

RESOLUTION 23-180

November 14, 2023

RESOLUTION AUTHORIZING THE HEALTH COMMISSIONER TO ENTER INTO CONTRACTS FOR 2023 AND 2024 WITH THE FRANKLIN COUNTY BOARD OF COMMISSIONERS FOR THE OPERATION OF AN ILLICIT DISCHARGE COMPLIANCE PROGRAM LOCATED IN THE ENVIRONMENTAL HEALTH DIVISION'S WATER QUALITY PROGRAM (REVENUE 2023: \$72,626.99 AND 2024: \$985,761.91)

**WHEREAS**, the Ohio Environmental Protection Agency ("Ohio EPA") issued the National Pollutant Discharge Elimination System ("NPDES") permit governing the Franklin County's municipal separate storm sewer system ("MS4") on December 30, 2014 as Permit 4GQ10009\*CG (and renewed the Permit 4GQ10009\*DG on April 19, 2021). The Franklin County Board of Commissioners ("Commissioners"), as contemplated by the MS4 NPDES permit, has developed a Stormwater Management Program ("SWMP"), including the following required six minimum measures: public education and outreach; public participation/involvement; illicit discharge detection and elimination ("IDDE"); construction site runoff control; post-construction runoff control; and pollution prevention/good housekeeping for municipal operations. The NPDES permit requires the "stormwater program includes best management practices (BMPs) for each minimum measure";

**WHEREAS**, the Franklin County Stormwater Partnership was initiated on May 27, 2003 with Commissioner's Resolution No. 503-03. The partnership was formed among the County Drainage Engineer, Economic Development and Planning, Sanitary Engineer, Franklin County Public Health ("FCPH"), Franklin Soil and Water Conservation District and the townships. FCPH leads the IDDE program, providing leadership and legal authority for monitoring Household Sewage Treatment Systems ("HSTSs") and addressing illicit discharge issues in partnership with the Franklin County Sanitary Engineer and initiating enforcement actions in the Franklin County Environmental Court;

**WHEREAS**, on January 15, 2020, a Consent Order was filed in *State of Ohio vs. Franklin County Board of Commissioners*, Franklin County Court of Common Pleas Case No. 18CV008695, requiring the County, in part, to notify property owners of the requirement to pursue coverage under the Ohio EPA's General Permit to Discharge Wastewater from HSTs under the National Pollutant Discharge Elimination System for HSTs discharging to the County's MS4 that cannot be eliminated through connection to sanitary sewer or installation of soil absorption systems;

**WHEREAS**, in *Jeffery Cox v. Board of County Commissioners of Franklin County, Ohio*, United States District Court, Southern District of Ohio Case No. 2:18-cv-1631, Judge Graham's May 21, 2021 decision interpreting the NPDES MS4 permit and the Consent Order held:

Plaintiff argues that the Consent Order does not actually require the elimination of the 2,000 HSTs making illicit discharges to the MS4. Plaintiff believes that all pre-2007 HSTs, even if functioning properly and not "failing," make illicit discharges. The Court notes, however, that the Consent Order requires the County to submit a schedule for eliminating "all illicit connections" to the MS4 with each of its annual reports. Consent Order, ¶ 14(j). Thus, to the extent Paragraphs 14(b) to (e) do not already require the County to address and eliminate illicit discharges from HSTs, Paragraph 14(j) does;

**WHEREAS**, the County's Plan and Schedule submitted to and approved by Ohio EPA pursuant to the Consent Order requires the County to notify property owners to seek NPDES permits for replacement discharging HSTs and enforce illicit connection removal from January 18, 2023 through January 15, 2033;

**WHEREAS**, pursuant to Resolution No. 0700-23, the Commissioners approved a settlement resulting in the dismissal of Case No. 2:18-cv-1631 ("District Court Action") and Appeal No. 21-3680 in the United States Court of Appeals for the Sixth Circuit, with the Estate of Jeffery E. Cox (deceased), Karen Cox, in her individual capacity as the widow and personal representative of Jeffrey E. Cox, the Ohio Environmental Council, and the Buckeye Environmental Network and agreed, in

part, to comply with the Consent Order and make best efforts to secure grants and/or other public funding to assist property owners with elimination, upgrades, or replacements of HSTS, including costs of connecting to sanitary sewers ("Settlement Agreement");

**WHEREAS**, a contract with FCPH will provide the Board of Health with the resources to implement and operate an Illicit Discharge Compliance Program, in addition to the existing IDDE program, to assist the Commissioners in complying with the NPDES permit, the Consent Order, and the Settlement Agreement;

**WHEREAS**, FCPH has the necessary experience and expertise to provide said services; and

**WHEREAS**, this resolution supports Environmental Health Division Strategic Goals of connecting environmental health work to social determinants of health, and creating equitable policies and practices.

Now, therefore, upon motion of Board Member \_\_\_\_\_,  
seconded by Board Member \_\_\_\_\_,

BE IT RESOLVED BY THE FRANKLIN COUNTY BOARD OF HEALTH BOARD MEMBERS:

1. That the Health Commissioner is hereby authorized to enter into contracts for 2023 and 2024 with the Franklin County Board of Commissioners.
2. That this resolution shall be in full force and effect on November 14, 2023.

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Voting Aye Thereon:

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Board Members  
Franklin County Board of Health

Voting Nay Thereon:

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Board Members  
Franklin County Board of Health