

ORDINANCE NO. 33-2019 (SMS)

By Council Member Yasinow

An Ordinance enacting Codified Ordinance Chapter 1334, Erosion and Sediment Control, and declaring an emergency.

**WHEREAS**, soil is most vulnerable to erosion by wind and water during soil disturbing activities and this eroded soil necessitates repair of sewers and ditches and dredging of rivers, harbors, and lakes; accelerates downstream bank erosion and damage to public and private property; damages water resources by reducing water quality; and causes the siltation of aquatic habitat; and

**WHEREAS**, communities throughout the watershed(s) in which the City of Cleveland Heights (“City”) is located have experienced and continue to experience costs associated with inadequate erosion and sediment control and increased State and Federal regulation; and

**WHEREAS**, there are watershed-wide efforts to reduce sedimentation in the Doan Brook watershed and the Dugway Brook watershed and Nine Mile Creek watershed and to protect and enhance the unique water resources or wetlands of these watersheds;

**WHEREAS**, the City is a member of the Doan Brook Watershed Partnership and recognizes the need to reduce sedimentation and to protect water quality by controlling soil disturbing activities within its borders; and

**WHEREAS**, 40 C.F.R. Parts 9, 122, 123 and 124, referred to as NPDES Stormwater Phase II, require designated communities, including the City, to develop and implement a Stormwater Management Program to address, among other components, erosion and sediment control during soil disturbing activities; and

**WHEREAS**, Article XVIII, Section 3 of the Ohio Constitution grants municipalities the legal authority to adopt rules to abate soil erosion and water pollution by soil sediments; and

**NOW, THEREFORE BE IT ORDAINED** by the Council of The City of Cleveland Heights, County of Cuyahoga, State of Ohio, that:

**SECTION 1:** Codified Ordinance **Chapter 1334, Erosion and Sediment Control**, is hereby adopted to read in total set forth in Exhibit A hereto:

**SECTION 2:** Notice of passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

**SECTION 3:** This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to commence the regulations set forth herein on a timely basis.

Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

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CAROL ANN ROE, Mayor  
President of the Council

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SUSANNA NIERMANN O'NEIL  
Acting Clerk of Council

PASSED: May 6, 2019

**EXHIBIT A**

**CHAPTER 1334  
EROSION AND SEDIMENT CONTROL**

**1334.01 PURPOSE AND SCOPE**

- (a) The purpose of this regulation is to establish technically feasible and economically reasonable standards to achieve a level of erosion and sediment control that will minimize damage to property and degradation of water resources, and will promote and maintain the health and safety of the citizens of the City of Cleveland Heights (“City”)
- (b) This regulation will:
  - (1) Allow development while minimizing increases in erosion and sedimentation.
  - (2) Reduce water quality impacts to receiving water resources-that may be caused by new development or redevelopment activities.
- (c) This regulation applies to all parcels, located within the City, used or being developed, either wholly or partially, for new or relocated projects involving highways, underground cables, or pipelines; subdivisions or larger common plans of development; industrial, commercial, institutional, or residential projects; building activities on farms; redevelopment activities; general clearing; and all other uses that are not specifically exempted in Section 1334.01 (d), 1 Acre or greater in area.
- (d) This regulation does not apply to activities regulated by, and in compliance with, the Ohio Agricultural Sediment Pollution Abatement Rules.

**1334.02 DEFINITIONS**

For purpose of this regulation, the following terms shall have the meaning herein indicated:

- (a) **ABBREVIATED STORMWATER POLLUTION PREVENTION PLAN (ABBREVIATED SWP3):** The written document that sets forth the plans and practices to be used to meet the requirements of this regulation.
- (b) **ACRE:** A measurement of area equaling 43,560 square feet.
- (c) **ADMINISTRATOR:** The person or entity having the responsibility and duty of administering and ensuring compliance with this regulation. The Administrator shall be the city engineer or other person designated by the City Manager.
- (d) **BEST MANAGEMENT PRACTICES (BMPs):** Also **STORMWATER CONTROL MEASURE (SCM).** Schedule of activities, prohibitions of practices, maintenance procedures, and other management practices (both structural and non-structural) to prevent or reduce the pollution of water resources. BMPs also include treatment requirements, operating procedures, and practices to control facility and/or construction site runoff, spillage or leaks, sludge or waste disposal; or drainage from raw material storage.

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- (e) CITY: The City of Cleveland Heights, its designated representatives, boards, or commissions.
- (f) COMMENCEMENT OF CONSTRUCTION: The initial disturbance of soils associated with clearing, grubbing, grading, placement of fill, or excavating activities or other construction activities.
- (g) CONCENTRATED STORMWATER RUNOFF: Any stormwater runoff that flows through a drainage pipe, ditch, diversion, or other discrete conveyance channel.
- (h) CONSTRUCTION ENTRANCE: The permitted points of ingress and egress to development areas regulated under this regulation.
- (i) DEVELOPMENT AREA: A parcel or contiguous parcels owned by one person or persons, or operated as one development unit, and used or being developed for commercial, industrial, residential, institutional, or other construction or alteration that changes runoff characteristics.
- (j) DEWATERING VOLUME: See current Ohio Rainwater and Land Development Manual or other standard acceptable to the Administrator.
- (k) DISCHARGE: The addition of any pollutant to surface waters of the state from a point source.
- (l) DISTURBANCE: Any clearing, grading, excavating, filling, or other alteration of land surface where natural or man-made cover is destroyed in a manner that exposes the underlying soils.
- (m) DISTURBED AREA: An area of land subject to erosion due to the removal of vegetative cover and/or soil disturbing activities such as grading, excavating, or filling.
- (n) DRAINAGE: (1) The area of land contributing surface water to a specific point. (2) The removal of excess surface water or groundwater from land by surface of subsurface drains.
- (o) DRAINAGE WATERSHED: For the purpose of this regulation the total contributing drainage area to a BMP, i.e., the “watershed” directed to the practice. This includes offsite contributing drainage.
- (p) DRAINAGE WAY: A natural or manmade channel, ditch, or waterway that conveys surface water in a concentrated manner by gravity.
- (q) EROSION: The process by which the land surface is worn away by the action of wind, water, ice, gravity, or any combination of those forces.
- (r) EROSION AND SEDIMENT CONTROL: The control of soil, both mineral and organic, to minimize the removal of soil from the land surface and to prevent its transport from a disturbed area by means of wind, water, ice, gravity, or any combination of those forces.
- (s) FINAL STABILIZATION: All soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of at least 80% coverage for the

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area has been established or equivalent stabilization measures, such as the use of mulches or geotextiles, have been employed. In addition, all temporary erosion and sediment control practices are removed and disposed of and all trapped sediment is permanently stabilized to prevent further erosion. Final stabilization also requires the installation of permanent (post-construction) stormwater control measures (SCMs).

- (t) GRADING: The excavating, filling, or stockpiling of earth material, or any combination thereof, including the land in its excavated or filled condition.
- (u) GRUBBING: removing or grinding of roots, stumps and other unwanted material below existing grade.
- (v) IMPERVIOUS: That which does not allow infiltration.
- (w) LANDSCAPE ARCHITECT: A Professional Landscape Architect registered in the State of Ohio.
- (x) LARGER COMMON PLAN OF DEVELOPMENT OR SALE: A contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan.
- (y) MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that are:
  - (1) Owned or operated by the federal government, state, municipality, township, county, district, or other public body (created by or pursuant to state or federal law) including a special district under state law such as a sewer district, flood control district or drainage districts, or similar entity, or a designated and approved management agency under Section 208 of the Federal Water Pollution Control Act that discharges into surface waters of the state; and
  - (2) Designed or used for collecting or conveying solely stormwater,
  - (3) Which is not a combined sewer, and
  - (4) Which is not a part of a publicly owned treatment works.
- (z) NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES): The national program for issuing, modifying, revoking and reissuing, termination, monitoring and enforcing permits and enforcing pretreatment requirements, under sections 307, 402, 318, 405 under the Clean Water Act.
- (aa) OPERATOR: Any party associated with a construction project that meets either of the following two criteria:
  - (1) The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
  - (2) The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with A Stormwater Pollution Prevention Plan (SWP3) for the site or other permit conditions (e.g. they are authorized to direct

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workers at a site to carry out activities required by the SWP3 or comply with other permit conditions.

- (bb) OWNER OR OPERATOR: Any person who owns or operates any facility or activity subject to regulation under the NPDES program.
- (cc) PARCEL: Means a tract of land occupied or intended to be occupied by a use, building or group of buildings and their accessory uses and buildings as a unit, together with such open spaces and driveways as are provided and required. A parcel may contain more than one contiguous lot individually identified by a 'Permanent Parcel Number' assigned by the Cuyahoga County Auditor's Office.
- (dd) PERCENT IMPERVIOUSNESS: The impervious area created divided by the total area of the project site.
- (ee) PERMANENT STABILIZATION: Establishment of permanent vegetation, decorative landscape mulching, matting, sod, rip rap, and landscaping techniques to provide permanent erosion control on areas where construction operations are complete or where no further disturbance is expected for at least one year.
- (ff) PERSON: Any individual, corporation, firm, trust, commission, board, public or private partnership, joint venture, agency, unincorporated association, municipal corporation, county or state agency, the federal government, other legal entity, or an agent thereof.
- (gg) PHASING: Clearing a parcel of land in distinct sections, with the stabilization of each section before the clearing of the next.
- (hh) POINT SOURCE: Any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or the floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.
- (ii) PRE-CONSTRUCTION MEETING: A meeting between the City and all principal parties, prior to the start of any construction, at a site that requires a Stormwater Pollution Prevention Plan.
- (jj) PRE-WINTER STABILIZATION MEETING: A meeting between the City and all principal parties, prior to October 1, in order to plan winter erosion and sediment controls for a site that requires a Stormwater Pollution Prevention Plan.
- (kk) PROFESSIONAL ENGINEER: A Professional Engineer registered in the State of Ohio.
- (ll) QUALIFIED INSPECTION PERSONNEL: A person knowledgeable in the principles and practice of erosion and sediment controls, who possess the skills to assess all conditions at the construction site that could impact stormwater quality and to assess the effectiveness of any sediment and erosion control measure selected to control the quality of stormwater discharges from the construction activity.
- (mm) RAINWATER AND LAND DEVELOPMENT: Ohio's standards for stormwater management, land development, and stream protection. The most current edition of these standards shall be used with this regulation, subject to Administrator's reasonable

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discretion to apply a different standard that is consistent with the purpose of this regulation.

- (nn) RIPARIAN AREA: The transition area between flowing water and terrestrial (land) ecosystems composed of trees, shrubs and surrounding vegetation which serve to stabilize erodible soil, improve both surface and ground water quality, increase stream shading and enhance wildlife habitat.
- (oo) RUNOFF: The portion of rainfall, melted snow, or irrigation water that flows across the ground surface and is eventually conveyed to water resources or wetlands.
- (pp) RUNOFF COEFFICIENT: The fraction of rainfall that will appear at the conveyance as runoff.
- (qq) SEDIMENT: The soils or other surface materials that are transported or deposited by the action of wind, water, ice, gravity, or any combination of those forces, as a product of erosion.
- (rr) SEDIMENTATION: The deposition or settling of sediment.
- (ss) SEDIMENT SETTLING POND: A sediment trap, sediment basin or permanent basin that has been temporarily modified for sediment control, as described in the latest edition of Rainwater and Land Development or such other standard acceptable to the Administrator.
- (tt) SEDIMENT STORAGE VOLUME: See current edition of online edition of Rainwater and Land Development as published by the Ohio Environmental Protection Agency or such other standard acceptable to the Administrator.
- (uu) SENSITIVE AREA: An area or water resource that requires special management because of its susceptibility to sediment pollution, or because of its importance to the well-being of the surrounding communities, region, or the State and includes, but is not limited to, the following:
  - (1) Ponds, wetlands or small lakes with less than five acres of surface area;
  - (2) Small streams with gradients less than ten feet per mile with average annual flows of less than 3.5 feet per second containing sand or gravel bottoms;
  - (3) Drainage areas of a locally or Ohio designated Scenic River; or
  - (4) Riparian and wetland areas.
- (vv) SETBACK: A designated transition area around water resources that is left in a natural, usually vegetated, state to protect the water resources from runoff pollution. Soil disturbing activities in this area are restricted by this regulation.
- (ww) SITE OWNER/OPERATOR: Any individual, corporation, firm, trust, commission, board, public or private partnership, joint venture, agency, unincorporated association, municipal corporation, county or state agency, the federal government, other legal entity, or an agent thereof that is responsible for the overall construction site or for any soil disturbing activity.

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- (xx) SOIL DISTURBING ACTIVITY: Clearing, grading, excavating, filling, grubbing or stump removal that occurs during clearing or timber activities, or other alteration of the earth's surface where natural or human made ground cover is destroyed and that may result in, or contribute to, erosion and sediment pollution.
- (yy) SOIL & WATER CONSERVATION DISTRICT: An entity organized under Chapter 1515 of the Ohio Revised Code referring to either the Cuyahoga County Soil and Water Conservation District Board or its designated employee(s). Hereafter referred to as SWCD.
- (zz) STABILIZATION: The use of BMPs, such as seeding and mulching, that reduce or prevent soil erosion by water, wind, ice, gravity, or a combination of those forces.
- (aaa) STEEP SLOPES: Slopes that are 15 percent or greater in grade. NOTE: If otherwise defined in community zoning, use community definition.
- (bbb) STORMWATER POLLUTION PREVENTION PLAN (SWP3): The written document that sets forth the plans and practices to be used to meet the requirements of this regulation.
- (ccc) STORMWATER: Stormwater runoff, snow melt and surface runoff and drainage.
- (ddd) SUBDIVISIONS, MAJOR AND MINOR: See Ohio Administrative Code 711.001 for definition.
- (eee) SURFACE OUTLET: A dewatering device that only draws water from the surface of the water.
- (fff) SURFACE WATER OF THE STATE: Also Water Resource or Water Body. Any stream, lake, reservoir, pond, marsh, wetland, or other waterway situated wholly or partly within the boundaries of the state, except those private waters which do not combine or affect a junction with surface water. Waters defined as sewerage systems, treatment works or disposal systems in Section 6111.01 of the Ohio Revised Code are not included.
- (ggg) TEMPORARY STABILIZATION: The establishment of temporary vegetation, mulching, geotextiles, sod, preservation of existing vegetation, and other techniques capable of quickly establishing cover over disturbed areas to provide erosion control between construction operations.
- (hhh) TOPSOIL: The upper layer of the soil that is usually darker in color and richer in organic matter and nutrients than subsoil.
- (iii) TOTAL MAXIMUM DAILY LOAD: If applicable by law, the sum of the existing and/or projected point source, nonpoint source, and background loads for a pollutant to a specified watershed, water resource or wetland, or water resource or wetland segment. A TMDL sets and allocates the maximum amount of a pollutant that may be introduced into the water and still ensure attainment and maintenance of water quality standard.

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- (jjj) UNSTABLE SOILS: A portion of land that is identified by the Administrator as prone to slipping, sloughing, or landslides, or is identified by the U.S. Department of Agriculture Natural Resource Conservation Service methodology as having a low soil strength.
- (kkk) WATER QUALITY VOLUME (WQv): The volume of stormwater runoff which must be captured and treated prior to discharge from the developed site after construction is complete. WQv is based on the expected runoff generated by the mean storm precipitation volume from post-construction site conditions at which rapidly diminishing returns in the number of runoff events captured begins to occur.
- (lll) WATER RESOURCE Also SURFACE WATER OF THE STATE: Any stream, lake, reservoir, pond, marsh, wetland, or waterway situated wholly or partly within the boundaries of the state, except those private waters which do not combine or affect a junction with surface water. Waters defined as sewerage systems, treatment works or disposal systems in Section 6111.01 of the Ohio Revised Code are not included.
- (mmm) WATERSHED: The total drainage area contributing runoff to a single point.
- (nnn) WETLAND: Those areas, that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas (40 CFR 232, as amended).

**1334.03        DISCLAIMER OF LIABILITY**

Compliance with the provisions of this regulation shall not relieve any person from responsibility for damage to any person otherwise imposed by law. The provisions of this regulation are promulgated to promote the health, safety, and welfare of the public and are not designed for the benefit of any individual or for the benefit of any particular parcel of property.

**1334.04        CONFLICTS, SEVERABILITY, NUISANCES AND RESPONSIBILITY**

- (a) Where this regulation is in conflict with other provisions of law, ordinance, regulation, or judicial order, the Administrator shall determine within the Administrator's reasonable discretion which provision shall prevail, provided that the Administrator's determination shall be consistent with the purposes of this regulation.
- (b) If any clause, section, or provision of this regulation is declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the remainder shall not be affected thereby.
- (c) This regulation shall not be construed as authorizing any person to maintain a private or public nuisance on their property, and compliance with the provisions of this regulation shall not be a defense in any action to abate such a nuisance.
- (d) Failure of the City to observe or recognize hazardous or unsightly conditions or to recommend corrective measures shall not relieve the site owner from the responsibility for the condition or damage resulting therefrom, and shall not result in the City, its officers, employees, or agents being responsible for any condition or damage resulting therefrom.

**1334.05        DEVELOPMENT OF STORMWATER POLLUTION PREVENTION PLANS**

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- (a) This regulation requires that a Stormwater Pollution Prevention Plan (SWP3) be developed and implemented for all soil disturbing activities disturbing one (1) or more acres of total land, or less than one (1) acre if part of a larger common plan of development or sale disturbing one (1) or more acres of total land. A Stormwater Pollution Prevention Plan must be developed and implemented for all commercial and industrial site development. The Administrator may require a Stormwater Pollution Prevention Plan on sites disturbing less than 1 acre, when stormwater runoff from these sites discharges to sensitive areas or areas of known flooding or water quality problems.
- (b) The following activities shall submit an Abbreviated SWP3:
  - (1) New single-family residential construction. If such activities disturb one (1) acre or more, or are part of a larger common plan of development or sale disturbing one (1) acre or more, a full SWP3 and compliance with the Ohio EPA Construction General Permit are required.
  - (2) Additions or accessory buildings for single-family residential construction. If such activities disturb one (1) acre or more, or are part of a larger common plan of development or sale disturbing one (1) acre or more, a full SWP3 and compliance with the Ohio EPA Construction Site General Permit are required.
  - (3) All non-residential construction on parcels of less than one (1) acre.
  - (4) General clearing activities not related to construction. If such activities disturb one (1) acre or more, or are part of a larger common plan of development or sale disturbing one (1) acre or more, compliance with the Ohio EPA Construction Site General Permit and a full SWP3 are required.
- (c) Activities disturbing 1/10 (one tenth) or less of an acre are not required to submit a SWP3 or an Abbreviated SWP3, unless required by the Administrator. These activities must comply with all other provisions of this regulation.

**1334.06 APPLICATION PROCEDURES**

- (a) SOIL DISTURBING ACTIVITIES SUBMITTING A STORMWATER POLLUTION PREVENTION PLAN (SWP3): The applicant shall submit two (2) sets of the SWP3 and the applicable fees to the City and two (2) sets of the SWP3 to the SWCD as follows:
  - (1) For developments: After the approval of the preliminary plans and with submittal of the improvement plans.
  - (2) For other construction projects: Before issuance of all applicable permits by the City.
  - (3) For general clearing projects: Prior to issuance of all applicable permits by the City.
- (b) SOIL DISTURBING ACTIVITIES SUBMITTING AN ABBREVIATED STORMWATER POLLUTION PREVENTION PLAN (SWP3): The applicant shall submit two (2) sets of the Abbreviated SWP3 and the applicable fees to the City and two (2) sets of the Abbreviated SWP3 and the applicable fees to the SWCD as follows:

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- (1) For single-family home construction: Before issuance of all applicable permits by the City.
  - (2) For other construction projects: Before issuance of all applicable permits by the City
  - (3) For general clearing projects: Prior to issuance of all applicable permits by the City.
- (c) The Administrator and the SWCD shall review the plans submitted under 1334.06 (a) or (b) for conformance with this regulation and approve, or return for revisions with comments and recommendations for revisions. A plan rejected because of deficiencies shall receive a narrative report stating specific problems and the procedures for filing a revised plan.
- (d) Soil disturbing activities shall not begin and City permits shall not be issued without
- (1) Approved SWP3 or Abbreviated SWP3
  - (2) Installation of erosion and sediment controls
  - (3) Physical marking in the field of protected areas or critical areas, including wetlands and riparian areas
- (e) SWP3 for individual sublots in a subdivision will not be approved unless the larger common plan of development or sale containing the subplot is in compliance with this regulation.
- (f) The developer, engineer and contractor, and other principal parties, shall meet with the Administrator for a Pre-Construction Meeting no less than seven (7) days prior to soil-disturbing activity at the site to ensure that erosion and sediment control devices are properly installed, limits of disturbance and buffer areas are properly delineated and construction personnel are aware of such devices and areas. Pre-Construction Meetings for Abbreviated SWP3s may be waived at the discretion of the Administrator.
- (g) Approvals issued in accordance with this regulation shall remain valid for one (1) year from the date of approval.

**1334.07 COMPLIANCE WITH STATE AND FEDERAL REGULATIONS**

Approvals issued in accordance with this regulation do not relieve the applicant of responsibility for obtaining all other necessary permits and/or approvals from the Ohio EPA, the US Army Corps of Engineers, and other federal, state, and/or county agencies or judicial order. If requirements vary, the most restrictive requirement shall prevail. These permits may include, but are not limited to, those listed below. All submittals required to show proof of compliance with these state and federal regulations shall be submitted with SWP3s or Abbreviated SWP3s. Design, selection and maintenance of construction and post-construction storm water control measures shall, at a minimum, meet the requirements of the Ohio EPA General NPDES Permit for Storm Water Associated with Construction Activities in effect at the time of plan submittal to the City.

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- (a) Ohio EPA NPDES Permits authorizing stormwater discharges associated with construction activity or the most current version thereof: Proof of compliance with these requirements shall be the applicant's Notice of Intent (NOI) number from Ohio EPA, a copy of the Ohio EPA Director's Authorization Letter for the NPDES Permit, or a letter from the site owner certifying and explaining why the NPDES Permit is not applicable.
- (b) Section 401 of the Clean Water Act: Proof of compliance shall be a copy of the Ohio EPA Water Quality Certification application tracking number, public notice, project approval, or a letter from the site owner certifying that a qualified professional has surveyed the site and determined that Section 401 of the Clean Water Act is not applicable. Wetlands, and other waters of the United States, shall be delineated by protocols accepted by the U.S. Army Corps of Engineers at the time an application is made under this regulation.
- (c) Ohio EPA Isolated Wetland Permit: Proof of compliance shall be a copy of Ohio EPA's Isolated Wetland Permit application tracking number, public notice, project approval, or a letter from the site owner certifying that a qualified professional has surveyed the site and determined that Ohio EPA's Isolated Wetlands Permit is not applicable. Isolated wetlands shall be delineated by protocols accepted by the U.S. Army Corps of Engineers at the time an application is made under this regulation.
- (d) Section 404 of the Clean Water Act: Proof of compliance shall be a copy of the U.S. Army Corps of Engineers Individual Permit application, public notice, or project approval, if an Individual Permit is required for the development project. If an Individual Permit is not required, the site owner shall submit proof of compliance with the U.S. Army Corps of Engineer's Nationwide Permit Program. This shall include one of the following:
  - (1) A letter from the site owner certifying that a qualified professional has evaluated the site and determined that Section 404 of the Clean Water Act is not applicable, and provide documentation.
  - (2) A site plan showing that any proposed fill of waters of the United States conforms to the general and special conditions specified in the applicable Nationwide Permit. Wetlands, and other waters of the United States, shall be delineated by protocols accepted by the U.S. Army Corps of Engineers at the time an application is made under this regulation.
- (e) Ohio Dam Safety Law: Proof of compliance shall be a copy of the ODNR Division of Water permit application tracking number, a copy of the project approval letter from the ODNR Division of Water, or a letter from the site owner certifying and explaining why the Ohio Dam Safety Law is not applicable.

**1334.08      STORMWATER POLLUTION PREVENTION PLAN (SWP3)**

- (a) In order to control sediment pollution of water resources, the applicant shall submit a SWP3 in accordance with the requirements of this regulation.
- (b) The SWP3 shall include Best Management Practices (BMPs) and Stormwater Control Measures (SCMs) adequate to prevent pollution of public waters by soil sediment from accelerated storm water runoff from development areas.

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- (c) The SWP3 shall be certified by a professional engineer, a registered surveyor, certified professional erosion and sediment control specialist, or a registered landscape architect.
- (d) The SWP3 shall be amended whenever there is a change in design, construction, operation or maintenance, which has a significant effect on the potential for the discharge of pollutants to surface waters of the state or if the SWP3 proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activity.
- (e) The SWP3 shall incorporate measures as recommended by the most current online edition of Rainwater and Land Development as published by the Ohio Environmental Protection Agency and shall include the following information:
  - (1) A cover page or title identifying the name and location of the site, the name and contact information of all construction site operators, the name and contact information for the person responsible for authorizing and amending the SWP3, preparation date, and the estimated start and completion dates for construction.
  - (2) A copy of the permit requirements (attaching a copy of the current Ohio EPA NPDES Construction General Permit is acceptable).
  - (3) Site description: The SWP3 shall provide:
    - (A) A description of the nature and type of the construction activity (e.g. residential, shopping mall, highway, etc.).
    - (B) Total area of the site and the area of the site that is expected to be disturbed (i.e., grubbing, clearing, excavation, filling or grading, including off-site borrow areas).
    - (C) An estimate of the impervious area and percent of imperviousness created by the land disturbance.
    - (D) A calculation of the run-off coefficients for both the pre-construction and post-construction site conditions.
    - (E) Existing data describing the soil and, if available, the quality of any known pollutant discharge from the site such as that which may result from previous contamination caused by prior land uses.
    - (F) A description of prior land uses at the site.
    - (G) An implementation schedule which describes the sequence of major soil-disturbing operations (i.e., grubbing, excavating, grading, utilities and infrastructure installation) and the implementation of erosion and sediment controls to be employed during each operation of the sequence.
    - (H) The location and name of the immediate receiving stream or surface water(s) and the first subsequent receiving water(s) and the aerial extent and description of wetlands or other special aquatic sites at or near the site which will be disturbed or which will receive discharges from disturbed areas of the project. For discharges to a municipal separate

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storm sewer system (MS4), the point of discharge to the MS4 and the location where the MS4 ultimately discharges to a water resource shall be indicated.

- (I) List TMDLs applicable for the site and demonstrate that appropriate BMPs or stormwater control measures (SCMs) have been selected to address these TMDLs. Prior to the development of TMDLs, SCMs should be selected to address potential future TMDL requirements for pollutants including bacteria, dissolved oxygen and organic enrichment, flow, habitat, nutrients, and suspended solids (sediment) unless demonstrated that receiving water quality is not negatively impacted by these pollutants.
- (J) For - developments a detail drawing of a typical individual lot showing standard individual lot erosion and sediment control practices. This does not remove the responsibility to designate specific erosion and sediment control practices in the SWP3 for areas such as steep slopes, stream banks, drainage ways, and riparian zones.
- (K) Location and description of any stormwater discharges associated with dedicated asphalt and dedicated concrete plants associated with the development area and the best management practices to address pollutants in these stormwater discharges.
- (L) A log documenting grading and stabilization activities as well as amendments to the SWP3, which occur after construction activities commence.
- (M) Each temporary and permanent stormwater practice shall be designated with an individual identification number.
- (N) Site map showing:
  - (i) Limits of soil-disturbing activity of the site, including off site spoil and borrow areas.
  - (ii) Soils types should be depicted for all areas of the site, including locations of unstable or highly erodible soils.
  - (iii) Existing and proposed one-foot (1') contours. This must include a delineation of drainage watersheds expected during and after major grading activities as well as the size of each drainage watershed in acres.
  - (iv) Surface water locations including springs, wetlands, streams, lakes, water wells, etc., on or within 200 feet of the site, including the boundaries of wetlands or stream channels and first subsequent named receiving water(s) the applicant intends to fill or relocate for which the applicant is seeking approval from the Army Corps of Engineers and/or Ohio EPA.
  - (v) Existing and planned locations of buildings, roads, parking

facilities, and utilities.

- (vi) The location of all erosion and sediment control practices, including the location of areas likely to require temporary stabilization during the course of site development.
- (vii) Sediment and stormwater management basins including their sediment settling volume and the maximum expected disturbed area that will be directed to the sediment pond during construction. The plan should include a summary of the following:
  - (a) The required sediment storage and dewatering volumes
  - (b) The provided sediment storage and dewatering volumes
  - (c) The weir length or skimmer size, as applicable
  - (d) The weir length or skimmer size provided
- (viii) Data sheets for all sediment traps, sediment basins, and SCMs that identify contributing drainage area, disturbed area, water quality volume, sedimentation volume, dewatering volume, practice surface area, facility discharge and dewatering time, outlet type and dimensions, and any other relevant parameters for each practice.
- (ix) A separate plan and profile view of each individual sediment settling pond and its outlet structure. Detail drawings of the outlet structure shall indicate the following elevations:
  - (a) Pond bottom
  - (b) Elevation required to store the required sediment storage volume
  - (c) For sediment basins, the elevation at which the skimmer is attached
  - (d) For sediment traps, the top and bottom of the stone outlet section
  - (e) Elevation required to store the dewatering volume, exclusive of the sediment storage volume
  - (f) Elevation of the top of embankment
  - (g) Crest of the emergency spillway
- (x) Where used as a sediment-settling pond during construction, the plan shall include a detail drawing of the temporary outlet configuration of the permanent storm water basin with the following information specified:

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- (a) Storage volume provided below the elevation at which the skimmer or other surface dewatering device is attached
  - (b) Elevation at which the skimmer or other surface dewatering device is attached
  - (c) Elevation at which the full dewatering zone is stored above the skimmer invert
  - (d) Any temporary modification to permanent outlet orifices or weirs required to ensure no discharge below the skimmer invert and only the skimmer controls the discharge up to the top of the dewatering volume.
  - (e) Calculations of the sediment storage volume, dewatering volume and skimmer drawdown time shall also be provided
- (xi) The location of permanent SCMs to be used to control pollutants in stormwater after construction operations have been completed.
  - (xii) Areas designated for the storage or disposal of solid, sanitary and toxic wastes, including dumpster areas, areas designated for cement truck washout, and vehicle fueling.
  - (xiii) Methods to minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, and sanitary waste to precipitation, stormwater runoff, and snow melt.
  - (xiv) Measures to prevent and respond to chemical spills and leaks. Applicants may also reference the existence of other plans (i.e., Spill Prevention Control and Countermeasure (SPCC) plans, spill control programs, Safety Response Plans, etc.) provided that such plan addresses this requirement and a copy of such plan is maintained on site.
  - (xv) Methods to minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. No detergents may be used to wash vehicles. Wash waters shall be treated in a sediment basin or alternative control that provides equivalent treatment prior to discharge.
  - (xvi) The location of designated stoned construction entrances where the vehicles will ingress and egress the construction site.
  - (xvii) The location of any in-stream activities including stream crossings.
- (4) A soils engineering report. The Administrator may require the SWP3 to include

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a Soils Engineering Report based upon his/her determination that the conditions of the soils are unknown or unclear to the extent that additional information is required to protect against erosion or other hazards. This report shall be based on adequate and necessary test borings, and shall contain all the information listed below. Recommendations included in the report and approved by the Administrator shall be incorporated in the grading plans and/or other specifications for site development.

- (A) Data regarding the nature, distribution, strength, and erodibility of existing soils.
- (B) If applicable, data regarding the nature, distribution, strength, and erodibility of the soil to be placed on the site.
- (C) Conclusions and recommendations for grading procedures.
- (D) Conclusions and recommended designs for interim soil stabilization devices and measures, and for permanent soil stabilization after construction is completed.
- (E) Design criteria for corrective measures when necessary.
- (F) Opinions and recommendations covering the stability of the site.

### **1334.09 PERFORMANCE STANDARDS**

The SWP3 must contain a description of the controls appropriate for each construction operation and the applicant must implement such controls. The SWP3 must clearly describe for each major construction activity the appropriate control measures; the general sequence during the construction process under which the measures will be implemented; and the contractor responsible for implementation (e.g., contractor A will clear land and install perimeter controls and contractor B will maintain perimeter controls until final stabilization).

The approved SWP3, and the sediment and erosion controls, and non-sediment pollution controls contained therein, shall be implemented upon the commencement of construction. Perimeter controls must be installed two working days prior to commencement of construction. The approved plan must be implemented until the site reaches final stabilization. All properties adjacent to the site of soil-disturbing activity shall be protected from soil erosion and sediment run-off and damage, including, but not limited to, private properties, natural and artificial waterways, wetlands, storm sewers and public lands.

It is the Site Owner's responsibility to maintain current records of any Site Operators responsible for implementation the SWP3 and providing that information to Administrator. The SWP3 shall identify all contractors and subcontractor Site Operators engaged in activities that could impact stormwater runoff. The SWP3 shall contain signatures from all of the identified Site Operators indicating that they have been informed and understand their roles and responsibilities in complying with the SWP3. The applicant shall review the SWP3 with the primary Site Operator prior to commencement of construction activities and keep a SWP3 training log to demonstrate that this review had occurred.

Erosion and sediment controls shall be designed, installed and maintained effectively to minimize the discharge of pollutants during the course of earth disturbing activities. The controls shall include the following minimum components:

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- (a) **NON-STRUCTURAL PRESERVATION MEASURES:** The SWP3 must make use of practices that preserve the existing natural condition to the maximum extent practicable. Such practices may include preserving riparian areas, preserving existing vegetation and vegetative buffer strips, phasing of construction operations in order to minimize the amount of disturbed land at any one time, minimizing disturbance of steep slopes, designation of tree preservation areas or other protective clearing or grubbing practices. Soil compaction shall be minimized and, unless infeasible, topsoil shall be preserved. Provide and maintain a 50-foot buffer of undisturbed natural vegetation around surface waters of the state, or riparian or wetland setbacks, if applicable, whichever is greater, unless maintaining this buffer is infeasible (e.g., stream crossings for roads or utilities, or for channel and floodplain rehabilitation and restoration). Direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration.
- (b) **EROSION CONTROL PRACTICES:** The SWP3 must make use of erosion controls that are capable of providing cover over disturbed soils. The amount of soil exposed during construction activity shall be minimized. A description of control practices designed to restabilize disturbed areas after grading or construction shall be included in the SWP3. The SWP3 must provide specifications for stabilization of all disturbed areas of the site and provide guidance as to which method of stabilization will be employed for any time of the year. Such practices may include: temporary seeding, permanent seeding, mulching, matting, sod stabilization, vegetative buffer strips, phasing of construction operations, the use of construction entrances, and the use of alternative ground cover.

Erosion control practices must meet the following requirements:

- (1) Stabilization. Disturbed areas must be stabilized as specified in Tables 1 and 2 below.

**Table 1: Permanent Stabilization**

Area requiring permanent stabilization	Time frame to apply erosion controls
Any area that will lie dormant for one year or more.	Within 7 days of the most recent disturbance.
Any area within 50 feet of a surface water of the state and at final grade.	Within 2 days of reaching final grade.
Any other areas at final grade.	Within 7 days of reaching final grade within that area.

**Table 2: Temporary Stabilization**

Area requiring temporary stabilization	Time frame to apply erosion controls
Any disturbed area within 50 feet of a surface water of the state and not at final grade.	Within 2 days of the most recent disturbance if that area will remain idle for more than 14 days.
For all construction activities, any disturbed area, including soil stockpiles that will be dormant for more than 14 days but less than one year, and not within 50 feet of a surface water of the state.	Within 7 days of the most recent disturbance within the area.  For residential subdivisions, disturbed areas must be stabilized at least 7 days prior to transfer of ownership or operational responsibility.
Disturbed areas that will be idle over winter.	Prior to November 1 or the onset of winter weather, whichever occurs first.

**Note:** Where vegetative stabilization techniques may cause structural instability or are otherwise unobtainable, alternative stabilization techniques must be employed.

- (2) Permanent stabilization of conveyance channels. Applicants shall undertake special measures to stabilize channels and outfalls and prevent erosive flows. Measures may include seeding, dormant seeding, mulching, erosion control matting, sodding, riprap, natural channel design with bioengineering techniques, or rock check dams, all as defined in the most recent edition of Rainwater and Land Development or the Field Office Technical Guide available at [www.nrcs.usda.gov/technical/efotg/](http://www.nrcs.usda.gov/technical/efotg/).
- (c) **RUNOFF CONTROL PRACTICES.** The SWP3 shall incorporate measures that control the volume and velocity of stormwater runoff within the site to prevent erosion. Peak flow rates and total stormwater volume shall be controlled to minimize erosion and outlets, downstream channel and streambank erosion. Such practices may include rock check dams, pipe slope drains, diversions to direct flow away from exposed soils and protective grading practices. These practices shall divert runoff away from disturbed areas and steep slopes where practicable. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel to provide non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.
- (d) **SEDIMENT CONTROL PRACTICES.** The SWP3 shall include a description of, and detailed drawings for, all structural practices that shall store runoff, allowing sediments to settle and/or divert flows away from exposed soils or otherwise limit runoff from exposed areas to minimize sediment discharges from the site. Structural practices shall be used to control erosion and trap sediment from a site remaining disturbed for more than 14 days. Such practices may include, among others: sediment settling ponds, silt fences, storm drain inlet protection, and earth diversion dikes or channels which direct runoff to a sediment settling pond. The design, installation and maintenance of erosion and sediment controls shall address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site.
- (e) All sediment control practices must be capable of ponding runoff in order to be considered functional. Earth diversion dikes or channels alone are not considered a sediment control practice unless used in conjunction with a sediment settling pond.

Sediment control practices must meet the following requirements:

- (1) Timing. Sediment control structures shall be functional throughout the course of earth disturbing activity. Sediment basins and perimeter sediment barriers shall be implemented prior to grading and within seven (7) days from the start of grubbing. They shall continue to function until the up slope development area is restabilized. As construction progresses and the topography is altered, appropriate controls must be constructed or existing controls altered to address the changing drainage patterns.
- (2) Sediment settling ponds. A sediment settling pond, or equivalent best management practice upon approval from the Administrator and/or the SWCD, is required for any one of the following conditions:

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- (A) Concentrated stormwater runoff.
- (B) Runoff from drainage areas which exceeds the design capacity of silt fence (see Table 3)- inlet protection, or other sediment barriers;
- (C) Runoff from common drainage locations with 10 or more acres of disturbed land.

Sediment settling ponds shall be provided in the form of a sediment trap or sediment basin as defined in the latest edition of Rainwater and Land Development. The maximum allowable contributing drainage area to a sediment trap shall be limited to less than 5 acres. Contributing-drainage areas of 5 acres or more shall be treated with a sediment basin. An equivalent best-management practice may be utilized upon approval from the City.

The sediment-settling pond shall provide both a sediment storage zone and a dewatering zone. The volume of the dewatering zone shall be at least 1,800 cubic feet of storage per acre of total contributing drainage area. The dewatering structure of sediment basins shall be designed to have a minimum 48-hour drain time, and, unless infeasible, be designed to always withdraw runoff from the surface of the pond throughout the storm cycle. As such, a skimmer discharge device consistent with Rainwater and Land Development shall be provided to dewater sediment basins. Sediment traps shall also provide both a sediment storage zone and dewatering zone, but the outlet structure shall be constructed consistent with the specifications contained in the latest edition of Rainwater and Land Development.

When post-construction detention/water quality ponds are to be used as temporary sediment trapping BMPs, a skimmer discharge device consistent with Rainwater and Land Development shall be utilized during construction phase and until the site is deemed by the City to be permanently stabilized.

The skimmer shall be designed per the equivalent requirements of sediment basins and the operator must ensure that the outlet structure of the pond provides an equivalent or better sediment storage zone and dewatering zone. As such, temporarily while the site is under construction, there shall be no discharge of runoff below the elevation required for the sediment storage zone and the discharge of stormwater within the dewatering zone shall only occur through the skimmer.

The volume of the sediment storage zone shall be calculated by one of the following methods:

- Method 1: The volume of the sediment storage zone shall be 1000ft<sup>3</sup> per disturbed acre within the watershed of the basin.
- Method 2: The volume of the sediment storage zone shall be the volume necessary to store the sediment as calculated with RUSLE or other generally accepted erosion prediction model.

When determining the total contributing drainage area, off-site areas and areas which remain undisturbed by construction activity must be included unless runoff from these areas is diverted away from the sediment settling pond and is not comingled with sediment-laden runoff. The depth of the dewatering zone must be less than or equal to five (5) feet. The configuration between the inlets and the outlet of the sediment-settling pond must provide at least two units of length for each one unit of width  $\geq 2:1$  length-to-width ratio; however, a length to width ratio of  $\geq 4:1$  is recommended. Sediment must be removed from the sediment-settling pond when the design capacity of the sediment storage zone has been completely filled by sediment accumulations - This limit is typically reached when sediment occupies one-half of the basin depth. When designing sediment settling ponds, the applicant must consider public safety, especially as it relates to children, as a design factor for the sediment basin and alternative sediment controls must be used where site limitations would preclude a safe design. The use of a combination of sediment and erosion control measures in order to achieve maximum pollutant removal is encouraged.

- (3) Silt fence and diversions. Sheet flow runoff from denuded areas shall be intercepted by silt fence or diversions to protect adjacent properties and water resources from sediment transported via sheet flow. Where intended to provide sediment control, silt fence shall be placed on a level contour and shall be capable of temporarily ponding runoff. The relationship between the maximum drainage area to silt fence for a particular slope range is shown in Table 3 below. Placing silt fence in a parallel series does not extend the size of the permissible drainage area.

**Table 3: Maximum Drainage Area to Silt Fence Based on Slope**

Maximum Drainage Area (acres) to 100 linear feet of silt fence	Range of slope for a drainage area (%)
0.5	<2%
0.25	$\geq 2\%$ but < 20%
0.125	$\geq 20\%$ but < 50%

- (4) Alternative perimeter controls for sheet flow discharges may be considered by the City, but their use shall not exceed the limitations indicated in Table 3 above. Detail drawings and plan notes shall specify the diameter of filter socks, compost berms and other such alternative perimeter controls if used instead of silt fence.
- (5) Stormwater diversion practices shall be used to keep runoff away from disturbed areas and steep slopes. Such devices, which include swales, dikes or berms, may receive storm water runoff from areas up to 10 acres.
- (6) Inlet protection. Erosion and sediment control practices, such as boxed inlet protection, shall be installed to minimize sediment-laden water entering active storm drain systems. All inlets receiving runoff from drainage areas of one or more acres will require a sediment settling pond. Straw or hay bales and filter socks around catch basins are not acceptable forms of inlet protection.
- (7) Off-site tracking of sediment and dust control. Best management practices must

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be implemented to ensure sediment is not tracked off-site and that dust is controlled. These best management practices must include, but are not limited to, the following:

- (A) Construction entrances shall be built and shall serve as the only permitted points of ingress and egress to the development area. These entrances shall be built of a stabilized pad of aggregate stone or recycled concrete or cement sized greater than 2" in diameter, placed over a geotextile fabric, and constructed in conformance with specifications in the most recent edition of Rainwater and Land Development.
- (B) Streets and catch basins adjacent to construction entrances shall be kept free of sediment tracked off site. Streets directly adjacent to construction entrances and receiving traffic from the development area, shall be cleaned daily to remove sediment tracked off-site. If applicable, the catch basins on these streets nearest to the construction entrances shall also be cleaned weekly and protected from sediment-laden runoff, if feasible without posing a public safety hazard.

Based on site conditions, the Administrator and/or the SWCD may require additional best management practices to control off site tracking and dust. These additional BMPs may include:

- (C) Fencing shall be installed around the perimeter of the development area to ensure that all vehicle traffic adheres to designated construction entrances.
  - (D) Designated vehicle and wheel-washing areas. Wash water from these areas must be directed to a designated sediment trap, the sediment-settling pond, or to a sump pump for dewatering in conformance with Section 1334.09 (f) of this regulation. No surfactants or detergents may be used to wash vehicles.
  - (E) Applicants shall take all necessary measures to comply with applicable regulations regarding fugitive dust emissions, including obtaining necessary permits for such emissions. The Administrator and/or the SWCD may require dust controls including the use of water trucks to wet disturbed areas, tarping stockpiles, temporary stabilization of disturbed areas, and regulation of the speed of vehicles on the site.
- (8) Surface Waters of the State protection. Construction vehicles shall avoid water resources. A 50 foot undisturbed natural buffer shall be provided around surface waters of the state unless infeasible. If it is infeasible to provide and maintain an undisturbed 50-foot natural buffer, the SWP3 shall comply with the stabilization requirements in 1334.09 (b) (1) for areas within 50 feet of a surface water or riparian or wetland setbacks if applicable, whichever is greater; and minimize soil compaction and, unless infeasible, preserve topsoil. If a riparian or wetland setback is greater than 50 feet, no disturbance of natural vegetation shall occur within the riparian or wetland setback unless a variance to the riparian or wetland setback regulation has been granted. If the applicant is permitted to disturb areas within 50 feet of a water resource, the following conditions shall be addressed in the SWP3:

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- (A) All BMPs and stream crossings shall be designed as specified in the most recent edition of Rainwater and Land Development.
  - (B) Structural practices shall be designated and implemented on site to protect water resources from the impacts of sediment runoff.
  - (C) No structural sediment controls (e.g., the installation of silt fence or a sediment settling pond in-stream) shall be used in water resources or wetlands.
  - (D) Where stream crossings for roads or utilities are necessary and permitted, the project shall be designed such that the number of stream crossings and the width of the disturbance are minimized.
  - (E) Temporary stream crossings shall be constructed if water resources or wetlands will be crossed by construction vehicles during construction.
  - (F) Construction of bridges, culverts, or sediment control structures shall not place soil, debris, or other particulate material into or close to the water resources or wetlands in such a manner that it may slough, slip, or erode.
  - (G) Concentrated stormwater runoff from BMPs to natural wetlands shall be converted to diffuse flow through the use of level spreaders or other such appropriate measure before the runoff enters the wetlands. The flow should be released such that no erosion occurs downslope. Level spreaders may need to be placed in series to ensure non-erosive velocities.
  - (H) Protected areas or critical areas, including wetlands and riparian areas shall be physically marked in the field prior to earth disturbing activities.
- (9) Modifying controls. If periodic inspections or other information indicates a control has been used inappropriately or incorrectly, the applicant shall replace or modify the control for site conditions.
- (f) **NON-SEDIMENT POLLUTANT CONTROLS:** No solid or liquid waste, including building materials, shall be discharged in stormwater runoff. The applicant must implement site best management practices to prevent toxic materials, hazardous materials, or other debris from entering water resources, wetlands or the MS4. These practices shall include but are not limited to the following:
- (1) Waste Materials: A covered dumpster shall be made available for the proper disposal of garbage, plaster, drywall, grout, gypsum, and other waste materials.
  - (2) Concrete Truck Wash Out: The washing of concrete material into a street, catch basin, other public facility, natural resource or water of the state is prohibited. A designated area for concrete washout shall be made available.
  - (3) Disposal of Other Wastewaters: The discharge of washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials to a street, catch basin, other public facility, natural resource or waters

of the state is prohibited. The discharge of soaps or solvents used in vehicle and equipment washing is also prohibited. If generated, these wastewaters must be collected and disposed of properly.

- (4) Fuel/Liquid Tank Storage: All fuel/liquid tanks and drums shall be stored in a marked storage area. A dike shall be constructed around this storage area with a minimum capacity equal to 110% of the volume of the largest containers in the storage area and/or a spill kit shall be provided to clean up spills. The SWP3 shall contain spill prevention and response procedures and these procedures shall be discussed at the pre-construction meeting.
- (5) Toxic or Hazardous Waste Disposal: Any toxic or hazardous waste shall be disposed of properly. The discharge of fuels, oils, and other pollutants used in vehicle and equipment operation and maintenance is prohibited.
- (6) Contaminated Soils Disposal and Runoff: Discovery of previously unknown contaminated soils onsite shall be self-reported to Ohio EPA, City, and applicable local authorities. Contaminated soils from redevelopment sites shall be disposed of properly. Runoff from contaminated soils shall not be discharged from the site. Proper permits shall be obtained for development projects on solid waste landfill sites or redevelopment sites. Where construction activities are to occur on sites with contamination from previous activities, operators shall be aware that concentrations of materials that meet other criteria (i.e. not considered a Hazardous Waste, meeting Voluntary Action Program (VAP standards)) may still result in stormwater discharges in excess of Ohio Water Quality Standards. Such discharges are not authorized by this code. Control measures which may be utilized to meet this requirement include, but are not limited to:
  - (A) Use berms, trenches, pits or tanks to collect contaminated runoff and prevent discharge.
  - (B) Pump runoff from contaminated soils to the sanitary sewer with the prior approval of the sanitary sewer system operator, or pump into a container for transport to an appropriate treatment or disposal facility; and
  - (C) Cover areas of contamination with tarps, daily cover or other such methods to prevent storm water from coming into contact with contaminated materials.

The SWP3 must include methods to minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, and sanitary waste to precipitation, stormwater runoff, and snow melt. The SWP3 shall include measures to prevent and respond to chemical spills and leaks. Applicants may also reference the existence of other plans (i.e., Spill Prevention Control and Countermeasure (SPCC) plans, spill control programs, Safety Response Plans, etc.) provided that such plan addresses this requirement and a copy of such plan is maintained on site.

- (g) **COMPLIANCE WITH OTHER REQUIREMENTS.** The SWP3 shall be consistent with applicable State and/or local waste disposal, sanitary sewer, or septic system regulations, including provisions prohibiting waste disposal by open burning, and shall provide for the proper disposal of contaminated soils located within the development area.
- (h) **TRENCH AND GROUND WATER CONTROL.** There shall be no sediment-laden or

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turbid discharges to water resources or wetlands resulting from dewatering activities. If trench or ground water contains sediment, it must pass through a sediment-settling pond or other equally effective sediment control device, prior to being discharged from the construction site. Alternatively, sediment may be removed by settling in place or by dewatering into a sump pit, filter bag or comparable practice. Ground water dewatering which does not contain sediment or other pollutants is not required to be treated prior to discharge. However, care must be taken when discharging ground water to ensure that it does not become pollutant-laden by traversing over disturbed soils or other pollutant sources.

- (i) INTERNAL INSPECTIONS. All controls on the site shall be inspected a at least once every seven calendar days and within 24 hours after any storm event greater than one-half inch of rain per 24 hour period. The inspection frequency may be reduced to at least once every month if the entire site is temporarily stabilized or runoff is unlikely due to weather conditions (e.g., site is covered with snow, ice, or the ground is frozen). A waiver of inspection requirements is available until one month before thawing conditions are expected to result in a discharge if prior written approval has been attained from the Administrator and/or the SWCD and all of the following conditions are met:
- (1) The project is located in an area where frozen conditions are anticipated to continue for extended periods of time (i.e. more than one (1) month).
  - (2) Land disturbance activities have been suspended, and temporary stabilization is achieved.
  - (3) The beginning date and ending dates of the waiver period are documented in the SWP3.
  - (4) For sites that will not be completed by October 1, a Pre-Winter Stabilization Meeting shall be held by the landowner and the developer, engineer and contractor of the project and the City prior to October 1, in order to plan and approve winter erosion and sediment controls as defined in the most current online edition of Rainwater and Land Development.

The applicant shall assign qualified inspection personnel to conduct these inspections to ensure that the control practices are functional and to evaluate whether the SWP3 is adequate, or whether additional control measures are required. Qualified inspection personnel are individuals with knowledge and experience in the installation and maintenance of sediment and erosion controls. Certified inspection reports shall be submitted to the Administrator within seven (7) working days from the inspection and retained at the development site.

These inspections shall meet the following requirements:

- (1) Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of or the potential for, pollutants entering the drainage system.
- (2) Erosion and sediment control measures identified in the SWP3 shall be observed to ensure that they are operating correctly. The applicant shall utilize an inspection form provided by the City or an alternate form acceptable to the Administrator. The inspection form shall include:

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- (A) The inspection date.
  - (B) Names, titles and qualifications of personnel making the inspection.
  - (C) Weather information for the period since the last inspection, including a best estimate of the beginning of each storm event, duration of each storm event and approximate amount of rainfall for each storm event in inches, and whether any discharges occurred.
  - (D) Weather information and a description of any discharges occurring at the time of inspection.
  - (E) Locations of:
    - (i) Discharges of sediment or other pollutants from site.
    - (ii) BMPs that need to be maintained.
    - (iii) BMPs that failed to operate as designed or proved inadequate for a particular location.
    - (iv) Where additional BMPs are needed that did not exist at the time of inspection.
  - (F) Corrective action required including any necessary changes to the SWP3 and implementation dates.
- (3) Discharge locations shall be inspected to determine whether erosion and sediment control measures are effective in preventing significant impacts to the receiving water resource or wetlands.
- (4) Locations where vehicles enter or exit the site shall be inspected for evidence of off-site vehicle tracking.
- (5) The applicant shall maintain for three (3) years following final stabilization the results of these inspections, the names and qualifications of personnel making the inspections, the dates of inspections, major observations relating to the implementation of the SWP3, a certification as to whether the facility is in compliance with the SWP3, and information on any incidents of non-compliance determined by these inspections.
- (i) **MAINTENANCE.** The SWP3 shall be designed to minimize maintenance requirements. All BMPs shall be maintained and repaired as needed to ensure continued performance of their intended function until final stabilization. All sediment control practices must be maintained in a functional condition until all up slope areas they control reach final stabilization. The applicant shall provide a description of maintenance procedures needed to ensure the continued performance of control practices and shall ensure a responsible party and adequate funding to conduct this maintenance, all as determined by the Administrator.

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When inspections reveal the need for repair, replacement, or installation of erosion and sediment control BMPs, the following procedures shall be followed:

- (1) When BMPs require repair or maintenance. If an internal inspection reveals that a BMP is in need of repair or maintenance, with the exception of a sediment-settling pond, it must be repaired or maintained within three (3) days of the inspection. Sediment settling ponds must be repaired or maintained within ten (10) days of the inspection.
  - (2) When BMPs fail to provide their intended function. If an internal inspection reveals that a BMP fails to perform its intended function as detailed in the SWP3 and that another, more appropriate control practice is required, the SWP3 must be amended and the new control practice must be installed within three (3) to ten (10) days of the inspection as determined by the community engineer or site inspector.
  - (3) When BMPs depicted on the SWP3 are not installed. If an internal inspection reveals that a BMP has not been implemented in accordance with the schedule, the control practice must be implemented within ten (10) days from the date of the inspection. If the internal inspection reveals that the planned control practice is not needed, the record must contain a statement of explanation as to why the control practice is not needed.
- (j) FINAL STABILIZATION. Final stabilization shall be determined by the Administrator. Once a definable area has achieved final stabilization, the applicant may note this on the SWP3 and no further inspection requirement applies to that portion of the site. Final stabilization also requires the installation of permanent (post-construction) stormwater control measures (SCMs). Obligations under this ordinance shall not be completed until installation of post-construction BMPs is verified.

**1334.10 ABBREVIATED STORMWATER POLLUTION PREVENTION PLAN (SWP3).**

- (a) In order to control sediment pollution of water resources, the applicant shall submit an Abbreviated SWP3 in accordance with the requirements of this regulation.
- (b) The Abbreviated SWP3 shall be certified by a professional engineer, a registered surveyor, certified professional erosion and sediment control specialist, or a registered landscape architect.
- (c) The Abbreviated SWP3 shall include a minimum of the following BMPs. City may require other BMPs as site conditions warrant.
  - (1) Construction Entrances: Construction entrances shall be built and shall serve as the only permitted points of ingress and egress to the development area. These entrances shall be built of a stabilized pad of aggregate stone or recycled concrete or cement sized greater than 2" in diameter, placed over a geotextile fabric, and constructed in conformance with specifications in the most recent edition of Rainwater and Land Development.
  - (2) Concrete Truck Wash Out: The washing of concrete material into a street, catch basin, or other public facility or natural resource is prohibited. A designated area

for concrete washout shall be indicated on the plan. Use for other waste and wastewater is prohibited.

- (3) Street Sweeping: Streets directly adjacent to construction entrances and receiving traffic from the development area shall be cleaned daily to remove sediment tracked off-site. If applicable, the catch basins on these streets nearest to the construction entrances shall be cleaned weekly.
- (4) Stabilization. The development area shall be stabilized as detailed in Table 4.

**Table 4: Stabilization**

Area requiring stabilization	Time frame to apply erosion controls
Any disturbed area within 50 feet of a surface water of the state and not at final grade.	Within 2 days of the most recent disturbance if that area will remain idle for more than 14 days
For all construction activities, any disturbed area, including soil stockpiles that will be dormant for more than 14 days but less than one year, and not within 50 feet of a stream.	Within 7 days of the most recent disturbance within the area
Disturbed areas that will be idle over winter	Prior to November 1
<b>Note:</b> Where vegetative stabilization techniques may cause structural instability or are otherwise unobtainable, alternative stabilization techniques must be employed. These techniques may include mulching or erosion matting.	

- (5) Inlet Protection. Erosion and sediment control practices, such as boxed inlet protection, shall be installed to minimize sediment-laden water entering active storm drain systems, including rear yard inlets. Straw, hay bales, and filter socks are not acceptable forms of inlet protection.
- (6) Silt Fence and Other Perimeter Controls. Silt fence and other perimeter controls approved by the City shall be used to protect adjacent properties and water resources from sediment discharged via sheet (diffused) flow. Silt fence shall be placed along level contours and the permissible drainage area is limited to those indicated in Table 3 in 1334.09 of these regulations.
- (7) Internal Inspection and Maintenance. All controls on the development area shall be inspected at least once every seven calendar days and within 24 hours after any storm event greater than one-half inch of rain per 24 hour period. Maintenance shall occur as detailed below:
  - (A) When BMPs require repair or maintenance. If the internal inspection reveals that a BMP is in need of repair or maintenance, with the exception of a sediment-settling pond, it must be repaired or maintained within three (3) days of the inspection. Sediment settling ponds must be repaired or maintained within ten (10) days of the inspection.
  - (B) When BMPs fail to provide their intended function. If the internal inspection reveals that a BMP fails to perform its intended function and that another, more appropriate control practice is required, the Abbreviated SWP3 must be amended and the new control practice must be installed within ten (10) days of the inspection.

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(C) When BMPs depicted on the Abbreviated SWP3 are not installed. If the internal inspection reveals that a BMP has not been implemented in accordance with the schedule, the control practice must be implemented within ten (10) days from the date of the inspection. If the inspection reveals that the planned control practice is not needed, the record must contain a statement of explanation as to why the control practice is not needed.

(8) Final Stabilization: Final stabilization shall be determined by the Administrator.

**1334.11 FEES**

The SWP3 and Abbreviated SWP3 review, filing, and inspection fee is part of a complete submittal and is required to be submitted to the City before the review process begins. The Administrator shall have the discretion to adjust all or part of these fees in light of fees that may be paid pursuant to Chapter 1334 and Chapter 1335.

Disturbed Areas	Review fee*	Reserve Deposit for Inspection during construction	Annual post construction BMP fee per site
Less than 1 acre	\$250	\$250	n/a
One acre to five acres	\$500	\$1,000	\$300
Greater than five acres	\$250 per whole acre rounded up	\$500 per whole acre rounded up	\$500

\* Additional re-review of plan submissions shall be charged 25 percent of the review fee per submittal.

**1334.12 BOND**

- (a) If a SWP3 or Abbreviated SWP3 is required by this regulation, soil disturbing activities shall not be permitted until a cash bond or deposit has been deposited with the City Finance Department. The amount shall be \$2,500 for one acre to five acres and \$5,000 for more than five acres. The bond will be used for the City to perform the obligations otherwise to be performed by the Site Owner or Site Operator of the development area as stated in this regulation and to allow all work to be performed as needed in the event that the applicant fails to comply with the provisions of this regulation. The cash bond shall be returned, less administrative fees as detailed in Chapter 1334 of the Codified Ordinances, after all work required by this regulation has been completed and final stabilization has been reached, all as determined by the Administrator. In implementing these regulations, the Administrator or other City officials may consult with the local county SWCD, state and federal agencies and other technical experts as necessary. Any costs associated with such consultations may be assessed to the applicant or his or her designated representative.
- (b) No project subject to this regulation shall commence without a SWP3 or Abbreviated SWP3 approved by the Administrator.

**1334.13 ENFORCEMENT**

- (a) Notice of Violation. When the City finds that a person, including but not limited to a Site Owner or Site Operator, has violated a prohibition or failed to meet a requirement of this regulation, the City may order compliance by written Notice of Violation, including but

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not limited to a stop work order. Such notice must specify the violation and shall be hand delivered, and/or sent by certified mail with return receipt and first class mail, to the owner/operator of the facility.

- (b) If abatement or remediation of a violation and/or restoration of affected property are required, the Notice of Violation shall set forth a deadline within which such remediation or restoration must be completed. Said Notice shall further advise that, should the facility owner/operator fail to abate, remediate, or restore within the established deadline, a legal action for enforcement may be initiated.
- (c) Any person receiving a Notice of Violation must meet compliance standards within the time established in the Notice of Violation.
- (d) The Administrator shall have the authority to make immediate on-site adjustments to the SWP3 in order to achieve compliance with this ordinance.
- (e) A final inspection will be made to determine if the criteria of this code have been satisfied and a report will be presented to the City on the site's compliance status.
- (f) The Administrator will monitor soil-disturbing activities for non-farm residential, commercial, industrial, or other non-farm purposes on land of less than one contiguous acre to ensure compliance required by these Rules.
- (g) The Administrator shall notify the U.S. Army Corps of Engineers when a violation on a development project covered by an Individual or Nationwide Permit is identified. The Administrator shall notify the Ohio Environmental Protection Agency when a violation on a development project covered by a Section 401 Water Quality Certification and/or Isolated Wetland Permit is identified.
- (h) The City shall not issue building permits for projects regulated under this code that have not received approval for an SWP3 for said project(s).
- (i) Administrative Hearing: Any person receiving a Notice of Violation may request an administrative hearing by hand delivery or sending by certified mail with return receipt and first class mail a request for hearing to the Administrator with a copy to the Director of Law. Said request must be received within ten (10) calendar days of the date of the Notice of Violation. The City shall schedule an administrative hearing. Notice of the administrative hearing shall be hand delivered and/or sent certified mail and first class mail. The hearing shall be held before the Nuisance Abatement Review Board (“NARB”) pursuant to Cod. Ord. Chapter 553. The decision of the NARB shall be final without further appeal within the City, and the Administrator or other authorized City official shall proceed according to the NARB’s decision.
- (j) Injunctive Relief: It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this regulation. If a person has violated or continues to violate the provisions of this regulation, the City may, pursuant to federal, state, or local laws and regulations, petition a court of competent jurisdiction for a preliminary or permanent injunction restraining the person from activities that would create further violations or compelling the person to perform abatement or remediation of the violation.

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After exhaustion of the administrative steps herein, including Section 1334.13 (i), a person aggrieved by any final order, requirement, determination, or any other final action by the City in relation to this regulation may appeal to the court of common pleas. Such an appeal shall be made in conformity with Ohio Rev. Code Ch. 2506. Written notice of appeal shall be served on the City to the attention of the City Manager and the Director of Law and a copy shall be provided to the SWCD.

**1334.15 REMEDIES NOT EXCLUSIVE**

The remedies listed in this regulation are not exclusive of any other remedies available under any applicable federal, state or local law and it is in the discretion of the City to seek cumulative remedies.

**1334.99 PENALTY**

- (a) No person shall violate, or cause, or knowingly permit to be violated, any of the provisions of this chapter, or fail to comply with any such provisions or with any lawful requirements of any public authority made pursuant to this chapter, or knowingly use or cause or permit the use of any lands in violation of this chapter or in violation of any permit granted under this chapter.
- (b) Whoever violates or fails to comply with any provision of this regulation is guilty of a misdemeanor of the first degree and shall be fined no more than one thousand dollars (\$1,000.00) or imprisoned for no more than one hundred eighty (180) days, or both, for each offense.
- (c) A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.