

**PUBLIC HEARING MINUTES**  
**Portage County Stormwater Rules and Utility Creation**  
**Portage County Engineer's Facility**  
5000 Newton Falls Road, Ravenna, Ohio 44266  
**Thursday, July 16, 2009**  
**Convened at 5:00 PM**

**I. OPENING & INTRODUCTIONS**

Portage County Board of Commissioners Vice-President Maureen T. Frederick introduced Commissioner Christopher Smeiles, County Engineer Mickey Marozzi, County Auditor Janet Esposito, Health Commissioner DuWayne Porter, Soil & Water District Coordinator James Bierlair, Consultant Shawn Arden, Shalersville Township Trustees Frank Ruehr and Dennis Bujak, Clerk Deborah Mazanec.

**II. PURPOSE OF THE HEARING – Deborah Mazanec, Clerk**

In accordance with Ohio Revised Code § 307.79, the Portage County Board of Commissioners will hold two Public Hearings to hear comment on the establishment of rules for erosion/sediment control and illicit discharges under Ohio Revised Code 307.79. Upon future adoption, the proposed rules would be implemented through a Portage County storm sewer district in accordance with Ohio Revised Code 6117.01. This is the first of two public hearings. A second public hearing is scheduled for **Thursday, July 23, 2009 at 1:00 PM** in the Portage County Commissioners' Board Room on the seventh floor of the County Administration Building, 449 South Meridian Street in Ravenna. Notice of this hearing was published in the Record Courier Newspaper on July 1, 2009, July 8, 2009 and July 15, 2009.

A copy of the draft rules for erosion/sediment control and illicit discharges has been available for public review at the Commissioners' Office located on the seventh floor of the Portage County Administration Building, 449 South Meridian Street in Ravenna and at the County Engineer's Facility, 5000 Newton Falls Road in Ravenna since June 23, 2009. A copy of the draft rules are also posted on the Portage County Storm Water Management Department Website, which can be found on the Portage County Homepage.

**III. SWEARING IN OF THOSE WHO ARE SPEAKING**

Commissioner Frederick swore in those who wished to speak.

- Do you solemnly affirm under the penalties of the law of perjury of the State of Ohio that the testimony you are about to give shall be the truth, the whole truth and nothing but the truth?

**Please respond:** I do.

**IV. PRESENTATION OF PROPOSED REGULATIONS**

Portage County Storm Water Coordinator Mickey Marozzi opened the hearing by giving the website for the storm water program as [www.co.portage.oh.us/stormwater.htm](http://www.co.portage.oh.us/stormwater.htm) and the name and email address of the Ohio EPA's Storm Water Coordinator Kelvin Rogers as (330) 963-1117 and [Kelvin.rogers@epa.state.oh.us](mailto:Kelvin.rogers@epa.state.oh.us).

Mr. Marozzi gave a history of how the Portage County Task Force was created and described the task that the Task Force undertook in creating the Storm Water program in order to comply with the Ohio EPA's six minimum control measures. The Task Force worked for three years in creating the rules that were to be adopted under the first permit. Portage County did not impose the rules and has been in violation since. The Soil & Water Conservation District, the Health Department and the County Engineer must work in tandem but cannot supply the necessary services with no funding. The Portage County Prosecutor has determined that there are three funding mechanisms available and the task

force recommended a storm water utility to create the necessary revenue stream. The Board of Commissioners is considering the implementation of a storm water utility and the adoption of two sets of rules for that utility. The Board of Commissioners retained ms consultants to assist in the implementation. Why is the county doing this? To create better storm water quality. There will be no pipes laid, no ditches dug and no dealings with the quantity of water. Secondly, this program is an unfunded mandate required by the Ohio EPA. Right now, Portage County is in violation and the EPA could fine Portage County \$30,000 per day. However, since the county has a schedule and timeframe, the EPA will wait for our process to move forward.

The Ohio EPA issued a first generation permit to Portage County and co-permittees for a five year period ending 2008. The second generation permit was issued for five years from 2009-2104.

Commissioner Charles W. Keiper II and State Representative Kathleen Chandler attending.

Shawn Arden, consultant with ms consultants, inc. noted that the EPA rolled out the rules in 2003 and stated that this is not a new program. The NPDES program requires Portage County to develop storm water quality controls in a minimum of six practice areas: 1) Illicit Discharge Detection and Elimination, 2) Construction Storm Water Management, 3) Post-Construction Storm Water Management, 4) Public Education, 5) Public Involvement, and 6) Good Housekeeping. The two sets of rules must be adopted for the unincorporated areas of Portage County, not the cities and villages. The county is working with Kelvin Rogers to finalize our plan. The EPA can fine Portage County and/or any individual Township if are not compliant. Outside agencies can also file suit for non-compliance. The EPA has advised the county that we will be audited in the fall of 2009.

Mr. Arden reviewed the draft rules for illicit discharge and storm water noting that the objectives of these rules are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by storm water discharges by any user
- (2) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with these rules

He further read Section VII of the draft illicit discharge and storm water rules, which states that no person shall discharge or cause to be discharged into the storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

Mr. Arden outlined the discharges that are exempt from the rules including: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing pollutants. He added that this program will be in place to prohibit the placing of something into storm water that should not be there.

The construction site sediment, erosion, and storm water management draft rules affect parcels larger than one acre. These rules are already in effect in Ohio but the local inspection and oversight will be provided here.

Mr. Arden stated that the proposed storm water district will include the unincorporated areas of Portage County only. There will be additional requirements under the current EPA permit in that 50% of residents must be educated, a storm water system must be mapped, construction sites must be inspected, post-construction sites maintained, and the county and township facilities must install Good Housekeeping Rules. Soil & Water staff will conduct site inspections and Health Department staff will test outfalls. Kent and Ravenna both have a District and Rules in place; Stow, Barberton and Wadsworth also have moved forward with rules and a district in place. Erie, Franklin and Lucas Counties are working on the creation of a district and rules.

In accordance with Ohio Revised Code 6117, Portage County will assess a storm water user fee in the unincorporated areas of the county beginning in January 2010 if the Storm Water District is adopted. Each residential property and agricultural parcels will be charged for one flat rate Equivalent Residential Unit (ERU), which is an average of 5,800 square feet. One ERU will cost \$3.00 or less per month. Industrial, commercial and public properties, as well as churches, hospitals and schools will be charged based on the impervious (hard surfaces such as patios, roofs, driveways, outbuildings, etc) area of the parcel, and billed one ERU per 5,800 SF of impervious area. There will be a credit program in place for special needs users who implement programs above the draft rules including the installation of rain gardens, ground water recharging, public education and some credit, yet to be determined, for agricultural relief. Mr. Arden noted that he would consider any suggestions from the Ag community. The City of Kent charges around \$2.30/month per ERU, the City of Ravenna charges \$3.00/month per ERU, and Lake County charges \$2.50/month. Mr. Arden stated that there is a liability for the county not to move forward with EPA fines for the county and/or each township. The rules require staffing, which the General Fund cannot pay for with tax revenues down. This utility is necessary to pay for this unfunded mandate following precedent set both locally and nationally.

Finally, Mr. Arden stated that this proposed Storm Water District is not a Conservancy District and is not associated with that entity in any way.

**V. PUBLIC COMMENT – Commissioner Frederick opened the hearing for comment**

- Carole Pollard, 5359 Allyn Road, stated that the Board of Commissioners has had years to get familiar with this concept and the public has had weeks. She would like to see more accurate terminology used for the rules – name what it is so that the public can understand. Ms. Pollard stated that there is no credit planned for residents who do their best to mitigate runoff.

Mr. Arden responded that the terminology is based on state statute. He added that there is consideration for residential credits but he does not believe it should be a financial credit; perhaps the county could provide rain barrels or plants as an alternative. He also added that the credit earning must be verified by staff before being approved.

- Cal Brant, 4336 Wayne Road, asked what the \$3.00/month fee is to be used for? He noted that he has a friend on Pioneer Trail who is at the bottom of several properties and has had vegetation changes due to the water running onto his property. How will that be fixed?

Mr. Arden responded that the district funds collected will go into an Enterprise Fund to be used for compliance issues and on-the-ground efforts. Since it appears that neighbors have diverted water, the situation on Pioneer Trail will not be helped by this proposed program, which deals with water

quality and not water quantity or flooding. State streams have been cleaned up due to controls not in place.

Mr. Brant asked about areas that are undevelopable. What inspections will be made?

Mr. Arden responded that the program may include advanced screening for wetlands or areas with weak soils, which should not be developed. The only inspections made will be for illicit discharges.

- Wayne Rogers, 5746 Beechwood Road, stated that the \$3.00/month just gets Portage County started. That cost will continue to rise.

Mr. Arden responded that the charge will be established for the current permit from 2009-2014. The Ohio EPA may change the regulations for the 2014 permit but there has been no indication as to how the regulations will change. He noted that the change in the two past cycles was minimal.

5:45 PM Commissioner Keiper left the public hearing

- Portage County Health Commissioner Porter added that the city of Kent decreased their fees from the original fee. He added that the Health Department hopes to decrease future costs by identifying and illuminating illicit discharges.
- Steve Berecek, 111416 Parkman Road, referred to a United Nations document, Agenda 21, Chapter 18, stating that this is "just another tax". He asked why the plan is not to go to those creating pollutants, like Dow Chemical, and not the residents.
- Kathleen Drown, 356 Cackler Road, stated that she does not understand the need to this program. She has a pond on her property that collects rainwater; she has turtles living in that pond. If the water was polluted, why are the turtles still living? The air is clean at her home, as well. She noted that there is lichen growing on the trees, indicating healthy air. She asked what she would get out of paying \$36/year. Every year, taxes go up, house insurance, recycling is on the tax bill. She asked why she has to pay this when she lives on a fixed income.
- Terry Vechery, 1137 Thornwood Drive, stated that she lives in a storm water controlled subdivision with 23 houses. Why should those 23 residents pay this fee? She noted that the City of Akron cannot comply with these EPA mandates. It looks like the government looked to see who was left to pay the fees and decided that the residents should pay.
- Bruce Stanford, 3077 Luli Road, stated that he has two horse barns on his eight acre property as well as a one acre pond. This program will charge him for all of this including the runoff from his home and his neighbors' parcels.

Mr. Arden responded that the Stanford property is considered a residential property and will be charged \$3.00/month. Mr. Marozzi added that the 5,800 SF charge is for commercial and industrial parcels, not residential parcels.

- Cal Brant stated that he is concerned that he owns three parcels with no draining. Will there be a review board in place to appeal charges?

Mr. Arden responded that he is looking at how to address multiple parcels.

- Steve Berecek presented the United Nations Agenda 21, Chapter 18 to the Commissioners' Clerk to copy for all speakers.
- Henri Pusker, 2032 Skyview Lane, stated that he attended E-Check meetings years ago and this sounds the same to him. He asked why federal stimulus money cannot be used to fund this program.

Mr. Arden responded that the Ohio EPA has projects identified for the stimulus funding. The money will be dispersed as compliance is approved. There are not grants or loans available for the NPDES Program.

- Commissioner Frederick asked how many other Ohio counties have storm water programs in place?

Mr. Arden responded about 20 counties are regulated by this program so far. Population is the threshold for entry into the program.

- Bob Stehli, 3898 Winchell Road, stated that farmers deal with runoff all the time by installing drain tiles to keep water draining slowly. It is necessary to preserve large tracts of land that will accept storm water. Money should be given to farmers who maintain these large tracts of land that will not be developed.

Commissioner Frederick responded that Mr. Stehli has suggested a CAUV credit for agricultural parcels.

Health Commissioner Porter added that agricultural parcels will only pay one ERU per parcel.

Mr. Stehli noted that this program will not cure the problem.

Mr. Arden responded that he appreciates the suggestions and there is room for assistance for farmers within the statutory requirements. The construction inspections will benefit farmers and the public education will benefit the Ag industry.

- Dave Pollard, 3692 State Route 82, apologized to James Bierlair for comments made at the public storm water meeting that were intended for the US Department of Agriculture. Mr. Pollard continued, noting that he is tired of "pickpockets". He is not confident that the Engineer and Health Department are involved in this program. Mantua Township is tired of county roads not being maintained, ditches not cleared but icing over and covered in vegetation. He believes that the Health Department has approved too many septic tanks erroneously. He has not confidence in this program and stated that it is a money siphon. He encouraged the county to find the moral courage to make developers foot the bill for damage to the county. Residents are not contributing to the problem but must pay. A properly designed retention pond will not overflow. He asked if the county will accept the changes that the townships must make? He stated that he has little confidence in this program, which is a tax scheme.
- Ron Stamm, 4980 Pioneer Trail, asked the Board of Commissioners if the General Fund is spending within its income. The Board of Commissioners responded yes. Mr. Stamm asked if the General Fund has the Ohio EPA fines of \$30,000/day to pay should this program not move forward. The Board of Commissioners responded no. Mr. Stamm noted that it is "disgusting" that the county is in this position. Mr. Stamm asked if there has been number crunching on the size of the staff necessary for the program. Expenses can be cut with reduced hiring.

Mr. Arden responded that there are ongoing discussions regarding staffing.

- David Stotler, 522 Horning Road, asked why all 88 counties are not involved. Does Portage County not have good water? What is the scientific basis for the program? Can we just say no?

Mr. Arden responded that the EPA set up this program based on population density and growth. There are areas of Summit County that are overflowing into Portage County and are to blame for our population expansion.

- Bonetta Guyette, 5345 Bassett Road, stated that flooding is the issue. The problem is not caused by residents or agriculture but by construction. Why not focus on the construction sector for money? Impervious surfaces contribute to runoff problems. Ms. Guyette added that someone allowed Wal-Mart to build in Brimfield destroying an area where storm water collected. Ms. Guyette asked why the county does not implement rules not like no cement parking lots?

Mr. Arden responded that wetlands are regulated by the Army Corp of Engineers. The Corp regulates the mitigation of wetlands. He added that implementing rules like no cement parking lots will not bring Portage County into compliance.

- Steve Berecek asked if compliance will come with inspection? There is no need to tax parcels if the money can come from other sources.
- Marie Stehli, Mantua Township Fiscal Officer, 3898 Winchell Road, stated that she wants to be certain that this is not an alternative funding source. The township governments cannot afford to fund this program.

Mr. Arden responded that the utility will fund 100% of the compliance and the county will not seek township funding. The Board of Commissioners can adjust the billing rate up or down at any time.

- Ron Stenglein, 9372 Dorothy Drive, stated that he is from Streetsboro so not included in the proposed district. He stated that he wanted those attending to know that the Board of Commissioners sent a petition to the court for the creation of a conservancy district. Mr. Stenglein read information regarding the purpose of the conservancy district from the petition. He added that the court conservancy district will have to power to assess in addition to the storm water program. The storm water district and the Portage Water Improvement District is a duplication of effort and another fee.

Mr. Arden responded that the conservancy district will deal with water quality trading, building projects on land to sell for credits. The storm water utility district will not building anything. These are two separate programs and not associated.

Mr. Stenglein responded that the polluter is still polluting after buying the credits.

Mickey Marozzi added that the steering committee listened to a presentation by the conservancy district and asked about its proposed revenue stream. If the district is successful in getting revenue that utility has access to, we can reduce our rates.

Mr. Stenglein added that, if created, the Conservancy District will have all of the authority of a government body with the officers appointed by the Judge, the ability to eminent domain property and the district can assess, which he believes will happen.

Mr. Marozzi responded that this may or may not happen; we will deal with it if so. But, we need the revenue stream now to come into compliance.

- Kathleen Drown stated that she owns 3.5 acres. What will she get out of this program. Will there be a credit for residents? She asked what the plan is to spend the \$3.00/month. Once this is built, will the charges stop?

Mr. Arden responded that we all live in a watershed, travel in the county and work in the community. This program will keep sediment out of the streams and illicit discharge out of our storm water. The funds will be used to comply with the mandate for the six minimum control measures.

- Steve Berecek stated that government continues to take away property rights.
- Mr. Stenglein noted that only two of the three Commissioners voted to petition the court for a conservancy district. Commissioner Frederick did not.
- Charles Duffield, 9032 Limeridge Road, asked why we should not handle the quantity of water first and then deal with the quality. He does not “buy the story” that the EPA is mandating this program. He added that the county ditches are “terrible”. He suggested that Portage County refuse to pay the fines; the government is out of control. This is being used as an excuse to do what the county wants. He added that no county could pay the amount of the fines.

Mr. Arden responded that the program is mandated by the EPA. The General Fund cannot cover the costs to cover quality let alone the quantity issue. He added that the county looked at this program in 2003 but tabled the issue due to the expense. Now the EPA has the right to fine Portage County.

- Commissioner Smeiles responded to some of the comments made so far. He noted that the county applies for many grants, each of which require that the county be in compliance with all state and federal laws. He would like to get grant money for this program but there is none available. For the past five years, Portage County has told the EPA that we are working on compliance issues. The Board of Commissioners received the EPA letter detailing the \$10,000 per day fines and agreed that it was time to move the program forward. The EPA has advised that they plan to audit the county in the fall of 2009. He reminded attendees that the taxpayers always lose to the EPA in court. The Board of Commissioners is looking for the least painful way to comply to include the recycling program and E-Check. The Board of Commissioners shares the frustrations expressed but cannot be out of compliance in this matter with the EPA. All residents paying a small price is less painful than some paying a large price. The County picked up the township portions of the permit fees in the past. Portage County has no choice in this matter.

Mr. Duffield asked if there is one example of the EPA fining the county?

County Auditor Esposito responded that the county paid several hundred thousand dollars years ago when the county was out of compliance.

Commissioner Smeiles continued, noting that the Conservancy District is a complex notion. He gave an example as to how the Conservancy District may work.

Mr. Stenglein asked what will happen in the third EPA five-year period. He added that the next step may be to build something to “fix” the problem. Mr. Arden responded that changes are unknown at this time. He hopes that the increased regulations will not be hugely different. He added that building something to “fix” the problem is cost prohibitive. The county may review development regulations as part of the program.

- Mr. Duffield asked if he will see inspectors on his property five years from now. Mr. Arden responded yes, they will be testing the flow for pollutants at drainage outfalls along county and township roads, which the Health Department will trace back to the source. The Health Commissioner noted that staff cannot go onto property without serving a warrant.
- Carole Pollard stated that the Wal-Mart wetland issue concerns her. It is inexcusable that the wetlands were not better used. Someone needs to look at ecology as a whole system. She keeps hearing that we are helpless; can anyone spell proactive? We need to look at the whole system. Mr. Arden agreed with the concerns but replied that wetland regulations are under the Corp of Engineers and the EPA and would require a legislative change for the county to obtain jurisdiction. He added that there are some developers that value wetlands and work them into their projects as amenities. This direction should be encouraged.
- Dave Pollard asked if there has been a baseline water quality figure established by township? If not, why not. How can we know if we are improving without that figure? Mr. Pollard asked, if the township can prove that water coming out of there are meets EPA standards, can that township be exempt from this program? Is the Board of Commissioners prepared to back the townships when they do what has to be done to change development? If not, this is a tax scheme.

Commissioner Smeiles responded that zoning is a local issue. Mr. Pollard responded that the Regional Planning Commission is closely tied to county government. We need to find ways to control development. Commissioner Smeiles replied that the Chairman of the Regional Planning Commission is Jack Groselle, who is a township trustee, as are other members of the Regional Planning Commission. He recommended that the township change their zoning regulations to control development. Mr. Arden added that the Soil & Water District will inspect developments under this program. He added that the Ohio EPA handles all baseline studies statewide. Portage County has done no baseline study.

- Bob Stehli asked if the EPA is getting any of the \$3.00/month Portage County charge. Mr. Arden responded that the EPA will get permit fees and fines.
- Mr. Stenglein asked how much Wal-Mart will pay in this program. Mr. Arden responded that the actual fee will depend on the impervious area contained on the parcel. Mr. Stenglein asked that this charge will affect new businesses coming into Portage County?
- Dennis Bujak, Shalersville Township Trustee, 4200 Dudley Road, stated that he believes that the EPA has too much power. He asked if there was another option for payment rather than property taxes.

Mr. Arden responded that it is too expensive to mail bills, which would increase costs. Commissioner Smeiles added that the Board of Commissioners could look at other payment options and added that the County Auditor is getting a portion of the fee for expenses.

- Carole Pollard asked who will pay the fee for the large box stores that have vacated? Mr. Arden responded that the property owner of record will pay. Ms. Pollard thanked the speakers and stated that she appreciates the opportunity to speak at length about this program.

## **VI. CLOSING STATEMENT – Commissioner Frederick**

Commissioner Frederick thanked those attending. She noted that a second public hearing is scheduled for **Thursday, July 23, 2009 at 1:00 PM** in the Portage County Commissioners' Board Room on the seventh floor of the County Administration Building, 449 South Meridian Street in Ravenna.

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We do hereby certify that the foregoing is a true and correct record of the Portage County Board of Commissioners' public hearing on **July 16, 2009**. There being no further business to come before the Board, the public hearing was adjourned at 7:20 PM

Charles W. Keiper II, President

Maureen T. Frederick, Vice President

Christopher Smeiles, Board Member

Deborah Mazanec, Clerk

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