Hamilton County's June 23, 2014 Responses to City of Cincinnati's May 23, 2014 Comments

STORM WATER SEPARATION POLICY

HAMILTON COUNTY'S RESPONSES TO
CITY OF CINCINNATI'S MAY 23, 2014 COMMENTS

CITY COMMENT (From City's May 23, 2014 letter & attachment)	COUNTY RESPONSE (June 23, 2014)
Why is the draft policy trying to strangle MSDGC's alternative approach [Revised Original LMCPR Sustainable approach] to the Lower Mill Creek Tunnel	The Revised Original LMCPR Sustainable approach is proposed to reduce CSO volume by 1.78 billion gallons (BG), while also increasing storm water discharges to the Mill Creek and its tributaries by 3 BG. The Regulators indicated during the responses to the public comments on the Revised Original LMCPR that the "storm water discharges will need to comply with the MS4 permit. The storm water discharges will need to be managed consistent with the applicable water quality standards for the local water bodies." This policy is designed to set forth a Business Case Evaluation (BCE) approach for all future MSDGC storm water separation projects to understand the total costs and impacts associated with storm water quality and quantity pollution. The Policy will ensure that the necessary data, costs and water quality (WQ) results are analyzed to determine what is needed (e.g., BMPs, etc.) to control storm water to the maximum extent practicable (MEP) and storm water pollutants do not cause or contribute to exceedances of water quality standards (WQSs) if storm water is separated from the CSOs and discharged directly to waterways.
County is micro-managing projects	Disagree. County is setting policy and not micro-managing projects
Intrudes on sound utility management	Disagree. The Policy ensures good utility management and environmental protection/measures are considered and implemented where appropriate (See Mr. Meyer's May 9, 2014 Memo to Mr. Parrott) for

	protection/measures are considered and implemented where appropriate (See Mr. Meyer's May 9, 2014 Memo to Mr. Parrott) for more discussion on this issue.
Vests ownership determination on BOCCs	Not correct. MSDGC makes a recommendation after performing analyses and planning, and consulting/coordinating with local jurisdictions.
Is a modification of the 1968 Agreement	No. Policy is consistent with County's obligations under the Agreement and to rate payers.
Improperly commits MSDGC funds, particularly for storm water	Opposite is true. Funds will be spent wisely on projects; there will be "more bang for the buck" in terms of improving water quality and controlling water quantity/flooding.
Incorrect legal standard – CWA MEP is the standard	OEPA MS4 permit and OAC §3745-39-03(C) requires compliance with both CWA MEP technology standard and water quality standards (WQSs). Storm water discharges that cause or contribute to WQSs exeedances are not covered by the MS4 general permit, so an analysis is needed to ensure the separate flow will be covered under the existing MS4 permit or some other OEPA permit. The Policy will lead to further reasonable progress in attaining state WQSs. CWA provides USEPA and states with discretion and authority to determine that compliance with state WQSs is necessary to control pollutants. 33 USC §1342(p)(3)(B)(iii). States may impose other provisions than the CWA minimum MEP standard that they determine are appropriate to meet state WQSs. *Defenders of Wildlife v. Browner,* 191 F.3d 1159, 1166. OEPA has imposed the "do not cause or contribute to WQS exceedances" standard in the MS4 permit and cannot be ignored.
Additional Legal Compliance burdens and costs	It is better to know at the project planning stage whether separated storm water will cause a problem rather than later when costs will be higher to modify the project or install retrofits. No new or increased compliance burdens will be incurred, as these obligations already exist. US EPA's recent announcement that they have decided to not pursue a national storm water rule amendment was primarily focused the

	difficulty of determining a national minimum storm water detention standard for storm water from new or redevelopment sites. As MSDGC mentions, US EPA plans to leverage existing requirements to strengthen storm water permits. This would entail leveraging existing state WQSs and other water quality requirements. In the long term, benefits of performing WQ analyses and incorporating the results into project planning and design, outweighs any negatives. See Mr. Meyer's May 9, 2014 Memo to Mr. Parrott.
Unilateral compliance consent decree strategy imposed by county/contrary to phased approach	The Policy does not prohibit the separation strategy for compliance with the consent decree. The Policy requires certain analyses to be performed to support such a strategy that might result in additional storm water controls/BMPs/Measures to be part of the separation project to improve water quality and control water quantity.
Unlike anything in the Industry	Other communities follow similar approaches to evaluating storm water pollution and planning for long-term WQ improvements in their watersheds. See, for example, Bangor, ME, Portland, ME, Milwaukee, WI, Chicago, IL, SD1 Northern Kentucky, Chesapeake Bay Utilities, North & South Carolina sewer utilities, and Washington DC Water and Sewer Authority.
Inconsistent with Consent Decree	Disagree. Consent Decree requires compliance with State WQSs and water quality requirements of the CWA. The ultimate goal of the Consent Decree and CSO strategies is to meet appropriate health and environmental objectives for a watershed. The Policy will help ensure these requirements and goals are met. See Mr. Meyer's May 9, 2014 Memo to Mr. Parrott for further discussion.
Complex/lacks critical definitions and reference to industry standards/cannot be implemented in current form	Model development is not complicated. County is confident MSDGC and its consultants have the ability to develop a WQ model for the Policy. MSDGC Engineering has also recently recognized the need for WQ sampling and modeling and wants to proceed with a County-wide program.
Unneeded bureaucratic process/lead to	Disagree. The Policy will lead to better

arbitrary decisions	decision making and project planning/design to improve watersheds and WQ. Policy is designed to perform a business case evaluation to understand the total costs and impacts associated with storm water quality and quantity pollution. The Policy will provide the needed data, costs and analytical results to determine what the maximum extent practicable (MEP) is for storm water BMPs if storm water is separated from the CSOs.
Vastly overbroad	Disagree
Subjects MSDGC to conflicting obligations	Disagree. MSDGC is charged with planning and designing CSO and SSO solutions, and if the solution recommended is storm water separation, then all of the impacts of the project need to be assessed, including the impacts from re-directing the flow. The Policy ensures the appropriate analyses are performed in this regard.
Arrogating decisions to County that may be made by other MS4 owners	Policy requires MSDGC to make a recommendation to the BOCCs after consulting and coordinating with local jurisdictions and other MS4 owners as necessary.
Mandates speculation of future storm water rules	Policy requires MSDGC to use its best efforts to access future risks that impact project costs, not to speculate. The OEPA Mill Creek TMDL update and Ohio River bacteria TMDL are examples of future regulatory actions that should be assessed for risks. The policy will also provide the needed data, costs, and results to determine what is needed to meet the maximum extent practicable (MEP) control standard for storm water, and "do not cause or contribute to WQSs" requirements of the MS4 permit, if storm water is separated from the CSOs. See Mr. Meyer's May 9, 2014 Memo to Mr. Parrott for more discussion on this.
No reason to institutionalize exercise	Disagree. Policy is needed to assess critical aspects of a separation project, including the impacts of re-directing the storm water flow and compliance with the MS4 permit, if storm water is separated from the CSOs.
Increased internal review time and costs for subdivision projects/permits	The Policy governs projects where storm water separation occurs by MSDGC as defined in the Policy. There should not be any impact on

	review time or costs related to housing or commercial subdivision projects or permits
No responsibility placed on developers/other stakeholders	Developer standards for storm water control are located in other MSDGC rules and regulations or under the Hamilton County Storm Water Management District, City's Storm Water Management Utility (SMU) or local jurisdiction. This Policy does not change those standards.
No plumbing inspection duties spelled out	The Policy does not affect plumbing inspections.
Plumbing permitting unclear	The Policy governs projects where storm water separation occurs by MSDGC as defined in the Policy. There is no impact on plumbing permitting.
BOCCs making final decision circumventing City storm water mitigation techniques	Policy is needed to assess critical aspects of a separation project, including the impacts of re-directing the storm water separated flow and will provide the needed data, costs, and analytical results to determine the MEP for storm water control/BMPs per the MS4 permit, if storm water is separated from the CSOs. The Policy does not dictate any specific storm water mitigation techniques, BMPs or other WQ control measures. These need to be considered and determined in the project planning and design stages with the water quality and water quantity analyses in hand.
Transportation projects will increase in cost and time	The Policy governs projects where storm water separation occurs by MSDGC as defined in the policy. Transportation projects would not be impacted unless MSDGC provides funding for the separation of the storm sewer system from the combined sewer system as part of the transportation project. If a new MS4 is created by the transportation project and no MSDGC funds are utilized, then the new MS4 would not be the responsibility of MSDGC/County and not impacted by the Policy.
Another hurdle for development projects	The Policy is not intended to address development projects. The Policy governs projects where storm water separation occurs by MSDGC as defined in the Policy.
MSDGC not responsible for meeting WQS compliance in the stream	All Clean Water Act NPDES permit holders are responsible to ensure that their discharges do not cause or contribute to exceedances of

	WQSs. This requirement is in all Ohio EPA NPDES permits, whether the permit covers a municipal separate storm water sewer system (MS4), CSOs, construction site run-off, industrial storm water or Wastewater Treatment Plant (WWTP) direct discharges. MSDGC is a county sewer district under Ohio law. The NPDES permit covering the Mill Creek WWTP is issued to the MSDGC. The NPDES permit covering MSDGC's CSOs is issued to Hamilton County. The MS4 permit was issued to Hamilton County and all of the Hamilton County Storm Water District Members as co-permittees, which includes the City of Cincinnati. Separation projects will remove storm water from a CSO, which is regulated by the CSO NPDES permit, and discharge it directly to a stream through a municipal storm water separate sewer system, which is regulated by an MS4 NPDES permit. Whose MS4 will be used to convey and discharge the separated storm water will have to be considered during planning for the separation project (e.g., whether the project will call for an existing system to be used or new pipes/ditches have to be installed, etc.). The Policy ensures that this piece of the project is analyzed as part of the BCE for the project, and responsibility for the quality and quantity of the discharge, and maintenance, etc. is taken into consideration and determined.
Policy does not take into account nonpoint source pollution or provide a solution	The Policy is needed to assess critical aspects of a separation project, including the impacts of re-directing the flow or directly discharging it to a stream. It will ensure that the needed data and results are used in the Business Case Evaluation for the project, and to determine that the MEP and "do not cause or contribute" requirements are met per the MS4 permit, if storm water is separated from the CSOs. Policy not intended to dictate ultimate solutions. WQ analyses and water quantity analyses are "tools" that help make better choices in addressing all sources of pollution in the watershed, including nonpoint sources.
Corps of Engineers has altered streams which	Agreed. However, the OEPA permits and

are incapable of meeting WQSs	Consent Decree water quality requirements still apply.
Will Corps consider a more natural state	Yes
Using Mill Creek as an example, how can MSDGC determine what progress towards WQSs compliance is cost effective/consistent with industry standards	The Policy includes a detailed stepwise process in Attachment I. MSDGC Engineering has also recently recognized the need for WQ sampling and modeling and wants to proceed with a County-wide program including in the Mill Creek.
BOCC overstepping its authority in who should own the pipe/dictating who should own	The Policy requires MSDGC to make a recommendation to the BOCCs on who should own the pipes after consulting with local jurisdictions and other MS4 owners as necessary.
WQ evaluation is unnecessary; no increase in volume and peak flow after separation; simple re-direction	Smaller more frequent storms are currently captured by the combined system and conveyed and treated by the WWTP. New storm sewers will discharge directly to the streams without treatment at the WWTP for storms that are large enough to create runoff. This fact changes the hydraulics of storm water runoff which needs to be evaluated on a case by case basis. One example is the LMCPR, which has been proposed to reduce CSOs by 1.78 billion gallons/year while increasing separate storm water discharges to the streams by 3 BG/year. This demonstrates that a significant change in storm water volumes can occur as a result of a sewer separation project.
WQ flow chart: how is infiltration accounted for	Infiltration into the combined sewer is typically a quantity issue. Removal/control of infiltration is a BMP issue, and can be included as an alternative to separation, and is not prohibited by the Policy.
WQ models are in their infancy; not reliable or proven	Disagree. MSDGC Engineering has also recently recognized the need for WQ sampling and modeling, and is planning to implement such a program on a county-wide basis.
How will other sources be put on the hook to improve WQ; should MSDGC be paying for this other work;	The Policy does not change the existing conditions that may exist with regard to pollutant source responsibility. The Policy will ensure the Business Case Evaluation identifies the pollutant sources that contribute to the storm sewer system so that better and informed decisions are made during the planning process as to whether separation is a feasible and

	acceptable solution, or whether another solution would be better on a long-term basis.
What is the industry standard for WQ sampling data	Please refer to the report prepared by MSDGC's consultant, Midwest Biodiversity Institute (MBI) for sampling standards/protocols. MBI recently conducted a biological and water quality study of the Mill Creek and tributaries in 2011. If additional references are needed, please refer to ORSANCO, USGS and US EPA. Another good resource is Northern Kentucky Sanitation District No. 1 (SD1), which routinely performs biological and water quality monitoring in its watersheds. MSDGC has partnered with SD1 to analyze water quality in the Ohio River due to CSO impact as part of the public early warning system program.
County has no legal authority to determine in stream target concentrations	The County may require any internal analyses it deems appropriate that would be helpful for planning purposes. Ideally, such analyses should be consistent with OEPA protocols/standards, including determining appropriate in-stream quality goals. The Policy states, "In the absence of an applicable in-stream WQS or in-stream target pollutant concentration… for a water body, contact Ohio EPA for guidance." The Policy does not encroach or supplant authority of any other regulatory agency. See Mr. Meyer's May 9, 2014 Memo to Mr. Parrott for more discussion on this.
Corps needs to be involved with decisions	The Corps should be involved when their regulatory jurisdiction is triggered. Voluntary consultation with the Corps might be a good idea for some separation projects where the Corps does not have jurisdiction.
Attachment H - How should cost per gal be determined/WQ benefit provided	The Policy includes a detailed stepwise process in Attachment I. MSDGC already calculates cost per gallon of CSO reduction for their current projects.
Water Quantity chart hard to follow; how would overland flooding be worse when subjected to same storm/how would SBUs increase	The existing combined sewer system will have different hydraulic capacities than the proposed storm sewer systems will have for separation projects. Therefore, separation will introduce changes in how the storm water is conveyed. The locations of flooding and/or basement

	backups may be different when the capacity of the combined system is exceeded versus when the proposed storm sewer system capacity is exceeded. It is important to understand these differences in assessing potential overland flooding and/or basement backups to avoid unintended consequences. MSDGC has already performed these types of analyses, for example, when planning for the storm sewers in the Lick Run watershed for the Revised Original LMCPR (data on the size and capacity of storm sewers was included in the combined sewer system hydraulic model). MSDGC needs to share these results with the County.
Is level of service being used to be the same as design standard	No. Level of service is referred to as "Storm Year Frequency/Size". This is not the same as design standard.
MSDGC has developed design storms based on Hamilton County radar and rainfall data; Is it not better to use data that are more representative of local conditions than the ultra-conservative SCS Type II storms; Using the Cincinnati storms would require a change to MSDGC and SMU Rules & Regs. Should a continuous simulation be used instead of design storm	The Policy is not intended to change current Hamilton County or City's SMU storm water rules and regulations/standards. MSDGC based the storm sewers in the Lick Run watershed for the LMCPR using the design storms per the City's SMU regulations (which MSDGC considers to be "ultra-conservative"). MSDGC may analyze additional storm events and use continuous simulations as part of this Policy, in addition to using the current Hamilton County and or SMU storm events and incorporate those results as part of their project analyses.

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