

“Exhibit A”

PORTAGE COUNTY ILLICIT DISCHARGE DETECTION AND ELIMINATION RULES

(Resolution No. 19-XXXX)

I. PURPOSE and INTENT

The purpose of these rules is to provide for the health, safety, and general welfare of the citizens of Portage County through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. These rules establish methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

II. OBJECTIVES

The objectives of these rules are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) via 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.

III. EFFECTIVE DATE

Effective date: Res. 09-0836 January 1, 2010; Res. 19-____ [adoption date + 31 days].

IV. APPLICABILITY

These rules shall apply to all water entering the storm drain system generated on any lands in unincorporated Portage County unless explicitly exempted by the Portage County Board of Commissioners.

V. RESPONSIBILITY FOR ADMINISTRATION

The Portage County Board of Commissioners shall administer, implement, and enforce the provisions of these rules. Any powers granted or duties imposed upon the Portage County Board of Commissioners may be delegated in writing by the Portage County Board of Commissioners to authorized enforcement agencies acting in the beneficial interest of or in the employ of the Portage County Board of Commissioners.

VI. SEVERABILITY

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

VII. ULTIMATE RESPONSIBILITY

The standards set forth herein and promulgated pursuant to these rules are minimum standards; therefore, these rules do not warrant nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

VIII. ILLICIT DISCHARGE AND ILLEGAL CONNECTION PROHIBITION AND MONITORING

PART ONE: DISCHARGE AND CONNECTION PROHIBITIONS

A. Prohibition of Illicit Discharges

No person shall discharge, or cause to be discharged, an illicit discharge into the MS4. The commencement, conduct, or continuance of any illicit discharge to the MS4 is prohibited except as described below:

1. Water line flushing; landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration; uncontaminated pumped ground water; discharges from potable water sources; foundation drains; air conditioning condensate; water softener discharges that are not accessible to sanitary sewer, irrigation water; springs; water from crawl space pumps; footing drains; lawn watering; individual residential car washing; flows from riparian habitats and wetlands; dechlorinated swimming pool discharges; street wash water; and discharges or flows from firefighting activities. These discharges are exempt until such time as they are determined by the Portage County Board of Commissioners to be significant contributors of pollutants to the MS4.
2. Discharges specified in writing by the Portage County Board of Commissioners as being necessary to protect public health and safety.
3. Discharges from off-lot discharging household sewage treatment systems permitted by Portage County Combined General Health District for the purpose of discharging treated sewage effluent in accordance with Ohio Revised Code 3718 and Ohio Administrative Code 3701-29 or other applicable Portage County Combined General Health District sewage treatment regulations, until such time as the Ohio Environmental Protection Agency issues an NPDES permitting mechanism for Household Sewage Treatment Systems existing prior to January 1, 2007. These discharges are exempt unless such discharges are deemed to be creating a public health nuisance in accordance with Ohio

Administrative Code 3718.011 and 3718.012 by the Portage County Combined General Health District.

In compliance with NPDES Permit #OHQ000001, or subsequent versions, discharges from all off-lot discharging household sewage treatment systems must either be eliminated or have coverage under an appropriate NPDES permit issued and approved by the Ohio Environmental Protection Agency. When such permit coverage is available, discharges from off-lot discharging household sewage treatment systems will no longer be exempt from the requirements of these Rules and Regulations.

B. Prohibition of Illicit Connections

The construction, use, maintenance, or continued existence of illicit connections to the MS4 is prohibited.

1. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
2. A person is considered in violation of this regulation if the person connects a line conveying illicit discharges to the MS4 or allows such a connection to continue.

PART TWO: MONITORING OF ILLICIT DISCHARGES AND ILLEGAL CONNECTIONS

A. Establishment of an Illicit Discharge and Illegal Connection Monitoring Program

The Portage County Board of Commissioners shall establish a program to detect and eliminate illicit discharges and illegal connections to the MS4.

This program shall include the mapping of the MS4, including MS4 outfalls and household sewage treatment systems; the routine inspection of storm water outfalls to the MS4, and the systematic investigation of potential residential, commercial, industrial, and institutional facilities for the sources of any dry weather flows found as the result of these inspections.

B. Inspection of Residential, Commercial, Industrial, or Institutional Facilities

1. The Portage County Board of Commissioners shall be permitted to enter and inspect facilities subject to this regulation as often as may be necessary to determine compliance with this regulation.
2. The Portage County Board of Commissioners shall have the right to set up at facilities subject to this regulation such devices as are necessary to conduct monitoring and/or sampling of the facility's storm water discharge, as determined by the Portage County Board of Commissioners.
3. The Portage County Board of Commissioners shall have the right to require the facility owner/operator to install monitoring equipment as necessary. This sampling and monitoring equipment shall be maintained at all times in safe and proper operating condition by the facility owner/operator at the owner/operator's expense. All devices

used to measure storm water flow and quality shall be calibrated by the Portage County Board of Commissioners to ensure their accuracy.

4. Any temporary or permanent obstruction to safe and reasonable access to the facility to be inspected and/or sampled shall be promptly removed by the facility's owner/operator at the written or oral request of the Portage County Board of Commissioners and shall not be replaced. The costs of clearing such access shall be borne by the facility owner/operator.
5. Unreasonable delays in allowing the Portage County Board of Commissioners access to a facility subject to this regulation for the purposes of illicit discharge inspection is a violation of this regulation.
6. If the Portage County Board of Commissioners is refused access to any part of the facility from which storm water is discharged, and the Portage County Board of Commissioners demonstrates probable cause to believe that there may be a violation of this regulation, or that there is a need to inspect and/or sample as part of an inspection and sampling program designed to verify compliance with this regulation or any order issued hereunder, or to protect the public health, safety, and welfare, the Portage County Board of Commissioners may seek issuance of a search warrant, civil remedies including but not limited to injunctive relief, and/or criminal remedies from any court of appropriate jurisdiction.

IX. SUSPENSION OF MS4 ACCESS

A. Suspension due to Illicit Discharges in Emergency Situations

The Portage County Board of Commissioners may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4, or Waters of the United States or Surface Waters of the State of Ohio. If the violator fails to comply with a suspension order issued in an emergency, the Portage County Board of Commissioners may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

B. Suspension due to the Detection of Illicit Discharge

Any person discharging to the MS4 in violation of these rules may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Portage County Board of Commissioners will notify a violator of the proposed termination of its MS4 access.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the Portage County Board of Commissioners.

X. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Portage County Board of Commissioners prior to the allowing of discharges to the MS4.

XI. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

The Portage County Board of Commissioners will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or Waters of the United States or Surface Waters of the State of Ohio.

The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs.

Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system.

Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a storm water pollution prevention plan (SWP3), as necessary, for compliance with requirements of the NPDES permit.

XII. WATERCOURSE PROTECTION

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately-owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

XIII. NOTIFICATION OF SPILLS

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsibility for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants discharging into storm water, the storm drain system, or Waters of the

United States or Surface Waters of the State of Ohio, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Portage County Board of Commissioners in person or by phone or facsimile no later than the next business day.

Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Portage County Board of Commissioners within three business days of the phone notice.

If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

XIV. ENFORCEMENT

- A. Whenever the Portage County Board of Commissioners finds that a person has violated a prohibition or failed to meet a requirement of these rules in conjunction with a failure to obtain any federal, state, or local permit necessary for sediment and erosion control, earth movement, clearing, cut and fill activity, or connections and discharges; the Portage County Board of Commissioners or authorized representative may issue a stop work order to the responsible person.
- B. Notwithstanding the provisions of Paragraph A of this Section, whenever the Portage County Board of Commissioners finds that a person has violated any prohibition or failed to meet any requirement of these rules, the Portage County Board of Commissioners or authorized representative may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
 - 1. The performance of monitoring, analyses, and reporting;
 - 2. The elimination of illicit connections or discharges;
 - 3. That violating discharges, practices, or operations shall cease and desist;
 - 4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
 - 5. Payment of a fine to cover administrative and remediation costs; and
 - 6. The implementation of source control or treatment BMPs.
- C. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the

established deadline, the Portage County Board of Commissioners may seek to have the work done by a designated governmental agency or a contractor, and the expenses charged to the violator.

- D. If, after a period of not less than thirty days has elapsed following the issuance of the notice of violation, the violation continues, the Portage County Board of Commissioners may issue a second notice of violation, including any relevant updated information.
- E. If, after a period of not less than fifteen days has elapsed following the issuance of the second notice of violation, the violation continues, the Portage County Board of Commissioners may issue a stop work order in accordance with R.C. 307.79.
 - 1. In the case of an issuance of a stop work order, the Portage County Board of Commissioners shall request, in writing, the Portage County Prosecuting Attorney to seek an injunction or other appropriate relief in the court of common pleas, in accordance with Section XV of these rules.
 - 2. The person to whom a stop work order is issued under this section may appeal the order to the Portage County Court of Common Pleas.

XV. INJUNCTIVE RELIEF

Notwithstanding the provisions of Section XIV of these rules, if a person has violated or continues to violate the provisions of these rules, the Portage County Board of Commissioners may request in writing that the Portage County Prosecutor's Office petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

Each day of violation of any of these rules shall be considered a separate violation subject to a civil fine.

XVI. COMPENSATORY ACTION

In lieu of enforcement proceedings, penalties, and remedies authorized by these rules, the authorized enforcement agency may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

The authorized enforcement agency may recover all attorney's fees court costs and other expenses associated with enforcement of these rules, including sampling and monitoring expenses.

XVII. REMEDIES NOT EXCLUSIVE

The remedies listed in these rules are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the Portage County Board of Commissioners to seek cumulative remedies.

XVIII. DEFINITIONS

For the purposes of these rules, the following shall mean:

Authorized Enforcement Agency:

The Portage County Board of Commissioners, its authorized employees, or its designees, including without limitation other County departments, boards, etc., not under the direct authority of the Portage County Board of Commissioners.

Best Management Practices (BMPs):

Schedules of activities, prohibitions of practices, maintenance procedures and other management practices (both structural and non-structural) to prevent or reduce the pollution of surface waters of the state. BMPs also include treatment requirements, operating procedures and practices to control plant and /or construction site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

Clean Water Act:

The federal Water Pollution Control Act (33 U.S.C. ' 1251 et seq.), and any subsequent amendments thereto.

Construction Activity:

Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of 1 acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Hazardous Materials:

Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit Connections:

An illicit connection is defined as either of the following:

Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process water, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an Authorized Enforcement Agency or,

Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an Authorized Enforcement Agency.

Illicit Discharge

As defined at 40 CFR 122.26 (b)(2) means any discharge to an MS4 that is not composed entirely of storm water, except for those discharges to an MS4 pursuant to a NPDES permit or otherwise noted in Section VIII of this rule.

Industrial Activity:

Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

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:

- (a). Owned or operated by the federal government, state, municipality, township, county, district, or other public body (created by or pursuant to state and federal law) including 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 act that discharges into surface waters of the state; and
- (b). Designated or used for collecting or conveying solely storm water;
- (c). Which is not a combined sewer; and
- (d). Which is not a part of a publicly owned treatment works.

National Pollutant Discharge Elimination System (NPDES) Discharge Permit:

A permit issued by EPA (or by a State under authority delegated pursuant to 33 USC ' 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge:

Any discharge to the storm drain system that is not composed entirely of storm water.

Person:

Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant:

Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Premises:

Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Drainage System:

Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm Water:

Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Storm Water Pollution Prevention Plan (SWP3): A plan prepared in accordance with appropriate guidelines that is required by the Ohio EPA for any facility or development that discharges storm water. The SWP3 identifies potential pollution sources and describes practices that will be implemented to prevent or control pollutant releases.

Surface Waters of the State:

All streams, lakes, reservoirs, ponds, marshes, wetlands, or other waterways which are situated wholly or partly within the boundaries of the State, except those private waters which do not combine or affect a junction with a surface water. Waters defined as sewerage systems, treatment works, or disposal systems in Section 6111.01 of the Ohio Revised Code are not included.