

**COMMONWEALTH OF KENTUCKY
COUNTY OF WARREN
ORDINANCE NO. 19-24 WC**

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**AN ORDINANCE AMENDING ORDINANCE NO. 11-31WC
RELATING TO POST CONSTRUCTION WATER QUALITY**

WHEREAS, Warren County Fiscal Court originally passed an ordinance relating to Post Construction Water Quality, herein referred to as Ordinance Number 11-31WC; and,

WHEREAS, the Federal Clean Water Act, the Federal Environmental Protection Agency and the Kentucky Department of Water mandate the introduction and implementation of post construction water quality procedures for stormwater runoff in the Commonwealth of Kentucky; and,

WHEREAS, Warren County operates under the requirements of the Kentucky Pollutant Discharge Elimination System (KPDES); and,

WHEREAS, Phase II of EPA's stormwater program and Phase II of the Kentucky Department of Water's Municipal Separate Storm Sewer Systems require Warren County to meet the water quality goals set by the Clean Water Act for Post Construction Stormwater Management; and,

WHEREAS, it is in the interest of Warren County and promotes the health, safety and welfare of its citizens to prevent the pollution, impairment or destruction of its natural resources; and,

WHEREAS, the Fiscal Court wishes to allow the Fee-In-Lieu of Construction (FILOC) option to create additional opportunities to meet permit compliance requirements.


NOW THEREFORE, BE IT HEREBY ORDAINED BY THE FISCAL COURT OF WARREN COUNTY, COMMONWEALTH OF KENTUCKY, that the Warren County Post

Construction Water Quality Ordinance, with the attached Exhibit "A" (which contains all the rules, regulations, definitions and penalties concerning this area) is hereby incorporated herein as if set forth in full and is **HEREBY ADOPTED**.

THAT, all ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

THAT, this Ordinance is adopted pursuant to KRS 67.077 in that it was published in summary form on the 12th day of June 2019, and was introduced and read on the 11th day of June 2019, and given final reading on the 21st day of June 2019, and said Ordinance shall be in full force and effect upon signature, recordation, and publication in summary pursuant to KRS Chapter 424 and KRS 67.777, subsection 3.

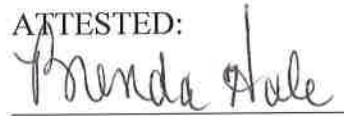
APPROVED this 21st day of June 2019.


Honorable Michael O. Buchanan
Warren County Judge-Executive

REQUESTED FOR APPROVAL:

JOSH MOORE
Warren County Public Works

ATTESTED:



BRENDA HALE
Warren County Fiscal Court Clerk

Passed by a Vote of 6 to 0.

Approved as to form and legality:

AMY HALE MILLIKEN
Warren County Attorney

Exhibit "A"

WARREN COUNTY STORMWATER MANAGEMENT

Post Construction Water Quality

I. DEFINITIONS

"Best Management Practice (BMP)" shall mean a measure that is implemented to protect water quality and reduce the potential for pollution associated with stormwater runoff.

"Channel" shall mean a natural or constructed/manmade watercourse with definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow is that water which is flowing within the limits of the defined channel.

"Clean Water Act (CWA)" shall mean those Federal regulations that prohibit the discharge of pollutants to waters of the United States unless such discharge is in accordance with an approved National Pollutant Discharge Elimination System (NPDES) permit.

"Clearing" shall mean any activity that removes vegetative surface cover.

"Critical Area" shall mean a site difficult to stabilize due to exposed subsoil, steep slope, extent of exposure or other conditions.

"Critical Flood Area" shall mean a watershed that has a FEMA Zone "A" or "AE" within the site or a location of historical flooding of roads or structures.

"Detention" shall mean the temporary delay of storm runoff prior to discharge into receiving waters. Retention is synonymous in meaning as it relates to this ordinance.

"Developer" shall mean any individual, firm, corporation, limited liability company, association, partnership, trust or other business entity involved in commencing proceedings to affect development of land for developers or others.

"Drainage Basin" shall mean a part of the surface of the earth that is occupied by and provides surface water runoff into a stormwater management system, which consists of a surface stream

or a body of impounded surface water together with all tributary surface streams and bodies of impounded surface water.

"Drainage/Dry Well" shall mean a bored, drilled, driven, dug, or naturally occurring shaft or hole with a depth greater than the largest surface dimension; used to drain surface fluid, primarily stormwater runoff, into a subsurface formation.

"Erosion" shall mean the wearing away of land surface by the action of wind, water, gravity, ice, or any combination of those forces.

"Erosion Prevention Sediment Control Plan (EPSC)" shall mean a set of plans prepared by or under the direction of a licensed professional engineer or other qualified individual or firm detailing the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction.

"Excavation" shall mean any portion of land surface or area from which earth has been removed or will be removed; the depth below original ground surface to remaining surface.

"Fill" shall mean the portion of land surface or area to which soil, rock, or other materials have been or will be added; height above original ground surface after the material has been or will be added.

"Flood Plain" shall mean the relatively flat or lowland area adjoining a river, stream, watercourse, lake, or other body of standing water at the surface or subsurface (sinkholes), which has been or may be covered temporarily by floodwater. For purposes of this ordinance, the flood plain is defined as the area encompassed by a 100-year storm having a one percent chance of being equaled or exceeded in any given year.

"Grading" shall mean any stripping, cutting, filling, or stockpiling of earth or land, including the land in its cut or filled condition, to create new grades.

"Impervious Surface" shall mean any ground or structural surface that water cannot penetrate or through which water penetrates with great difficulty.

"Kentucky Division of Water (KYDOW) General Permit (KGP)" shall mean an agreement between the regulating authority and the Permittee, which specifies conservation practices that shall be implemented in the construction of activities specified in the terms and conditions of the general permit.

"Land Disturbance" shall mean the purposeful act of clearing, grubbing, excavating, or grading; disrupting ground surface by or for construction activities, including construction access/road, staging, and storage sites producing significant areas of exposed soil and soil piles.

"National Pollutant Discharge Elimination Systems (NPDES)" shall mean EPA's program to control the discharge of pollutants to waters of the United States. NPDES is a part of the Federal CWA, which requires point and non-point source dischargers to obtain permits. These permits are referred to as NPDES permits.

"Notice of Intent (NOI)" shall mean a formal notice to the EPA or a state agency having delegated NPDES authority that a construction project seeking coverage under a General Permit is about to begin.

"Notice of Termination (NOT)" shall mean a formal notice to the KYDOW having delegated NPDES authority that a construction project is complete and seeking release for the EPSC and the State General Permit.

"Perimeter Control" shall mean a barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

"Permittee" shall mean the "Person Responsible for the Land Disturbing Activity."

"Public Storm Drain" shall mean the drain system provided by Warren County that is designed to help convey stormwater runoff; it also provides inlets for water to travel to holding areas attempting to remove excessive water from streets and other areas.

"Sediment" shall mean solid material, both mineral and organic, that in suspension is being transported or has been moved from its site of origin by air, water, or gravity as a product of erosion.

"Sediment Control" shall mean measures that prevent eroded sediment from leaving the site.

"Site" shall mean a parcel of land or a contiguous combination thereof, where grading work is performed as a single unified operation subject to erosion or sedimentation as a result of cutting, filling, grading, or other disturbance of the soil.

"Stabilization" shall mean the use of practices that prevent exposed soil from eroding or establishment of vegetative cover (70% coverage or better of the cover for unpaved areas and area not covered by the permanent structures or equivalent permanent stabilization measures).

"Start of Construction" shall mean the first land-disturbing activity associated with a development, including land preparation such as clearing, grading, filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

"Stormwater Management Plan (SWMP)" shall mean a plan that is based on hydrologic and hydraulic calculations to determine flood stage and required improvement to minimize impacts by development. The City County Planning Commission is and continues to be the permitting authority for "quantity" plans which are a part of the SWMP. Water "quality" plans are required to be approved by the Office of Stormwater Management.

"Temporary Protection" shall mean short-term stabilization of erosive sediment producing areas.

"Watercourse" shall mean any body of water including, but not streams, and bodies of water limited to, lakes, ponds, rivers, delineated by the County of Warren.

"Waterway" shall mean a channel that directs surface runoff to a watercourse or to the public storm drain.

II. Post Construction Water Quality

A. Purpose.

To fully comply with federally mandated stormwater regulations, the County is required to address runoff from post construction areas in order to prevent or minimize water quality impacts. Post construction stormwater management in areas undergoing new development or redevelopment is necessary because runoff from these areas has been shown to significantly affect receiving water bodies. Many studies indicate that prior planning and

design for the minimization of pollutants in post construction stormwater discharges is the most cost-effective approach to stormwater quality management.

B. Applicability.

For construction meeting the criteria herein below, review and approval is required prior to commencement of construction:

1. Disturb more than one (1) acre and greater than 10,000 square feet of additional impervious surfaces.
2. Hotspot land uses as defined below:
 - a) Automotive fueling facilities;
 - b) Automotive maintenance and repair facilities;
 - c) Restaurants with grease collection and disposal; and,
 - d) Other land uses as determined to have a high potential of pollutant discharge into the MS4 as determined by the County Engineer.

C. Review and Issuance of Permit.

1. For projects requiring post construction, plans shall be submitted as part of the application process (e.g. building permit, comprehensive development plan, detailed development plan or subdivision). The plans shall conform to the design criteria of a BMP developed based on all applicable City/County/State/Federal ordinances and guidelines established by Warren County Fiscal Court Division for Stormwater Management policy and procedure. Based on the review of the permit application, the Warren County Joint Stormwater Agency will:
 - a. Approve the permit application;
 - b. Approve the permit application subject to such permit subject to these conditions; or,
 - c. Deny the permit application, indicating the reason(s) and procedure for submitting a revised application and/or submission.
2. The Warren County Joint Stormwater Agency reserves the right to inspect the site prior to any construction activity in furtherance of the review process.
3. The Warren County Joint Stormwater Agency's approval of the permit is for general compliance with local requirements and the KYDOW general permit pursuant to promulgated regulations and guidelines of the Kentucky Department for Environmental Protection and KYDOW. The designer is ultimately responsible for the details of design, with the property owner being responsible for implementation and maintenance.

D. Maintenance.

The property owner shall be responsible for all maintenance and record keeping as detailed in the Maintenance Agreement established by Warren County Fiscal Court Division for Stormwater Management policy and procedure which is to be based on all applicable City/County/State/Federal ordinances and guidelines.

E. Right of Entry.

The Warren County Joint Stormwater Agency and its agents shall have right of entry to inspect, observe, test or perform any related activity to the operation, maintenance and function of the stormwater infrastructure.

F. General Requirements for Post Construction Stormwater Control.

Requirements for design, maintenance and a menu of BMPs may be referenced in the Post Construction section of the City of Bowling Green Stormwater BMP Manual. All requirements for design and maintenance detailed in a Post Construction BMP should be developed and based on all applicable City/County/State/Federal ordinances and guidelines, shall be the standard practice for post construction compliance in Warren County.

G. Fee-in-Lieu of Construction (FILOC).

For projects requiring Post Construction Stormwater Controls, the Agency may allow a fee-in-lieu of construction (FILOC) to be paid for projects that cannot practicably meet the post-construction stormwater control requirements for water quality. An application must be made to the Agency to qualify for FILOC. Factors to be considered include the Agency's program costs, project design and construction costs, and long-term maintenance costs. Fees collected from FILOC will be used for public stormwater management improvement projects identified by the agency with the intent of improving water quality in the regional project area.

III. PENALTIES.

A. Enforcement proceedings shall be initiated by the issuance of a notice of violation or a citation by a Warren County Stormwater Management official or Warren County building inspector. The notice of violation or citation shall be delivered to the violator at his last known address as it appears from the current property tax assessment roll. Such notice of violation or citation shall be deemed properly served if given by certified mail, return receipt requested, by personal delivery or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice. Service by certified mail shall be presumed to have been served on the third day following mailing. A copy shall also be posted in a conspicuous place in or about the structure or premises affected by such notice of violation or citation.

B. Warren County may also take immediate action to remedy a violation, including the issuance of a stop work order if construction under an active building permit is not in compliance with the requirements of this Ordinance. Nothing in this Ordinance shall prohibit Warren County from correcting the violation through self-help or taking immediate action to remedy a violation when there is reason to believe that the violation presents a serious threat to the public health, safety and welfare, or if in the absence of immediate action, the effects of the violation will be irreparable or irreversible. Warren County may file liens on the property to recover its costs of labor and material, civil fines and other expenses. The lien shall take precedence over all other subsequent liens except state, county, and school boards taxes, and may be enforced by judicial proceedings.

C. Upon receipt of a citation, the violator shall respond to the citation with seven (7) days by either paying the civil fine, or requesting in writing a hearing before the Code Enforcement Board to contest the citation. If the violator responds by paying the civil fine, the violator shall still be required to remedy the violation. If the violator fails to remedy the violation or to request a hearing within the designated time, the code official is authorized to issue another citation and to remedy the violation.

D. If a citation for a violation of this Ordinance is not contested by the person charged with the violation, the maximum penalties shall apply; however, the Board may waive any or all of a penalty of an uncontested violation, if in its discretion, the Board determines that such waiver will promote compliance with this Ordinance. The penalties listed are for each day a violation continues, beginning on the first day after the ending date of the corrective period. A second offense is an offense that occurs within five (5) years of the prior offense. All other violations are those, which occur within five (5) years of two (2) or more prior offenses:

| CITATION PENALTIES | | |
|-------------------------|-------------------------|------------|
| 1 st Offense | 2 nd Offense | All Others |
| \$100.00 | \$500.00 | \$1,000.00 |