

2009 Non-Mandated Expenditures Department Response

DEPARTMENT: Soil & Water Conservation District
DEPARTMENT HEAD: Holly Utrata-Halcomb
OCA TITLE: 920017

1. Are there elements of the BSI non-mandated services that you believe are mandated? If so, provide the specific Ohio Revised Code (ORC) citation, Code of Federal Regulation (CFR) and/or relevant case law information. Please be especially diligent if there is a specific service or staffing level prescribed by law.

I feel it is necessary to briefly review how the Earth Work Regulations came to be.

The Earth Work Program is made up of two sectors.

1. Hillside Stability
2. Sediment and Erosion Control

In the 1950s and 60s many of the County's hilltops and plateau areas were developed as demand for river views and high-rise apartments increased. Our high clay soils, high annual precipitation rate (which weakens the soil), steep slopes, shale/limestone bedrock geology and human impact, aggravated the ongoing geomorphic process within our region. Land that was once thought to be unbuildable was being built upon. As prime land continues to shrink, this trend has only increased.

The 1970s brought more hillside development with larger machinery.

- 28% of the land has slopes steeper than 15% and are prone to slippage
- Hamilton County soils have the highest rate of erosion in the entire State of Ohio.
- Soil is our # 1 water pollutant by volume

Soil loss due to land use*

Forested land	50 tons/sq.mi./year
Farmland	1000-5000 tons/sq.mi./year
Construction	2,500 – 5,000 tons/sq.mi./year

*National Tree Trust

In 1974, a cut in the toe of a hill while constructing I-471 resulted in Mt. Adams slipping. \$26 million dollars in federal, state and local sources gave Hamilton County the notoriety of spending more dollars/capita than any other county in the Country for landslide remediation.

In 1975 The Earth Movement Task Force was established and consisted of technical and academic experts and local officials. Over 20 studies were performed which the task force evaluated and made recommendations. Finally, in November 1990, the County Commissioners adopted the Hamilton County Earthwork Regulations. At that time, the Hamilton County Department of Public Works administered the program. It consisted only of plan review with no in-field oversight or enforcement. There was no assurance that what was on the plan was translating to the field. Public outcry & pressure from environmental groups emerged as landslides still occurred.

This situation turned into a political "hot potato" with a strong lobby from the Greater Cincinnati Homebuilders Association encouraging the County not to enforce in the field. Due to the political climate, Public Works preferred not to continue administering the program.

At that time, it was noted that The SWCD had the expertise in soils, stormwater issues and land use planning. Also, I believe that since our District is a separate government entity, the political

2009 Non-Mandated Expenditures Department Response

pressure was perceived to be more removed. In 1992 the SWCD was asked by the Commissioners to take over the Earthwork Regulations. Our independent Board of Supervisors agreed and in October 1993, we took the administration over with the provision that we could hire a Geotechnical Engineer to provide unbiased review and two additional technicians for erosion and sediment review and field inspection. Permit application intake for the program remained in the Public Works Department to retain the one stop shop continuity. Another benefit was the funds that the County appropriated to our agency received on average an 80% match from ODNR – Division of Soil & Water.

While neither one of these services - hillside stability or erosion and sediment control were mandated in 1990; the cost of having no over site was astronomical. Since then, the USEPA Clean Water Act, Phase II (NPDES Phase II) was established in 2003 and requires sediment and erosion control on development sites over 1 acre.

Because of our existing Earth Work Program, the County Engineer asked our District to take over this component of the Phase II program. While our staffing has not increased, 50% of the salaries are now covered by the Phase II program, thus reducing the request from the General Fund. This was self-initiated by the SWCD.

2. Who are the recipients of the service or activity for the non-mandated service? How many recipients? Please note any internal customers, other county departments, jurisdictions, businesses, etc. If the service is geographic specific (i.e., a satellite probation office), please identify the neighborhood, township or municipality.

The recipients are all of the twelve townships (unincorporated areas) of Hamilton County. The intake department in the County Administration Building is a hub of coordination with the Building Dept., Planning and Zoning and Public Works.

As a side note, our Geotechnical Engineer also provides consultation to all of these departments as well. Even on issues not directly related to the Earth Work Permit.

3. Are there county revenues associated with the non-mandated services? If so, please provide the methodology for any lost revenues. Please consider state or federal reimbursements, grants, fees, etc. Please note if the service or activity is included in the county's indirect cost plan.

The ODNR match could be considered revenue. Fees have not ever been charged for this program, but they certainly could be charged. The Home Builders lobby has been adamantly opposed to this and have been quite verbal to the County Commissioners.

4. If the county did not provide the non-mandated service, is there the potential for increased expenditures in another jurisdiction within Hamilton County? If so, please list the specific municipality and/or township.

Not having a Geotechnical review could set the County up for law suits and cause great financial harm to inexperienced home buyers. This would be terrible PR for the County. This is certainly a quality of life issue.

A good example of possible consequences is the Lux Lane landslide. This subdivision was built in the 1950, long before the Earthwork regulation was developed. The builder built on improperly compacted fill. The landowners began experiencing landslide problems only a few years after

2009 Non-Mandated Expenditures Department Response

moving in to the development. Solutions turned out to be only short-lived. Many County departments and the County Commissioners received pleas for help on a regular basis.

Right before three of the houses were about to be condemned, Dan Taphorn, our District Urban Conservationist came up with a collaborative plan between an excavation company that needed a place to dispose of clean hard fill and the landowner. The Excavation Company paid for the Engineering and all materials in exchange for a site to place their fill. This solution saved 11 homes from being condemned. Dan won the Innovation Award – Employee of the Year Award for this plan. Unfortunately, there are scores of other homeowners in our County that are in the same position, but the locations are not conducive to this solution. If we did not have Geotechnical review of development and building projects, this situation would return to our County.

5. Does the non-mandated service include Board of County Commissioner policy via resolution or motion?

Yes. In 1990 when the Earthwork Regulations were developed, the primary focus was on hillside stability. Sediment and erosion control and water quality were secondary.

6. Are there contracts or agreements that preclude the elimination of a non-mandated service? If so, please provide the specific language as to termination and/or amendment terms.

Just the original transfer of the program from Public Works to SWCD.

7. What are the equipment/non-personnel expenditure considerations with discontinuing a non-mandated service? (i.e., surplus equipment).

One desk and a computer.

8. Do any of the non-mandated services include employees represented by a bargaining unit? If so, please note the union and provide information as to reduction-in-force and job abolishment considerations.

No.

9. For positions within non-mandated services, are there are special circumstances that preclude a traditional job abolishment process? Separation costs will be addressed centrally including leave balance payouts, unemployment compensation and severance (based on current Commission policy).

No, but the County would be left to deal with a huge liability and clean up costs from landslides due to poor sight selection and in-field inspection due to poor compaction and improper cut and fill operations.

10. In addition to positions associated with non-mandated services, the Budget Office included a review of management layers, support staff, and currently vacant positions. Please comment on the impact of eliminating these positions.

The SWCD has only two “management positions” – the District Administrator that handles representation of the publicly elected volunteer Board of Supervisors, managing personnel, budget as well as all the public relations and mass media for the Storm Water District. This position is also the designated enforcement official for the ODNR Agriculture Pollution Abatement Rules.

The other position is the Urban Land Manager, who supervises and coordinated the four staff people in the Earth Works Program. He also handles the larger, more time consuming non-

2009 Non-Mandated Expenditures Department Response

compliance issues. If you compare our department to others involved in building and development, I believe you will discover we have fewer inspectors and plan reviewers and perform, on average, more inspections.

All staff pitch in and help with public presentations and public events. In 2007, these totaled 68. In 2008, to date, these total 52 in 2008.

11. What is the performance impact of not providing the non-mandated service? For example, wait times, waiting lists, case loads, operating hours and other consequences of not providing the service.

Not having a Geotechnical Engineer would jeopardize the entire development process in the County. Please see answers to questions 1 & 4.

12. Are there any alternatives that result in savings to the general fund?

We could approach the municipalities and offer these Earthwork Services. Most hire consultants and I believe we could provide the services for less cost and add consistency throughout the County – which the Homebuilder's would like.

We could also generate income by basing our services on fees. This would subtly introduce the concept of fees to the builders as well.

13. Are there more efficient ways to deliver a mandated service that may allow for the savings to offset the cost of a non-mandated service?

Fees are the only thing I can think of that could further offset costs. We are already staffed as lean as we can be and our administrative staff also covers field work.

14. Is there an opportunity to transfer any non-mandated expenditures to another funding source (i.e., restricted fund or grant)?

ODNR provided a 95% match on the 920017 – General Services Account in 2008 and will probably provide a 75% match in 2009. Just a little over 50% of the salaries have already been transferred over to the Storm Water District – 920027, as have a portion of costs for supplies, travel postage, mileage, training, and indirect costs.

15. Does your department have any fees that could be raised to offset the cost of a mandated service?

Since the Earthwork Permit is the only County permit that does not have a fee, it seems reasonable that it should be a cost of doing business.

Other Considerations and Comments:

ODNR has been talking about setting a ceiling on the match dollars as the disparity of county appropriations between rural and urban counties grows. In other words, we cannot push that envelope too far.

The Storm Water District is at a tentative crossroad this year. They are asking municipalities to sign on for a five year period to coincide with the length of the renewed permit. If rates jump too high in 2009, municipalities may drop out of the District and the economy of scale will be lost.