

# Resolution

Number 19-0178

Adopted Date February 5, 2019

## APPROVE AND ADOPT WARREN COUNTY EROSION AND SEDIMENT CONTROL REGULATIONS

WHEREAS, this Board met on January 15, 2019, January 22, 2019, and again this 5<sup>th</sup> day of February 2019, for two public hearings to consider the adoption of Warren County Erosion and Sediment Control Regulations in accordance with Ohio Revised Code Section 307.37; and

WHEREAS, during said public hearings, this Board considered the recommendation from the Soil and Conservation District and all those present to speak in favor of or in opposition to the adoption of said regulations; and

NOW THEREFORE BE IT RESOLVED, approve and adopt Warren County Erosion and Sediment Control Regulations in accordance with Ohio Revised Code Section 307.37; said regulations as attached hereto and made a part hereof.

Mr. Grossmann moved for adoption of the foregoing resolution, being seconded by Mrs. Jones. Upon call of the roll, the following vote resulted:

Mr. Young - absent  
Mrs. Jones - yea  
Mr. Grossmann - yea

Resolution adopted this 5<sup>th</sup> day of February 2019.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Soil and Water (file)  
Engineer (certified) (file)  
Erosion Control Regulations Public Hearing file  
Cincinnati HBA  
Dayton HBA

**WARREN COUNTY  
EROSION AND SEDIMENT CONTROL REGULATIONS**

Warren County, Ohio

2019

Warren County Board of Commissioners  
Shannon Jones  
David G. Young  
Tom Grossmann  
406 Justice Drive, Lebanon, Ohio

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# WARREN COUNTY EROSION AND SEDIMENT CONTROL REGULATIONS

## ARTICLE I GENERAL PROVISIONS

### SECTION 100 TITLE

These regulations, and any amendments thereto, shall be cited as the Warren County Erosion and Sediment Control Regulations and may hereinafter be referred to as "these regulations."

### SECTION 101 STATUTORY AUTHORIZATION

These regulations are promulgated in accordance with section 307.79, et. seq. of the Ohio Revised Code, whereby a board of county commissioners may adopt, amend, and rescind rules establishing technically feasible and economically reasonable standards to achieve a level of management and conservation practices that will abate wind or water erosion of the soil or abate the degradation of the waters within the state by soil sediment in conjunction with land grading, excavating, filling, or other soil disturbing activities on land used or being developed for non-agriculture, commercial, industrial, residential, or other non-agriculture purposes, and establish criteria for determination of the acceptability of those management and conservation practices.

Per section 307.79 of the Ohio Revised Code, these regulations shall require persons to file applications relating to plans governing erosion control, sediment control, and water management before clearing, grading, excavating, filling, or otherwise wholly or partially disturbing one or more contiguous acres of land owned by one person or operated as one development unit for the construction of non-agriculture buildings, structures, utilities, recreational areas, or other similar non-agriculture uses.

Per section 307.79 of the Ohio Revised Code, these regulations shall not apply inside the limits of municipal corporations or the limits of townships with a limited home rule government that have adopted their own regulations governing soil erosion or water degradation from non-agriculture development, or lands being used in a strip mine as defined in section 1513.01, or surface mine operation defined in section 1514.01, of the Ohio Revised Code.

### SECTION 102 PURPOSE

The Warren County Commissioners adopts these regulations as a comprehensive rewrite of, and restates and amends the regulations dated November 16, 2006 or prior thereto.

These regulations amend and restate the Erosion and Sediment Control Regulations of Warren County, Ohio, to establish technically feasible and economically reasonable standards to achieve a level of management and conservation practices that will abate wind or water erosion of the soil or abate the degradation of the waters within the state by soil sediment in conjunction with land grading, excavating, filling, or other soil disturbing activities on land used or being developed for non-agriculture, commercial, industrial, residential, or other non-agriculture purposes, and establish criteria for determination of the acceptability of those management and conservation practices.

The purposes of these regulations include, without limitation, the following:

- A. Permitting development while keeping erosion and sedimentation as close to existing levels as practical.
- B. Reducing impairment of receiving streams which may be caused by erosion and sedimentation from construction and other earth disturbing activities.
- C. Encouraging innovative design which will enhance the control of erosion and sedimentation in a manner consistent with the intent of these regulations.
- D. Implementing the applicable area-wide waste treatment management plan prepared under section 208 of the "Federal Water Pollution Control Act," 86 Stat. 816 (1972), 33 U.S.C.A. 1228, as amended, and to implement phase II of the storm water program of the national pollution discharge elimination system (NPDES) established in 40 C.F.R. Part 122.

### **SECTION 103 SCOPE**

No person shall cause or allow earth-disturbing activities on a development area except in compliance with the criteria established by these regulations and those found in the Ohio Environmental Protection Agency (Ohio EPA) General Permit Authorization for Storm Water Discharges Associated with Construction Activity Under the NPDES, Permit No. OHC000005, hereafter referred to as the Construction General Permit, and all subsequent versions. These regulations shall apply to all earth disturbing activities covered in Part I.B. of the Construction General Permit which shall be performed on unincorporated lands of Warren County, Ohio except those activities excluded in Section 307.79 of the Ohio Revised Code as follows:

- A. Strip mining operations regulated under Section 1513.01 of the Ohio Revised Code;

- B. Surface mining operations regulated by Section 1514.01 of the Ohio Revised Code;
- C. Public highways, transportation, and drainage improvement or maintenance project undertaken by a government agency or political subdivision in accordance with a statement of its standard sediment control policies that is approved by the board or the chief of the division of soil and water conservation in the Ohio department of agriculture.

**SECTION 104 DISCLAIMER OF LIABILITY**

Neither submission of a plan under provisions of these regulations nor compliance with provisions of these regulations shall relieve any person from responsibility for damage to any person or property otherwise imposed by law, nor impose any duty or liability upon the Warren County Board of Commissioners or their agents for damage to any person or property.

**SECTION 105 SEVERABILITY**

If any clause, section, or provision of these regulations is declared invalid or unconstitutional by a court of competent jurisdiction, validity of the remainder shall not be affected thereby.

**SECTION 106 EFFECTIVE DATE**

These regulations shall be effective on the 31st day after adoption by the Warren County Commissioners.

**ARTICLE II  
INTERPRETATION**

**SECTION 200 INTERPRETATION OF TERMS AND WORDS**

For the purpose of these regulations certain rules or word usage apply to the text as follows:

- A. Words used in the present tense include the future tense, and the singular includes the plural, unless the context clearly indicates the contrary.
- B. The term "shall" is always mandatory and not discretionary; the word "may" is permissive.
- C. Words or terms not interpreted or defined by this article or statutory law shall have their customary meanings as interpreted by Ohio common law, or

if no common law exists then as found in the most recent editions of published dictionaries, so as to give these regulations its most reasonable application.

## **SECTION 201 DEFINITIONS OF TERMS AND WORDS**

For the purpose of these regulations certain definitions apply to the text as follows:

- A. **Construction Site:** Any parcel of land on which land has been disturbed for non-farming activity in the efforts to construction a new land or building feature.
- B. **Agriculture:** Agriculture includes agricultureing; ranching; aquaculture; algaculture meaning the agricultureing of algae; apiculture and related apicultural activities, production of honey, beeswax, honeycomb, and other related products; horticulture; viticulture, winemaking, and related activities; animal husbandry, including, but not limited to, the care and raising of livestock, equine, and fur-bearing animals; poultry husbandry and the production of poultry and poultry products; dairy production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of the foregoing; the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production; and any additions or modifications to the foregoing made by the director of agriculture by rule adopted in accordance with Chapter 119. of the Revised Code.
- C. **Board or Board of County Commissioners or Warren County Board of County Commissioners:** Consisting of the three duly elected or appointed County Commissioners of Warren County, Ohio, a political subdivision of the State of Ohio operating under a statutory scheme of County government, that is vested with the authority to promulgate and enforce administrative rules of sediment control and water management per section 307.79, etc. of the Ohio Revised Code, referred to hereinafter as the Warren County Commissioners.
- D. **Construction General Permit:** Ohio Environmental Protection Agency's General Permit Authorization for Storm Water Discharges Associated with Construction Activity Under the National Pollution Discharge Elimination System, Ohio EPA Permit Number: OHC000005, and all subsequent versions at [https://www.epa.ohio.gov/dsw/permits/GP\\_ConstructionSiteStormWater](https://www.epa.ohio.gov/dsw/permits/GP_ConstructionSiteStormWater).

- E. **Developer/Owner:** Any individual, sub-divider, firm, association, syndicate, partnership, corporation, trust, or any other legal entity commencing proceedings under these regulations to disturb earth on a parcel of land hereunder for himself or for another.
- F. **Development/Construction Area:** Any tract, lot, parcel of land or combination of such which are part of a larger common plan of development, upon which more than one acre of earth disturbing activity is to be performed.
- G. **Earth Disturbing Activity:** Any clearing, grading, excavating, grubbing, and/or filling or other alteration of the earth's surface where natural or man-made ground cover is destroyed and which may result in or contribute to erosion and sediment pollution.
- H. **Earth Disturbing Permit:** A permit to perform earth disturbing activities provided by the Warren County SWCD once a developer/owner meets specific criteria, such as: approval of sediment and erosion control plan, approval of a storm water pollution prevention plan (SWP3), payment of a review and inspection fee.
- I. **Erosion and Sediment Control Plan:** A strategy or plan to minimize erosion and prevent off-site sedimentation by passing sediment laden runoff through a sediment control measure, which has been prepared and approved in accordance these regulations and those requirements of the Construction General Permit. The erosion and sediment control plan is most often part of a larger set of construction drawings.
- J. **Owner:** Someone who holds the right of possession and title to a parcel or tract of land.
- K. **Soil and Water Conservation District:** As organized under Chapter 940 of the Ohio Revised Code, the Soil and Water Conservation District includes either its board, or its director or employees, hereinafter referred to as the Warren County SWCD.
- L. **Storm Water Pollution Prevention Plan (SWP3):** The SWP3 is a stand-alone document required by these regulations and the Construction General Permit for all construction sites disturbing one acre or more of land. The SWP3 describes all the construction site operator's activities to prevent stormwater contamination, control sedimentation and erosion, manage post construction storm water runoff and comply with the requirements of the Clean Water Act.



**ARTICLE III  
REGULATIONS**

**SECTION 300 REQUIREMENTS**

These regulations set forth the process for applying and obtaining an earth disturbing permit, and are not intended to state in their entirety the technical criteria which are found in the Ohio EPA Construction General Permit, and amendments thereto, but must strictly comply with such Ohio EPA Construction General Permit criteria.

No person shall cause or allow earth-disturbing activities on a development area except in compliance with the standards and criteria set forth in these regulations.

- A. When a proposed development area includes one or more acres of earth disturbing activities on land being developed for non-agriculture, commercial, industrial, residential, or other non-agriculture purposes which are within the jurisdiction of Warren County, the developer/owner of record shall obtain an earth disturbing permit from Warren County SWCD prior to the commencement of any earth disturbing activities.
- B. When a proposed development area involves less than one acre of earth disturbing activities, it is not necessary to obtain a permit; however, the developer/owner must comply with the other provisions of these regulations.
- C. All earth disturbing activities shall be subject to observation and site inspection by Warren County SWCD to determine compliance with these regulations.
- D. In accordance with these regulations, and as part of the criteria for an earth disturbing permit, the developer/owner shall:
  - 1. Submit an earth disturbing permit application, as per section 401 of these regulations.
  - 2. Develop and submit to Warren County SWCD a Storm Water Pollution Prevention Plan (SWP3) and an erosion and sediment control plan, as per section 402 of these regulations.
  - 3. Develop and submit a stand-alone Operation and Maintenance Plan (O&M) for all post construction BMPs in the SWP3. The O&M requirements can be found in the OEPA Construction General Permit.

4. Once SWP3 approval is obtained from Warren County SWCD and Warren County Engineer's Office, developer/owner shall submit for a NOI from the EPA. The developer/owner shall then provide to Warren County SWCD a copy of the Notice of Intent (NOI) certifying the site's coverage under the Construction General Permit.
  5. Submit a review and inspection fee as established in section 403 of these regulations.
  6. Submit an electronic copy of the approved preliminary plan, where applicable.
- E. The Warren County SWCD shall be notified 48 hours prior to commencement of earth disturbing activities and within 48 hours after the project is completed.
- F. All earth disturbing activity and improvements shall be constructed in conformity with approved plans. Revisions or amendments to the approved plans or SWP3 shall be timely submitted to Warren County SWCD for review and approval prior to implementation.

**ARTICLE IV  
ADMINISTRATION**

**SECTION 400 ADMINISTRATION**

Unless otherwise provided herein, the Warren County Commissioners designate the Warren County SWCD as its designee for the administration and enforcement of these regulations. The Warren County SWCD shall establish procedures for the issuance of permits, review applications, issue and/or deny permits, issue notices of violations, stop work orders, and may request the county prosecutor to seek an injunction and other appropriate relief in the court of common pleas, as necessary, to abate excessive erosion or sedimentation and secure compliance with these regulations.

The foregoing designation of authority to the Warren County SWCD shall be concurrent with and not prohibit the Warren County Commissioners, per section 307.79 (F) of the Ohio Revised Code, from determining a developer/owner is in violation of these regulations or an administrative order, and requesting the county prosecutor to seek an injunction or other appropriate relief in the court of common pleas, as necessary, to abate excessive erosion or sedimentation and secure compliance with these regulations.

**SECTION 401 EARTH DISTURBING PERMIT APPLICATION**

As part of the criteria for an earth disturbing permit, the developer/owner shall submit an earth disturbing permit application.

- A. The earth disturbing permit application can be found on the Warren County SWCD website at [www.warrenswcd.com](http://www.warrenswcd.com). This form is a fillable PDF which can be downloaded, filled out electronically and emailed back to Warren County SWCD. The form can also be printed and filled in by hand and mailed to Warren County SWCD.
- B. The earth disturbing permit application is a form intended to collect information for the on-site person responsible for all erosion and sediment control issues that arise during construction. This person will be contacted with reminders, deficiencies, maintenance items, problems or additions to the on-site erosion and sediment control practices and efforts during construction.

**SECTION 402 SWP3 & EROSION AND SEDIMENT CONTROL PLANS**

As part of the criteria for an earth disturbing permit, the developer/owner shall develop and submit a Storm Water Pollution Prevention Plan (SWP3) and an erosion and sediment control plan to Warren County SWCD for review and approval.

- A. All submittals shall be electronic.
- B. The SWP3 and erosion and sediment control plan shall, at a minimum, meet the technical requirements set forth in Ohio EPA's Construction General Permit.
- C. The SWP3 and erosion and sediment control plan shall be certified by a professional engineer registered in the State of Ohio.
- D. The SWP3 shall be approved, or conditionally approved, by the Warren County Engineer's Office before the Warren County SWCD will issue an Earth Disturbing Permit.
- E. Approved plans shall remain valid for two (2) years from date of approval unless construction has begun and control measures have been implemented. Renewal is accomplished by the submission of another plan.

**SECTION 403 PLAN REVIEW AND INSPECTION FEE**

As part of the criteria for an earth disturbing permit, the developer/owner shall submit a plan review and inspection fee, as established by the Warren County Commissioners.

- A. The review and inspection fee shall be made payable to Warren County Soil and Water Conservation District.
- B. Fee schedule shall be as follows:  
 Disturbed Acres:      \$125/disturbed acre

**SECTION 404 EARTH DISTURBING PERMIT**

- A. An earth disturbing permit shall be obtained before any earth disturbing activity is begun except for soil borings, test pits, and other analysis efforts. Earth disturbing activities include clearing, grading, excavating, grubbing, and/or filling or other alteration of the earth's surface where natural or man-made ground cover is destroyed and which may result in or contribute to erosion and sediment pollution.
- B. Earth Disturbing Permits shall remain valid for two years from date of approval unless construction has begun and control measures have been implemented. Renewal is accomplished by resubmission of all necessary requirements found in Section 300 (D).

**SECTION 405 INSPECTION**

Warren County SWCD may inspect developments and development areas to determine compliance with these regulations.

- A. Warren County SWCD may perform monthly, or more frequent, inspections on all construction sites within the county.
- B. Individual lots as part of a larger development may be subject to review and inspection.
- C. Warren County SWCD, upon identification of the owner or person in charge, may enter any land upon obtaining agreement with the owner, tenant, or manager of the land in order to determine whether there is compliance with these regulations. If the Warren County SWCD is unable to obtain such an agreement, it may apply for, and a judge of the court of common pleas for the county where the land is located may issue, an appropriate inspection warrant as necessary to achieve the purposes of this chapter.

#### **SECTION 406 MAINTENANCE NEEDS, DEFICIENCIES, VIOLATIONS AND ENFORCEMENT**

All temporary erosion and sediment control practices shall be installed according to the timeline set forth in the approved SWP3, on the erosion and sediment control plans and in accordance with the Construction General Permit. These practices shall be maintained and repaired as needed to assure continued performance of their intended function. The developer/owner shall be responsible for such maintenance and repairs until the final inspection.

- A. If it is found that an developer/owner failed to obtain any federal, state, or local permit necessary for erosion and sediment control, earth movement, clearing, or cut and fill activity on a development area of one acre or larger, the Warren County SWCD, as authorized representative of the Warren County Commissioners, may issue an immediate stop work order.
- B. Upon inspection by the Warren County SWCD, if a deficiency or lack of installation of an erosion and sediment control practice is found, the Warren County SWCD will communicate the need to the developer/owner, develop a timeline for compliance, and will afford the developer/owner an opportunity to bring the project back into compliance before moving the deficiency to a violation.
- C. Over the course of construction and through deterioration by use and weather, erosion and sediment control practices often need maintenance, repair or re-installation. The developer /owner shall assign qualified inspection personnel to inspect all sediment and erosion control practices at a frequency set forth in the latest Construction General Permit. If any erosion and sediment control practice needs maintenance, repair or reinstall, the developer/owner shall comply with the timeline set forth in the Construction General Permit.

- D. If the developer/owner is unresponsive or if the owner/developer does not comply with Warren County SWCD's requests or timeline to remediate the maintenance needs, deficiencies or lack of installed practices, Warren County SWCD can upgrade the maintenance need, deficiency or lack of installation to a violation.
- E. Notice of violation process per O.R.C. 307.79 as follows:
1. If the Warren County SWCD determines that a violation of these regulations exists, the Warren County SWCD may issue an immediate stop work order if the violator failed to obtain any federal, state, or local permit necessary for sediment and erosion control, earth movement, clearing, or cut and fill activity. In addition, if the Warren County SWCD determines such a violation exists, regardless of whether or not the violator has obtained the proper permits, Warren County SWCD may authorize the issuance of a notice of violation. If, after a period of not less than thirty days has elapsed following the issuance of the notice of violation, the violation continues, the Warren County SWCD shall issue a second notice of violation. Except as provided in division (3) of this section, if, after a period of not less than fifteen days has elapsed following the issuance of the second notice of violation, the violation continues, Warren County SWCD may issue a stop work order after first obtaining the written approval of the prosecuting attorney of the county if, in the opinion of the prosecuting attorney, the violation is egregious.
  2. Once a stop work order is issued, the Warren County SWCD shall request, in writing, the county prosecuting attorney to seek an injunction or other appropriate relief in the court of common pleas to abate excessive erosion or sedimentation and secure compliance with these regulations. If the prosecuting attorney seeks an injunction or other appropriate relief, then, in granting relief, the court of common pleas may order the construction of sediment control improvements or implementation of other control measures, and may assess a civil fine of not less than one hundred or more than five hundred dollars for civil contempt by failing to comply with the court's order. Each day of violation shall be considered a separate violation subject to a civil fine. Once an injunction or other appropriate relief is issued, an expedited motion may be filed by the prosecuting attorney for future violations by the developer/owner requesting the Court to order the developer/owner to appear and show cause why the developer/owner should not be held in further contempt of the injunction or other appropriate relief ordered by the court.
  3. The person to whom a stop work order is issued under this section may appeal the order to the court of common pleas of the county in which it was issued, seeking any equitable or other appropriate relief from that order.

4. No stop work order shall be issued under this section against any public highway, transportation, or drainage improvement or maintenance project undertaken by a government agency or political subdivision in accordance with a statement of its standard sediment control policies that is approved by the board or the chief of the division of soil and water resources in the department of agriculture.
  
- F. No person shall violate these regulations. Notwithstanding division (E) of this section, if the Warren County Commissioners determine that a violation of these regulations or administrative order issued relating thereto, the Warren County Commissioners may request, in writing, the prosecuting attorney of the county to seek an injunction or other appropriate relief in the court of common pleas to abate excessive erosion or sedimentation and secure compliance with these regulations or an administrative order. In granting relief, the court of common pleas may order the construction of sediment control improvements or implementation of other control measures and may assess a civil fine of not less than one hundred or more than five hundred dollars for civil contempt by failing to comply with the court's order. Each day of violation shall be considered a separate violation subject to a civil fine. Once an injunction or other appropriate relief is issued, an expedited motion may be filed by the prosecuting attorney for future violations by the developer/owner requesting the Court to order the developer/owner to appear and show cause why the developer/owner should not be held in further contempt of the injunction or other appropriate relief ordered by the court.

#### **SECTION 407 APPEALS**

- A. Any person aggrieved by any stop work order, requirement, determination, or any other action or inaction by the Warren County SWCD in relation to these regulations may appeal to the court of common pleas.
  
- B. Such an appeal shall be made in conformity with Chapters 2505 and 2506 of the Ohio Revised Code. Written notice of appeal shall be served on the clerk of the Warren County Commissioners and the Warren County SWCD.
  
- C. Appeals shall be filed within thirty days of the decision of the Director or the employee(s) of the Warren County SWCD.