as a Member municipal corporation under the Phase II Permit, the City of Blue Ash wishes to adopt the attached Rules and Regulations to protect the health, safety and welfare of its citizens by preventing non-storm water discharges and controlling storm water discharges from construction, development, and re-development sites located within the City of Blue Ash to the maximum extent practicable, consistent with federal, state or local law, and further defined in the attached Exhibit A "Determinations and Background Pertinent to Storm Water Management in Hamilton County, Ohio"; now, therefore,

Be it ordained by the Council of the City of Blue Ash, not less than five (5) members thereof concurring,

SECTION I

That Council hereby approves and adopts the "Determinations and Background Pertinent to Storm Water Management in Hamilton County", which are attached to this Ordinance as Exhibit A and hereby fully incorporated herein.

SECTION II

That Council hereby adopts, establishes and implements within the City of Blue Ash, the Rules and Regulations of the Hamilton County Storm Water District, Article I – Definitions, Article II – Illicit Discharge Regulations, Article III – Earthworks Regulations,

Article IV – Stream Corridor Regulations, and Article V – Post-Construction Storm Water Quality Regulations (“Post-Construction Regulations”), as the same are set forth in Exhibit B which are attached hereto and incorporated into this Ordinance as if fully rewritten herein as provided under Section 17.03 of the Blue Ash Charter.

SECTION III

That these Rules and Regulations of the HCSWD may be duly amended or modified by the Board of County Commissioners of Hamilton County, Ohio from time to time, and that Council must adopt said amendments or modifications to these Rules and Regulations of the HCSWD unless Council enacts alternative rules and regulations that are mutually agreed to be as stringent or more stringent than the Rules and Regulations of the HCSWD.

SECTION IV

That Council and the appropriate administrative officials of the City of Blue Ash will cooperate with the HCSWD in the enforcement of the Rules and Regulations, and shall exercise such legal authority as it may possess which may be reasonably required to assist the HCSWD in carrying out the intent of the Rules and Regulations within the municipal corporate boundaries in order to achieve and maintain compliance with the requirements of state and federal law regarding the Phase II Program.

SECTION V.

That Council hereby:

- a. authorizes and designates the HCSWD and its authorized designated agent(s) to act as the **Enforcing Official for Article II - Illicit Discharge Regulations**, within the corporate boundaries of the City of Blue Ash; and
- b. consents to and hereby authorizes the City Manager to enter into such agreements, **as approved by the Solicitor**, with the Board as may be necessary and appropriate for the District to provide such Phase II services; and
- c. consents to collection of an equitable fee by the District for the performance of such services from property owners located within the municipal corporate boundary of the City of Blue Ash through property assessments or related charges, and/or from developers within the City of Blue Ash for the provision of such services, which fee shall be reasonably determined by the District in consultation with the City of Blue Ash.

SECTION VI.

That the City Manager, or his designated representative, is hereby authorized and directed to act as the **Enforcing Official for Article III - Earthwork Regulations**, to do all things reasonably necessary and proper to cooperate with the HCSWD in implementing and carrying out the Phase II Program and enforcing Article III Earthwork Regulations within the City of Blue Ash corporate boundaries for any common plan of development that disturbs one (1) acre or more, hereby names the Blue Ash Board of Zoning Appeals as the body designated to hear appeals under Section 320 of the Earthwork Regulations, and hereby agrees to report such enforcement actions to the HCSWD in a format and frequency approved by the HCSWD.

SECTION VII.

That the City Manager, or his designated representative, is hereby authorized and directed to act as the **Enforcing Official for Article IV - Stream Corridor Regulations**, to do all things reasonably necessary and proper to cooperate with the

Comment [JAA1]: NOTE TO COMMUNITIES: COMMUNITIES SHOULD REMOVE THE BOLD, ITALICIZED TEXT IN SECTION 2 IF THEY WISH TO ADOPT SECTIONS 311 AND 314 OF THE EARTHWORK REGULATIONS, WHICH EXCEED MINIMUM PHASE II NPDES COMPLIANCE REQUIREMENTS.

Comment [JAA2]: NOTE TO COMMUNITIES: SECTION 5 SHOULD BE INCLUDED IF THE COMMUNITY REQUESTS THAT THE DISTRICT PROVIDE ENFORCEMENT OF ONE OR MORE ARTICLES OF THESE RULES AND REGULATIONS (SELECT THOSE ARTICLES LISTED IN BOLD IN SECTION 5 THAT APPLY AND SELECT ONE OF THE TWO APPROPRIATE METHODS OF PAYMENT, SHOWN IN ITALICS).

HCSWD in implementing and carrying out the Phase II Program and enforcing the Stream Corridor Regulations within the City of Blue Ash corporate boundaries for any common plan of development that disturbs one (1) acre or more, establish stream corridor protection zones according to the dimensions in Table 407-B of the Stream Corridor Regulations for any stream with a drainage area of 100 acres or larger, hereby names the Blue Ash Board of Zoning Appeals as the body designated to hear appeals of notices of violation under Section 412 of the Stream Corridor Regulations, and hereby agrees to report such enforcement actions to the HCSWD in a format and frequency approved by the HCSWD.

SECTION VIII.

That the City Manager, or his designated representative, is hereby authorized and directed to act as the **Enforcing Official for Article V - Post-Construction Regulations**, to do all things reasonably necessary and proper to cooperate with the HCSWD in implementing and carrying out the Phase II Program and enforcing Article V Post-Construction Regulations within the City of Blue Ash corporate boundaries for any common plan of development that disturbs one (1) acre or more, require the control of 20% of the water quality volume for redevelopment projects, hereby names the Blue Ash Board of Zoning Appeals as the body designated to hear appeals under Section 520 of the Post-Construction Regulations, and hereby agrees to report such enforcement actions to the HCSWD in a format and frequency approved by the HCSWD.

Comment [JAA3]: **NOTE TO COMMUNITIES: SECTIONS 6, 7, 8, AND 9 SHOULD BE INCLUDED ONLY FOR THOSE ARTICLES NOT ADDRESSED IN SECTION 5.**

SECTION IX.

That it is the intent of the Council of the City of Blue Ash that the remedies provided in this Ordinance and in the Rules and Regulations are intended to be in addition to and not exclusive of any other remedies as may be available under applicable federal, state or local law.

SECTION X.

That the provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION XI.

That the Clerk of Council of the City of Blue Ash is hereby directed to certify a copy of this Ordinance to the Board of County Commissioners of Hamilton County.

SECTION XII.

This ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, and welfare of the citizens of Blue Ash; the reason for the emergency is the requirement for adoption of the regulations by July 1, 2009 to comply with the Phase II Program.

PASSED this 11th day of June, 2009.

Robert J. Buckman, Jr., Mayor

Jamie K. Eifert, Clerk of Council

APPROVED AS TO FORM:

Bryan Pacheco, Deputy Solicitor

| THIS IS A CERTIFIED TRUE AND CORRECT COPY:

Deleted: &

Jamie K. Eifert, Clerk of Council

Exhibit A
Determinations and Background Pertinent to Storm Water Management
In Hamilton County, Ohio

- 1) Pursuant to Resolution duly passed by the Board of County Commissioners of Hamilton County, Ohio ("Board") on February 12, 2003, the Board established the Hamilton County Storm Water District ("HCSWD") under Ohio Law and the Ohio Revised Code (O. R. C.), including Chapter 6117, in order to administer the Phase II Program.
- 2) By Resolution No. 2003 - 13, dated February 13, 2003, the City of Blue Ash, a municipal corporation located in Hamilton County, Ohio and organized and existing under the laws of Ohio, did consent to the formation, operation and jurisdiction of the HCSWD within the corporate boundaries of the said City of Blue Ash for the purpose of compliance with requirements of the Phase II Program.
- 3) O.R.C. 6117.01(D) provides that the Board has the authority to adopt and enforce rules and regulations within the HCSWD, which is made up of the unincorporated territory in the County and in various independent jurisdictions which have joined the HCSWD.
- 4) Non-storm water discharges into the MS4 can cause pollution, public health concerns, and environmental damage.
- 5) Soil is most vulnerable to erosion by wind and water during soil disturbing activities and this eroded soil necessitates repair of sewers and ditches, dredging of rivers, harbors, and lakes; accelerates downstream bank erosion and damage to public and private property; endangers water resources by reducing water quality; and causes the siltation of aquatic habitat.
- 6) Development, and redevelopment projects and associated increases in impervious cover alter the hydrologic response of local watersheds; increase storm water runoff rates and volumes; contribute to erosion, sediment transport and deposition; and disrupt aquatic habitat within streams and other water resources.
- 7) Inadequate control of storm water and protection of water resources can result in flooding, streambank erosion, and water quality degradation, causing significant damage to structures, property, and receiving water resources, impairing the capacity of these resources to sustain aquatic systems and their associated aquatic life use designations.
- 8) In order to promote public health and safety and sound economic development in Hamilton County, it is important to provide homebuilders, developers, and property owners with consistent, technically feasible, and operationally practical standards for illicit discharge prevention, storm water management, erosion prevention, and sediment control.

- 9) Under the Phase II Program, the HCSWD and its consenting co-permittee jurisdictions are required to implement programs designed to detect and prohibit non-storm water discharges into the municipal separate storm sewer system (“MS4”) and to control the discharge of storm water runoff from construction, development, and redevelopment projects that disturb one acre or more of earth within the HCSWD.
- 10) Article I consists of “Definitions”, which are intended to define terms that are used within one or more of the other four (4) Articles of the Hamilton County Storm Water District’s Rules and Regulations.
- 11) Article II consists of the “Illicit Discharge Regulations” which are intended to regulate illicit discharges from and illicit connections to MS4s for compliance with the Phase II Program, to the extent allowable under State or local law, with the following specific objectives:
- (a) To regulate for compliance with the Phase II Program the contribution of pollutants to the MS4 from non-storm water discharges by any user;
 - (b) To effectively prohibit illicit connections and discharges to the MS4, to the extent allowable under State or local law;
 - (c) To identify legal authority to carry out the inspection, surveillance and monitoring procedures necessary to ensure compliance with Article II of these Rules and Regulations;
 - (d) To identify appropriate enforcement mechanisms to discourage illicit and illegal connections and discharges to the MS4.
- 12) Article III consists of the “Earthwork Regulations”, which are intended to minimize or eliminate the creation of new or the aggravation of existing sensitive land areas and formations and to minimize or prevent the degradation of water quality associated with storm water discharges from construction activities within the HCSWD to the maximum extent practicable, consistent with federal, state or local law, with the following specific objectives:
- (a) To regulate for compliance with the Phase II Program pollutants in storm water discharges and non-storm water discharges from construction projects and/or earth disturbing activities;
 - (b) To preserve and protect the natural environment of Hamilton County as it relates to the stability of hillside slopes; Deleted: .
 - (c) To identify legal authority to carry out the inspection, surveillance and monitoring procedures necessary to ensure compliance with the Earthwork Regulations;
 - (d) To identify appropriate enforcement mechanisms for construction activities and earth disturbing activities that destabilize hillsides, cause erosion, release sediment, and cause pollution of receiving waters. Deleted: ; and

13) Article IV consists of the "Stream Corridor Regulations," which are intended to regulate the protection of streams and use of land near streams, consistent with federal, state or local law, with the following specific objectives:

(a) To protect the habitat of the stream from development-related impacts and protect the development from flooding and erosion by the stream;

(b) To establish allowable facilities and activities within the stream corridor protection zone as a condition of approval for select land development and redevelopment projects;

(c) To identify the legal authority to establish these zones and conduct inspection, surveillance, and monitoring procedures necessary to ensure compliance with the Stream Corridor Regulations;

(d) To identify appropriate enforcement mechanisms to restore stream protection where designated unallowable facilities and activities are present.

Deleted: ; and

14) Article V consists of the "Post-Construction Storm Water Quality Regulations" ("Post-Construction Regulations") which requires land developers to properly design and construct storm water management facilities, and establish agreements for the long-term maintenance of storm water management facilities that serve the development project, consistent with federal, state or local law, with the following specific objectives:

(a) To regulate and establish standards for the design, construction, and long-term maintenance of storm water quality control facilities for development and redevelopment projects;

(b) To preserve and protect the water resources of the County of Hamilton by controlling the discharge of pollutants and accelerated runoff;

(c) To identify legal authority to carry out the inspection, surveillance and monitoring procedures necessary to ensure compliance with the Post-Construction Regulations;

(d) To identify appropriate enforcement mechanisms for the design, construction, and long-term maintenance of storm water control facilities.

Exhibit B
Rules and Regulations of the Hamilton County Storm Water District

(Incorporated by Reference. Printed copies are on file in the Service Department Office for inspection by the public and for sale to the public at cost. Electronic copies are available at www.blueash.com.)

Article I – Defintions

Article II – Illicit Discharge Regulations

Article III – Earthwork Regulations

Article IV – Stream Corridor Regulations

**Article V – Post-Construction Storm Water Quality Regulations
(Post-Construction Regulations)**