



HANDBOOK

Ohio County Commissioners

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37 West Broad Street, Suite 650 • Columbus, Ohio 43215-4195
Phone: 614-221-5627 • Fax: 614-221-6986 • www.ccao.org

CHAPTER 92

URBAN SEDIMENT RULES

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92.01 INTRODUCTION

Counties have the authority to adopt urban sediment rules. Counties were given this authority in 1979 with the enactment of HB 513. Ohio Revised Code Section 307.79 is the basic enabling statute. Although some counties had, previous to the enactment of HB 513 controlled erosion and sediment utilizing subdivision regulations, this act provided additional authority to adopt such regulations.

HB 513 also gave authority to soil and water conservation districts to regulate farming operations which may cause water pollution problems. This chapter of the handbook will 92.03 discuss the details of urban sediment rules which is another development control tool available to county commissioners to assure that quality development occurs.

92.02 AUTHORITY TO ADOPT RULES

County commissioners have the authority to adopt rules establishing standards which will require management and conservation practices to abate wind or water erosion of the soil or to abate the degradation of water quality resulting from soil sediment. The rules may also include criteria by which those given administrative responsibility for the program can determine if the management and conservation practices are acceptable. The erosion and sediment control rules may regulate grading, excavating, filling or other soil disturbing activities on land being used or developed for non farm uses.

92.03 CONTENT OF EROSION AND SEDIMENT CONTROL RULES

If county commissioners adopt erosion and sediment control rules the following requirements of the law must be considered:

1. The rules can only apply to the unincorporated areas of the county.
2. The standards contained in the rules must be technically feasible and economically reasonable.
3. The rules must be designed to implement the federal "208" Areawide Water Quality Management Plan for the county in question.
4. The rules can not apply to strip mines or surface mines because they are regulated exclusively by the Ohio Department of Natural Resources (ODNR).
5. The rules may require the filing of sediment control plans and water management plans prior to any clearing, grading, excavating, filling or in other ways disturbing five or more contiguous acres of land owned by one person or operated as one development unit for the construction of non-farm uses.
6. No specific authority is granted for approval or disapproval of plans.
7. Although no plan can be required of an individual prior to land disturbing activities on an area of less than five acres in area, the rules requiring sediment control still apply to lands less than five acres in area.
8. Highway and drainage (including maintenance of county ditches) improvements by governmental agencies are exempt from the plan submission requirements if such improvements are undertaken according to agency control policies which have been approved by the county commissioners or the Chief of the Division of Soil and Water Districts of ODNR.
9. Reasonable filing fees for plan review may be established.
10. A surety, such as a deposit or performance bond, is not specifically authorized.

92.04 ADOPTION PROCEDURE

Erosion and sediment control rules are enacted by the adoption of a resolution. Prior to adoption, the following procedures must be followed:

1. Public hearings on the rules must be held at two regular sessions of the county commissioners.
2. Notice of the public hearings must be published in a newspaper of general circulation once a week for two weeks preceding the public hearing. The notice must include the time, date, and place. A summary of the proposed rules, although not required by law, is also recommended to be published. The notice must also specify

locations where interested citizens may review or obtain a copy of the proposed rules.

3. The proposed rules must be made available to the public at the commissioners' office and other locations specified in the notice prior to the hearings.
4. If the commissioners adopt the rules, a resolution to that effect is adopted and the rules become effective 31 days after their adoption.

The same procedures must also be followed when amending or rescinding the rules.

92.05 REPEAL OF RULES

There are three methods by which urban sediment rules may be rescinded:

1. The county commissioners may rescind the rules following the procedures outlined above.
2. A petition signed by 10 percent of the number of electors who voted for governor in the last election may be submitted to the county auditor within 30 days after the adoption of urban sediment rules requesting a referendum on the rules. This procedure is the same as for the repeal of county permissive taxes, except the rules are enforceable until the electors vote on the question.
3. After the rules are effective, an election to repeal may be requested in any year by filing a 10 percent petition with the board of elections at least 75 days before any general election.

Both repeal procedures require petitions signed by 10 percent of the residents of the entire county who voted in the last election for governor. This raises the interesting situation that, although the urban sediment rules only control development in the unincorporated areas of the county, it appears that residents of municipal corporations may sign petitions requesting the repeal of the rules and vote in such an election.

92.06 ADMINISTRATION OF URBAN SEDIMENT RULES

A wide variety of options is available for the administration of urban sediment rules if adopted. Following are some of them:

1. The county commissioners may hire necessary personnel to administer the rules within their office or assign the responsibility to an existing office under its jurisdiction such as the building, sanitary engineering, or planning department.
2. The commissioners may enter into agreements with cities or villages to administer the rules.

3. The commissioners may enter into agreements with other county officials to administer the program. The county engineer may administer the program, however, the engineer must submit standard policies and procedures for approval and thus a possible conflict arises if such a delegation occurs.
4. The commissioners may also enter into agreements with other government agencies to administer the rules. This would allow commissioners to delegate administration to a soil and water conservation districts or conservancy district.

Administration should be coordinated with other development regulations to avoid duplication. Coordination of the urban sediment regulations with subdivision regulations is one way to minimize duplication. Representatives of the technical staff of the soil and water conservation district might be used for reviewing site conditions and sediment control plans or for training individuals in techniques of erosion and sediment pollution control.

92.07 ENFORCEMENT

It is difficult and cumbersome to enforce urban sediment rules because of certain provisions of the law. For example, the law requires the filing of sediment control plans before conducting land disturbing activities, however, there is no specific authority to approve the plans and the developer need not obtain a permit prior to engaging in land disturbing activities. Possibly, existing authority for plat approval can be used to require submission and approval of sediment control plans.

After plans are submitted, (not approved), a developer may proceed and is prohibited from violating the rules adopted by the commissioners. If it is suspected that the rules are being violated the following general procedure must be followed to enforce the rules:

1. The inspector must identify himself to the owner or other person in charge of the development and obtain agreement to enter the land in order to determine if the work is in compliance with the urban sediment rules.
2. If the owner or manager of the project refuses access to the inspector, he must apply to common pleas court for the issuance of an inspection warrant.
3. If, after making site inspection, the county commissioners determines that a violation exists, it may make a written request to the prosecuting attorney who must then seek an injunction or some other appropriate relief to abate excessive erosion or sedimentation, and to secure compliance with the urban sediment pollution abatement rules. This is the same

enforcement procedure that now exists for violations of county building codes.

4. The court may grant further relief by requiring the developer to construct sediment control improvements or to institute other control improvements or to institute other control measures.
5. There is no penalty for the violation of urban sediment rules nor can a performance bond be required to guarantee the construction of improvements. The county commissioners likewise may not establish penalties or require bonds as part of their rule making authority.

92.08 DEVELOPMENT OF STATE STANDARDS

In 1989 the Division of Soil and Water Conservation of the Department of Natural Resources, pursuant to Section 1511.02(E)(2), of the Revised Code established state standards for erosion and sediment control (Ohio Administrative Code Chapter 1501:15-1). These standards do not apply to agriculture, strip or surface mining, or in counties or municipalities that adopt rules for urban sediment control.

In 1991 DNR developed model regulations that could be used by counties. These will be revised and will be coordinated with Ohio's stormwater discharge permit program which will take effect in October 1992. Copies can be obtained from DNR, and the model regulations are an excellent source document that includes a narrative commentary about many of the recommended regulations.

92.09 CONCLUSION

It should be apparent from a reading of this chapter that the basic enabling legislation for urban sediment rules is, in many respects, very limited and often cumbersome. These same limitations probably do not exist if the rules are included within either zoning (OAG 85-053) or subdivision regulations. It should be stressed that the county commissioners have authority to adopt urban sediment rules, but the responsibility for agricultural pollution abatement rules for agricultural operations and animal waste is the responsibility of other agencies and is coordinated by the Department of Natural Resources.