

City of Bristol Tennessee



National Pollution Discharge Elimination System

Municipal Separate Storm Sewer System

Enforcement Response Plan

January 2013

Table of Contents

Introduction	Page 1
---------------------	---------------

Chapter One

Enforcement Response Plan for Construction Site Stormwater Runoff Control	Page I-1
I. Introduction	Page I-2
Terminology	Page I-2
Authority	Page I-3
II. Roles and Responsibilities	Page I-4
III. Enforcement of Construction Site Stormwater Runoff Control	Page I-5
IV. NPDES Referrals	Page I-9
V. Requirements for Chronic Violators	Page I-10
VI. Enforcement Tracking	Page I-10

Chapter Two

Enforcement Response Plan for Illicit Discharges and Illegal Connections to the Storm Sewer System	Page II-1
I. Introduction	Page II-2
Terminology	Page II-2
Authority	Page II-3
II. Roles and Responsibilities	Page II-3
III. Enforcement of Illicit Discharges	Page II-4
IV. NPDES Permit Referrals	Page II-9
V. Requirements for Chronic Violators	Page II-10
VI. Enforcement Tracking	Page II-10

Chapter Three

Enforcement Response Plan for Permanent Stormwater Management	Page III-1
I. Introduction	Page III-2
Terminology	Page III-2
Authority	Page III-3
II. Roles and Responsibilities	Page III-4
III. Enforcement of Water Quality Management	Page III-4
IV. NPDES Permit Referrals	Page III-9
V. Requirements for Chronic Violators	Page III-9
VI. Enforcement Tracking	Page III-10

List of Appendices

- Appendix A: Code of Ordinances Chapter 74-Article V – Control of Erosion and Sediment into the Stormwater System
- Appendix B: Code of Ordinances Chapter 74-Article VI – Illicit Discharges and Connections to the Municipal Storm Sewer System
- Appendix C: Code of Ordinances Chapter 74-Article VII – Post-Construction Water Quality Management

Introduction

In October of 2003, the city was issued a National Pollution Discharge Elimination System (NPDES) permit by the Tennessee Department of Environment and Conservation to operate and maintain a Municipal Separate Storm Sewer System (MS4) for the management of urban stormwater runoff. As part of that permit, the city was required to adopt ordinances to protect water quality. The ordinances included 1) regulations to control construction site runoff; 2) regulations to eliminate illicit discharges and connections to the MS4 system; and 3) regulations governing post-construction development standards. The ordinances established criteria for construction plan submittal, erosion and sediment control measures, types of illicit discharges prohibited from the storm sewer system, standards for new development to enhance water quality, and penalties for non-compliance with provisions of the ordinance.

In May of 2011, the city was issued a second NPDES permit for management of the MS4 system. An element of that permit required the city to develop enforcement response plans for each of the three stormwater management ordinances. The enforcement response plans outline, in a step-by-step fashion, the procedures to be followed by the city when identifying, documenting, and responding to violators of the stormwater management ordinances. The plans are designed to provide guidance in selecting initial and follow-up enforcement actions, indicate staff responsibilities for these actions, and specify time frames in which the actions are to occur. The center piece of the enforcement response plan is the enforcement response guide. This guide is a matrix which describes and indicates a range of appropriate enforcement options.

This document contains three enforcement response plans to address the respective stormwater management ordinances. In addition, the stormwater management ordinances are included in the appendix of this document.

Chapter One



Enforcement Response Plan for Construction Site Stormwater Runoff Control

I. Introduction

Parts 4.2.4.h and 4.5.1 of the State of Tennessee NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer Systems (Permit No. TNS075183) require the City of Bristol (City) to develop an Enforcement Response Plan (ERP) for construction site stormwater runoff control. Under the Construction Site Stormwater Runoff Control minimum control measure, the permit requires the City to develop, implement and enforce a program of practices and tools (including the ERP) to minimize or eliminate the discharge of pollutants from construction activities (i.e., sediment and construction related wastes) to the City's storm sewer system or waters of the State.

The ERP is intended to guide City personnel in the enforcement of erosion and sediment control requirements by identifying the City's potential responses to violations of the erosion and sediment control ordinance. The ERP also addresses repeat violations through progressive enforcement as needed to minimize or eliminate the discharge of pollutants from construction activities to the storm sewer system or waters of the State. The use of the ERP should result in the consistent and effective application of the City's available enforcement tools. Professional judgment must be used when implementing all enforcement actions. The City has the legal ability to employ any combination of enforcement actions and to escalate enforcement responses where necessary to address persistent non-compliance, repeat or escalating violations, or incidents of major environmental harm.

Background

Under CFR §122.44(s), TDEC can formally recognize a Phase I or II MS4 as a Qualifying Local Program (QLP) that meets or exceeds the provisions of the Tennessee Construction General Permit (TNR100000). A QLP will administer its own stormwater construction permitting program in accordance with, and in lieu of, the State of Tennessee's construction site stormwater management program.¹ The City of Bristol Tennessee applied for and was accepted as a participant in the pilot QLP in August 2012. Therefore, the City's construction site stormwater management program constitutes the single set of requirements, procedures and design criteria/guidance which satisfy both State and local requirements. Enforcement will be conducted mainly by the City unless it is necessary to make a referral to TDEC. For more information on referrals, see Section IV of this ERP.

Terminology

A comprehensive list of definitions is available within Chapter 74, Article V, Section 74-272 of the City's Code of Ordinances. This section of the Code of Ordinances is henceforth referred to as the "erosion and sediment control ordinance". For purposes of this ERP the following definitions are of note:

Best management practices (BMPs) – Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to the municipal separate storm sewer system and waters of the State. The term also includes treatment requirements, operating procedures, and practices to control plant site runoff, spillage, or leaks, sludge or waste disposal, or drainage from raw materials storage.

¹ Source: <http://www.tn.gov/environment/wpc/stormh2o/qlp.shtml>

City Manager – The City Manager of the City or his designee, who is responsible for the implementation of this ERP.

Construction related waste – Refuse or unused materials that result from construction activities. Construction related waste can include, but is not limited to, unused building and landscaping materials, chemicals, litter, sanitary waste, and concrete truck washout.

Erosion – The removal of soil particles by the action of water, wind, ice or other agents, whether naturally occurring or acting in conjunction with or promoted by manmade activities or effects.

Land disturbing activity – Any activity on a property that results in a change in the existing soil cover, whether vegetative or non-vegetative, or the existing soil topography. Land disturbing activities include, but are not limited to, development, re-development, demolition, construction, reconstruction, clearing, grading, filling, land transporting, and excavation.

Municipal separate storm sewer system (MS4) – A conveyance or system of conveyances, including roads with drainage systems, streets, roads, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, further defined in the erosion and sediment control ordinance.

Priority construction activity – Construction activities that discharge directly into or immediately upstream from waters the State recognizes as impaired for siltation or those waters designated as exceptional Tennessee waters. A property is considered to have a direct discharge if stormwater runoff from the property does not cross any other property before entering the waters of the State.

Sediment – Solid material, either mineral or organic, that is in suspension, being transported, or has been moved from its site of origin by erosion.

Waters or waters of the State – Any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through or border upon Tennessee or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.

Authority

The erosion and sediment control ordinance specifically addresses erosion and sediment control from construction sites, as well as the control of construction related waste. A summary of key provisions of the ordinance and their usefulness for enforcement is provided in Table 1.

Table 1 – Erosion & Sediment Control Ordinance Provisions that are Key to Enforcement

Citation	Description	Usefulness for Enforcement
§74-272	Definitions	Establishes the meaning of several terms used in the Article.
§74-284	Applicability	Establishes off-site discharges and discharges to waters of the State as violations. Sets forth the requirement for certain sites to obtain a permit in order to perform land disturbing activities within the City.
§74-296	Adoption of Standards	Adopts the most current version of the <i>Tennessee Erosion & Sediment Control Handbook</i> by reference as the appropriate standard for BMP design, installation and maintenance.
§74-311	Requirements	Establishes requirements for submitting plans.
§74-329	Inspections	Authorizes the City to enter onto private property for the purpose of inspecting land disturbing activities.
§74-330 to 332	Enforcement and Penalties	Provides that violations of any provisions in the article are subject to a stop work order, withholding of a certificate of occupancy, penalties or damages.

II. Roles and Responsibilities

The City Manager is responsible for enforcement of the applicable ordinances and implementation of the policies and standard procedures related to stormwater quality management of the City. Duties related to enforcement of the control of erosion and discharge of sediment into the storm sewer system include:

- oversight of City personnel and related plan review/approval and inspection programs;
- development and maintenance of codes, ordinances, policies, tools and procedures as required to implement a construction site stormwater runoff control program that complies with relevant Federal, State or local permits and regulations,
- inspection of construction sites, activities, or projects to assess compliance with the approved stormwater pollution prevention plan and to evaluate the potential for discharge of sediment and other construction related wastes;
- completion of applicable inspection reports; and,
- initiation of corrective actions, enforcement actions and penalties as defined by the terms of the erosion and sediment control ordinance.

Owner or Operator means any person or entity associated with a construction project in accordance with the definition provided in the erosion and sediment control ordinance. Owner/operator responsibilities include the following:

- acquisition of, and compliance with, the City’s erosion and sediment control ordinance and all required land development related permits (Federal, State and local), including the development and implementation of all required plans necessary to engage in land disturbing activities;
- make efforts in good faith toward minimizing erosion and the discharge of sediment and other construction related wastes to waters of the State or the storm sewer system;

- cooperating in good faith with the City, providing requested documents and truthful testament to questions; and,
- timely compliance with any and all stormwater pollution prevention plan updates/amendments, inspections, documentation requests, corrective actions, enforcement actions or penalties.

III. Enforcement of Construction Site Stormwater Runoff Control

Informal Enforcement

Informal enforcement includes verbal warnings, withholding plan approval, permit issuance, increased inspection frequency or other measures. The City may, at its discretion, choose to perform informal enforcement prior to, or in lieu of, more formal notices and impactful penalties or other measures. In general, informal enforcement measures should be used:

- to ensure that the approved stormwater pollution prevention plan is in conformance with City regulations;
- to advise or educate the owner/operator of the potential for a violation; or,
- to address minor deficiencies in the installation and maintenance of BMPs.

Informal enforcement measures at active construction sites (i.e., after plan approval and permit issuance) should always be documented by the City in a log book or in the file notes. Failure to respond to informal enforcement measures is a separate violation which may lead to more stringent enforcement measures.

Notice of Violation

The notice of violation (NOV) is an official communication from the City which informs the owner and/or operator that a violation of the erosion and sediment control ordinance has occurred. The authority to issue a NOV is held by the City Manager.

Notices of Violation serve as an effective method to initiate enforcement actions because they provide the violator with the opportunity to correct noncompliance on their own initiative, which fosters a cooperative environment between the City and the violator. The NOV tracks the violation and the corrective action of the violator should incidents of noncompliance escalate. The NOV is a relatively inexpensive and prompt enforcement approach that can garner satisfactory results for addressing issues of noncompliance.

All NOVs must include a deadline for response or corrective action by the violator. The recipient must respond to the notice within the time specified in the NOV. Failure to respond to a NOV is a separate violation, which may lead to more stringent enforcement measures.

Civil Penalty and Damages

A civil penalty is a monetary penalty assessed by the City for violations of stormwater standards and requirements. Civil penalties are made at the City's discretion and penalty amounts may be determined on an individual basis. T.C.A. §68-221-1106 allows permitted MS4 entities to

impose penalties between \$50 and \$5,000 per day, per violation.

Civil penalties may be used as escalated enforcement, particularly when responses such as NOVs have not prompted a return to compliance.

In general, the amount of the civil penalty should have a correlation to the severity of the violation, the violation history of the owner/operator and/or the significance of damages or costs to the City. However, many other factors can be used to determine penalty amounts. When assessing the amount of a civil penalty, the following factors may be considered:

- The harm done to the public health or the environment.
- Whether the civil penalty imposed will be a substantial economic deterrent to illegal activity.
- The economic benefit gained by the violator.
- The amount of effort put forth by the violator to remedy the violation.
- Any unusual or extraordinary enforcement costs incurred by the City.
- Any amount of penalty established by ordinance or resolution for specific categories of violations.
- Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

In addition to the civil penalty, the City may assess:

- All damages proximately caused by the violator to the City, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, the erosion and sediment control ordinance, or any other actual damages caused by the violation.
- The costs of the City's maintenance of stormwater facilities when the user of such facilities fails to maintain them as required by the erosion and sediment control ordinance.

Other Enforcement Responses

Stop Work Order

Upon issuance of a Stop Work Order, the owner/operator must halt all activities until the condition that caused the issuance of the order is addressed and the City authorizes work to resume.

Denial of Service

Suspension of utility service and/or the withholding of inspections, approvals, or Certificates of Occupancy are administrative responses that can be implemented by the City to spur a corrective action or other positive response for a violation. Typically, this response is used when there is a lack of response from previous notices, or in an emergency situation.

Judicial Responses

Civil litigation is usually invoked when the owner/operator of a facility/site/activity refuses to pay penalties or damages.

Guidance for Enforcement Response Selection

The enforcement response selected should be appropriate for the violation. However, in selecting an enforcement response, the City must always exercise professional judgment for the situation at hand and attempt to communicate with the owner/operator of the site where the violation occurred. When considering an appropriate response, the following factors should be considered:

- The magnitude of the violation.
- The potential for discharges/damages, or actual discharges/damages, off-site or to the municipal separate storm sewer system or waters of the State.
- Whether the violation occurred as a result of a priority construction activity, as defined in the erosion and sediment control ordinance.
- The compliance history of the owner/operator. See guidance for enforcement responses for repeating offenders.

Table 2 below presents a number of scenarios that are typical violations of erosion and sediment control regulations. Table 2 applies to all land disturbing activities addressed by the erosion and sediment control ordinance and identifies situations when enforcement tactics may differ for small lots. All scenarios are not equal in terms of severity and enforcement outcomes. The column entitled “Mitigating Factors” attempts to discern where distinctions can be made when evaluating the scenario that caused the noncompliance. Violations are classified as minor, moderate or major. The classification assigned generally depends on the frequency, intent and impact of the violation. Typically, a minor violation is a first offense and unintentional. A moderate violation may be a second offense and also unintentional. A violation may be considered a major violation if there is an impact (or impacts) to the environment or the MS4 and/or the violation was intentional. More detail is provided in the table. Note that the “Suggested Enforcement Responses” column serves as guidance and does not preclude the City from pursuing elevated enforcement responses if dictated by the situation.

Table 2 – Guidance for Enforcement Response Selection

Violation Scenario	Mitigating Factors	Violation Type	Suggested Progressive Enforcement Responses
Engaging in land disturbing activities without a permit or with an expired permit.	<ul style="list-style-type: none"> ➤ No sediment or construction related waste discharges. ➤ Disturbed area less than 1 acre and not part of a larger common development. 	Minor	<ul style="list-style-type: none"> • Verbal Warning with requirement to obtain permit by next working day.
	<ul style="list-style-type: none"> ➤ Owner/operator history of noncompliance at the site or other sites. ➤ Caused sediment or construction related waste discharges. ➤ Disturbed area is 1 acre or greater. 	Moderate or Major (depending on intent)	<ul style="list-style-type: none"> • Notice of Violation + Stop Work Order pending permit issuance. • Denial of services. • Civil Penalty • Damages, if warranted. • Referral to TDEC.
Failure to comply with approved stormwater pollution prevention plan.	<ul style="list-style-type: none"> ➤ No sediment or construction related waste discharges. ➤ Lack of required BMPs. ➤ Minor BMP maintenance issues. ➤ Improper documentation. 	Minor	<ul style="list-style-type: none"> • Verbal warning with requirement to correct deficiency within 24 hours.
	<ul style="list-style-type: none"> ➤ Owner/operator history of noncompliance at the site or other sites. ➤ Major maintenance issues or lack of required BMPs. ➤ Caused sediment or construction related waste discharges. 	Moderate or Major (depending on intent)	<ul style="list-style-type: none"> • Notice of Violation • Stop Work Order • Denial of services. • Civil Penalty • Damages, if warranted. • Referral to TDEC.
Failure to allow inspections by the City.	None	Major	<ul style="list-style-type: none"> • Stop Work Order • Denial of services. • Civil Penalty • Damages, if warranted. • Referral to TDEC.
Persistent failure to pay a penalty or damages.	None	Major	<ul style="list-style-type: none"> • Civil Litigation

Enforcement Timeframes

The City will establish the timeframe for the owner/developer to address the violation based on the severity. For minor violations, the owner/developer will be given a maximum 24 hour timeframe to mitigate the violation. The timeframe for mitigating moderate or major violations will be based on the complexity of the repairs and the likelihood of construction site discharges. In situations where a construction site discharge is imminent or could be significant, an immediate response by the owner/operator will be required. The NPDES Phase II MS4 permit requires that violations shall be addressed *“before the next storm event, but in no case more than 7 days after the need is identified.”* In no instance will the owner/operator be given a timeframe to mitigate a violation greater than that allowed by the permit.

Appeals

Any person aggrieved by the imposition of a civil penalty or damage assessment as provided by the erosion and sediment control ordinance may appeal the penalty or damage assessment to the city council. The appeal shall be in writing and filed with the city recorder within 30 days after the civil penalty or damage assessment is served in any manner authorized by law. Upon receipt of an appeal, the city council shall hold a public hearing on the appeal within 45 days unless otherwise agreed by the aggrieved party. At least ten days prior to the hearing, notice of the time, date, and location of the hearing shall be mailed to the aggrieved party at the address provided by the aggrieved party at the time of appeal. The decision of the city council shall be final, and the aggrieved party may appeal therefrom in the manner provided by Tennessee law. If an appeal of a civil penalty or damage assessment is not filed with the city recorder within 30 days as provided in the erosion and sediment control ordinance, the violator shall be deemed to have consented to the civil penalty or damage assessment and it shall become final.

IV. NPDES Referrals

Section 4.5.2 of the NPDES Phase II MS4 permit requires the City to account in its ERP for NPDES permit referrals for those construction projects that are subject to the Tennessee Construction General Permit (TNR100000). If the City becomes aware that owners or operators of activities that are subject to the above-mentioned permit are operating without a permit, it must make TDEC aware of the situation. Also, the City must notify TDEC for persistent noncompliance by an owner/operator that appears to be non-reconcilable through the City’s enforcement efforts.

The contact information for the local Environmental Field Office is as follows:

TDEC-Johnson City Field Office
2305 Silverdale Road
Johnson City, Tennessee 37601
(423) 854-5400

When making referrals to TDEC the following information should be provided:

- Nature of the offense.
- Construction project location.
- Name of owner or operator.

- Estimated project size.
- Records of communication with the owner regarding the offense.

V. Requirements for Chronic Violators

Section 4.5.4 of the NPDES Phase II MS4 permit requires the City to identify chronic violators of any Stormwater Management Program component and reduce the rate of noncompliance recidivism. The City tracks enforcement through its tracking system and considers the appropriateness of increasing the inspection frequency at the operator's sites. If corrective actions are not taken, the City pursues progressive enforcement in accordance with Table 2. If necessary, the City will perform the mitigation/repair work and assess the cost against the owner.

VI. Enforcement Tracking

Section 4.5.3 of the NPDES Phase II MS4 permit requires the City to track enforcement. The City's enforcement documentation tracks the information listed below:

- Name of owner/operator.
- Location of construction project or industrial facility.
- Description of violation.
- Required schedule for returning to compliance.
- Description of enforcement response used, including escalated responses if repeat violations occur or violations are not resolved in a timely manner.
- Accompanying documentation of enforcement response.
- Any referrals to different departments or agencies.
- Date violation was resolved.

Chapter Two



Enforcement Response Plan for Illicit Discharges and Illegal Connections to the Storm Sewer System

I. Introduction

Parts 4.2.3 and 4.5.1 of the State of Tennessee NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer Systems (Permit No. TNS075183) require the City of Bristol (City) to develop an Enforcement Response Plan (ERP) for illicit discharge detection and elimination. Under the Illicit Discharge Detection and Elimination minimum control measure, the permit requires the City to develop, implement and enforce a program of practices and tools (including this ERP) that prohibits non-stormwater discharges to the City storm sewer system or waters of the State.

The ERP is intended to guide City personnel in the enforcement of discovered illicit discharges or illegal connections to the City's storm sewer system or waters of the State by identifying the City's potential responses to violations of the illicit discharge ordinance. The ERP also addresses repeat violations through progressive enforcement as needed to eliminate non-stormwater discharges. The use of this ERP should result in the consistent and effective application of the City's available enforcement tools. Professional judgment must be used when implementing all enforcement actions. The City has the legal ability to employ any combination of enforcement actions and to escalate enforcement responses where necessary to address persistent non-compliance, repeat or escalating violations, or incidents of major environmental harm.

Terminology

A comprehensive list of definitions is available through Chapter 74, Article VI, Section 74-362 of the City's Code of Ordinances, henceforth referred to as "the illicit discharge ordinance". For purposes of this ERP, the following definitions are of note:

City Manager – The City Manager of the City or his designee, who is responsible for the implementation of this ERP.

Discharge – To dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked, or placed by any means, including any direct or indirect entry, of any non-stormwater solid or liquid matter into the municipal separate storm sewer system or waters of the State.

Illicit connection – Any unauthorized or illegal connection to the municipal separate storm sewer system whether or not such connection results in a discharge to that system.

Stormwater or stormwater runoff – That portion of the precipitation on a drainage area that is discharged from the area into the municipal separate storm sewer system or waters of the State.

Municipal separate storm sewer system (MS4) – A conveyance or system of conveyances, including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains which are further defined in the illicit discharge ordinance.

Waters of the State – Any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through, or border upon Tennessee or any portion

thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or affect a junction with natural surface or underground waters.

Authority

The illicit discharge ordinance specifically addresses illicit discharges and illicit connections to the storm sewer system or waters of the State. A summary of key provisions of the ordinance and their usefulness for enforcement is provided in Table 1.

Table 1 – Illicit Discharge Ordinance Provisions that are Key to Enforcement

Citation	Description	Usefulness for Enforcement
§74-362	Definitions	Allows City personnel to determine if the discharge is illicit or if it is exempted per the chapter.
§74-371 to 372	Prohibition	Specifically prohibits illicit discharges or sanitary sewer connections to the storm sewer system.
§74-386	Notices	Notifies the discharger that a violation occurred. More information about enforcement responses is provided in this ERP.
§74-387	Inspections	Authorizes the City to enter upon private property for the purpose of investigating a suspected illicit discharge or illicit connection.
§74-388 to 390	Enforcement and Penalties	Provides that violations of any provisions in the article are subject to a stop work order, withholding of a certificate of occupancy, penalties or damages.

II. Roles and Responsibilities

The City Manager is responsible for enforcement of the applicable ordinances and implementation of the policies and standard procedures related to stormwater quality management of the City. Duties related to enforcement of illicit discharges and connections include the following:

- oversight of City personnel and inspection programs;
- development and maintenance of codes, ordinances, policies, tools and procedures as required to implement an illicit discharge program that complies with relevant Federal, State or local permits and regulations;
- inspection of sites, activities, or facilities if they present a possible illicit discharge or connection issue;
- completion of applicable inspection reports; and,
- initiation of corrective actions, enforcement actions and penalties as defined by the terms of the illicit discharge ordinance.

Everyone living, working or doing business within the City limits is responsible for compliance with the illicit discharge ordinance.

Dischargers are persons or businesses that are responsible for the delivery of non-stormwater discharges to the City's storm sewer system or waters of the State. Dischargers are in violation of the illicit discharge ordinance. Dischargers are responsible for:

- cooperating in good faith with the City, providing requested documents and truthful testament to questions; and,
- timely compliance with any and all corrective actions, enforcement actions or penalties.

III. Enforcement of Illicit Discharges

Enforcement actions can vary and may be executed based on financial responsibility, historical information about the problem, discharger understanding of the problem, and severity or frequency of occurrence. The following sections describe the types of violations that can occur, suggested enforcement responses, guidance for selecting an appropriate response, and enforcement timeframes. While these do not present a complete list of all possible scenarios, the intent is to provide for some consistency when analyzing illicit discharges and their enforcement.

A. Illicit Discharge or Illicit Connection Violations

To provide context, descriptions are given to the following violation types to characterize the severity of illicit discharges:

1. Minor Violations:

Minor Violations are defined as less serious discharges or dumping (first or second offenses only) that, when considered as a single incident, may at most have caused minimal damage to the environment, the storm sewer system or to public health and safety. The violation may only have resulted in minimal costs to the City or the discharger to correct. These violations are often the result of the actions of a discharger who has little knowledge of the storm sewer system, pollution prevention and the potential impacts of such discharges, or owners/operators who need improved pollution controls for litter or other non-hazardous wastes.

2. Moderate Violations - Unintentional:

Unintentional, moderate violations are accidental non-stormwater discharges that have caused, or have the potential to cause, moderate damage to the environment, the storm sewer system or to public health and safety. The violation may have resulted in moderate costs to the City or the discharger to correct. The magnitude of enforcement actions may be dependent upon the type of substance discharged (i.e., hazardous/toxic or not), with the more dangerous substances requiring a higher level of enforcement due to the higher potential to cause damage or incur recovery costs.

3. Moderate Violations – Intentional:

Intentional, moderate violations are deliberate non-stormwater discharges that have caused, or have the potential to cause, moderate damage to the environment, the storm sewer system or to public health and safety. The violation may have resulted in moderate costs to the City or the discharger to correct. The magnitude of enforcement actions may be dependent upon the type of substance discharged (i.e., hazardous/toxic or not), with the more dangerous substances requiring a higher level of enforcement due to the higher

potential to cause damage or incur recovery costs.

4. Major Violations:

A major violation is a violation by a discharger that already has two or more violations (even if the prior violations were considered minor or moderate offenses), or any discharge (whether intentional or unintentional) that has the potential to cause serious or prolonged damage or impact to the environment, the storm sewer system or public health and safety. The violation may have resulted in significant cost to the City or the discharger to correct.

B. Enforcement Responses

Table 2 provides a guide to the City's enforcement responses and the expected results. Detailed descriptions of the enforcement responses are in the paragraphs that follow. It should be noted that all of the responses listed below are in accordance with the City's illicit discharge ordinance and that the enforcement actions may vary depending on the severity and impact of the illicit discharge.

Table 2 – Illicit Discharge Detection/Elimination Enforcement Responses

Violation Type	Suggested Enforcement Responses	Expected Results
<p><u>Minor Violations</u></p> <ul style="list-style-type: none"> • The discharge has the potential to cause minimal damage to the environment, storm sewer system and/or public health and safety. • The discharge may result in minimal or no cost to the City for enforcement and/or damages. 	<p><u>First Offense</u></p> <ul style="list-style-type: none"> ➤ Verbal Warning ➤ Educational brochures or discussions. 	<ul style="list-style-type: none"> ➤ Elimination of the discharge. ➤ Education of the discharger. ➤ Corrective action(s) by the discharger to prevent future discharges. ➤ Payment of civil penalty.
	<p><u>Second Offense</u></p> <ul style="list-style-type: none"> ➤ Notice of Violation ➤ Educational brochures or discussions. ➤ Cost recovery for mitigation and/or damages. ➤ Civil Penalty 	
<p><u>Moderate Violations –Unintentional</u></p> <ul style="list-style-type: none"> • First or second offense. • The discharge has the potential to cause moderate damage to the environment, the storm sewer system and/or public health and safety. • The discharge may result in moderate cost to the City for enforcement and/or damages. 	<p><u>Non-toxic or Non-hazardous Substances</u></p> <ul style="list-style-type: none"> ➤ Notice of Violation ➤ Educational brochures or discussions. ➤ Cost recovery for mitigation and/or damages. 	<ul style="list-style-type: none"> ➤ Elimination of the discharge. ➤ Education of the discharger. ➤ Corrective action(s) by the discharger to prevent future discharges and to repair damages caused by the discharge. ➤ Referral to the Health Department (residential wastewater non-stormwater discharge). ➤ Recovery of the City’s actual costs for enforcement and/or damages. ➤ Payment of civil penalty.
	<p><u>Toxic or Hazardous Substances</u></p> <ul style="list-style-type: none"> ➤ Notice of Violation ➤ Requirement for Compliance Plan if discharger’s activities pose a significant potential for further discharges. ➤ Educational brochures or discussions. ➤ Cost recovery for mitigation and/or damages. ➤ Civil Penalty 	

Violation Type	Suggested Enforcement Responses	Expected Results
<p><u>Moderate Violations –Intentional</u></p> <ul style="list-style-type: none"> • First or second offense. • The discharge has the potential to cause moderate damage to the environment, the storm sewer system and/or public health and safety. • The discharge may result in moderate cost to the City for enforcement and/or damages. 	<ul style="list-style-type: none"> ➤ Notice of Violation with Compliance Order to stop illicit discharge immediately. ➤ Cost recovery for mitigation and/or damages. <p>If discharger fails to comply with Compliance Order, the enforcement action can also include:</p> <ul style="list-style-type: none"> ➤ Stop Work Order ➤ Denial of Services ➤ Notification to TDEC or other appropriate agencies. ➤ Referral to local law enforcement agency. ➤ Civil Penalty 	<ul style="list-style-type: none"> ➤ Elimination of the discharge. ➤ Corrective action(s) by the discharger to prevent future discharges and to repair damages caused by the discharge. ➤ Recovery of the City's actual costs for enforcement and/or damages. ➤ Payment of civil penalty.
<p><u>Major Violations</u></p> <ul style="list-style-type: none"> • Third or more offense. • The discharge has the potential to cause serious or prolonged damage or impact public health and safety. • The discharge may result in major cost to the City for enforcement and damages. 	<ul style="list-style-type: none"> ➤ Notice of Violation with Compliance Order to stop illicit discharge immediately. ➤ Stop Work Order ➤ Denial of Services ➤ Cost recovery for mitigation or damages. ➤ Notification to TDEC or other appropriate agencies. ➤ Referral to local law enforcement agency. ➤ Civil Penalty. 	<ul style="list-style-type: none"> ➤ Elimination of the discharge. ➤ Corrective action(s) by the discharger to prevent future discharges and to repair damages caused by the discharge. ➤ Recovery of the City's actual costs for enforcement and/or damages. ➤ Payment of civil penalty.

Informal Enforcement – In some cases, the discharger is not aware of an illicit discharge, or is not aware that a purposeful discharge is considered illegal or illicit. The City may elect to use verbal means of communication and/or follow up with an inspection. The main goal of this tool is to advise the discharger of the illicit discharge and recommend or require remedies to prevent the illicit discharge from recurring.

Notices of Violation (NOV) – §74-386 of the illicit discharge ordinance authorizes the City to issue NOVs which are written correspondences that include a description of the location where the violation occurred, the violation, the action required, and a deadline for compliance or stop work order. Violations described herein are subject to any combination of penalties, fees, damages and legal action.

Civil Penalties and Damages – §74-388 to 390 of the illicit discharge ordinance allows the City to impose penalties on dischargers. Civil penalties are made at the City's discretion and penalty amounts may be determined on an individual basis. T.C.A. §68-221-1106 allows permitted MS4 entities to impose penalties between \$50 and \$5,000 per day, per violation. The illicit discharge ordinance reiterates this authority.

Civil penalties may be used as escalated enforcement, particularly when responses such as NOVs have not prompted a return to compliance.

In general the amount of the civil penalty should have a correlation to the severity of the violation, the violation history of the owner/operator and/or the significance of damages or costs to the City. However, many other factors can be used to determine penalty amounts. When assessing the amount of a civil penalty, the following factors may be considered:

- The harm done to the public health or the environment.
- Whether the civil penalty imposed will be a substantial economic deterrent to illegal activity.
- The economic benefit gained by the violator.
- The amount of effort put forth by the violator to remedy the violation.
- Any unusual or extraordinary enforcement costs incurred by the City.
- Any amount of penalty established by ordinance or resolution for specific categories of violations.
- Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

In addition to the civil penalty, the City may assess:

- All damages proximately caused by the violator to the City, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, the illicit discharge ordinance, or any other actual damages caused by the violation.
- The costs of the City's maintenance of stormwater facilities when the user of such facilities fails to maintain them as required by the illicit discharge ordinance.

C. Guidance for Enforcement Response Selection

The enforcement response selected should be appropriate for the violation. However, in selecting an enforcement response, the City must always exercise professional judgment for the situation at hand and attempt to communicate with the owner/operator of the site where the violation occurred. When considering an appropriate response, the following factors should be considered:

- The magnitude of the violation.
- The potential for discharges/damages, or actual discharges/damages, to the municipal separate storm sewer system or waters of the State.
- The compliance history of the owner/operator.

Enforcement Timeframes

In order to be effective, detection and enforcement of illicit discharges and the required response or corrective action from the discharger must be prompt. Due to the dynamic nature of illicit discharges, response times are highly variable depending on the situation. The City will establish the timeframe for the discharger to address the violation based on the severity and potential to cause damages to the environment, storm sewer system or public health and safety. The NPDES Phase II MS4 permit requires that *“documented illicit discharges shall be responded to no more than 7 days from detection, and eliminated as soon as possible.”* When a complaint is received, staff will immediately begin an investigation, but in no case be longer than 7-days from the day the complaint is received. In no instance will the discharger be given a timeframe to mitigate a violation greater than that allowed by the permit.

Appeals

Any person aggrieved by the imposition of a civil penalty or damage assessment as provided by erosion and sediment control ordinance may appeal the penalty or damage assessment to the city council. The appeal shall be in writing and filed with the city recorder within 30 days after the civil penalty or damage assessment is served in any manner authorized by law. Upon receipt of an appeal, the city council shall hold a public hearing on the appeal within 45 days unless otherwise agreed by the aggrieved party. At least ten days prior to the hearing, notice of the time, date, and location of the hearing shall be mailed to the aggrieved party at the address provided by the aggrieved party at the time of appeal. The decision of the city council shall be final, and the aggrieved party may appeal therefrom in the manner provided by Tennessee law. If an appeal of a civil penalty or damage assessment is not filed with the city recorder within 30 days as provided in the erosion and sediment control ordinance, the violator shall be deemed to have consented to the civil penalty or damage assessment and it shall become final.

IV. NPDES Permit Referrals

Section 4.2.3 of the NPDES Phase II permit requires the City to foster interagency coordination of hazardous waste or material spills response and cleanup. The City shall inform local spill-response agencies and/or TEMA (Tennessee Emergency Management Agency) of any negative consequences of spill clean-up activities that may cause pollutants to enter waters of the State.

As noted in Table 2, The City may choose to notify TDEC for persistent noncompliance that appears irreconcilable through the City's enforcement efforts or to report significant environmental impacts from illicit discharges. The contact information for the local Environmental Field Office is as follows:

TDEC-Johnson City Field Office
2305 Silverdale Road
Johnson City, Tennessee 37601
(423) 854-5400

When making referrals to TDEC the following information should be provided:

- Nature of the offense.
- Facility or site location.
- Name of the discharger.
- Record of communication with the discharger regarding the offense.

V. Requirements for Chronic Violators

Section 4.5.4 of the NPDES Phase II permit requires the City to identify chronic violators of any Stormwater Management Program component and reduce the rate of noncompliance recidivism. The City tracks enforcement through its tracking system and considers the appropriateness of increasing the inspection frequency at the discharger's sites. If corrective actions are not taken, the City pursues progressive enforcement in accordance with Table 2. If necessary, the City will perform the mitigation/repair work and assess the cost against the discharger.

VI. Enforcement Tracking

Section 4.5.3 of the NPDES Small MS4 permit requires the City to track enforcement. The City's enforcement documentation tracks the information listed below.

- Name of violator.
- Location of violation.
- Description of violation.
- Required schedule for returning to compliance.
- Description of enforcement response used including escalated responses if repeat violations occur or violations are not resolved in a timely manner.
- Accompanying documentation of enforcement response.
- Any referrals to different departments or agencies.
- Date violation was resolved.

Chapter Three



Enforcement Response Plan for Permanent Stormwater Management

I. Introduction

Parts 4.2.5 and 4.5.1. of the State of Tennessee NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer Systems (Permit No. TNS075183) require the City of Bristol (City) to develop an Enforcement Response Plan (ERP) for compliance with the permanent stormwater management minimum control measure. The permit requires the City to develop, implement and enforce a program of practices and tools (including the ERP) to control discharges from new development and redevelopment projects² such that water quality impacts are minimized.

The ERP is intended to guide City personnel in enforcement by identifying the City's potential responses to violations of the water quality management ordinance. The ERP also addresses repeat violations through progressive enforcement as needed to minimize water quality impacts from development or redevelopment. The use of the ERP should result in the consistent and effective application of the City's available enforcement tools. Professional judgment must be used when implementing all enforcement actions. The City has the legal ability to employ any combination of enforcement actions and to escalate enforcement responses where necessary to address persistent non-compliance, repeat or escalating violations, or incidents of major environmental harm.

Background

The City currently implements a stormwater management program in accordance with the State of Tennessee NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer Systems, henceforth called the NPDES Phase II permit. The City's compliance with the permit centers on Chapter 74, Article VII, Sections 401 through 435 of the City's Code of Ordinances. This section of the City's Code of Ordinances is henceforth referred to as the "water quality management ordinance." The ordinance addresses the City's permanent stormwater management requirements and establishes the City's enforcement authority. Enforcement will be conducted by the City unless it is necessary to make a referral to TDEC. For more information on referrals, see Section IV of this ERP.

Terminology

A comprehensive list of definitions is available within Section 74-401 of the water quality management ordinance. For purposes of this ERP the following definitions are of note:

Best management practices (BMPs) – Various practices, procedures and devices designed to prevent or reduce the pollution of waters as set forth in the Water Quality BMP Manual.

City Manager – The City Manager of the City or his designee, who is responsible for the implementation of this ERP.

Municipal separate storm sewer system (MS4) – A conveyance or system of conveyances, including roads with drainage systems, streets, roads, catch basins, curbs, gutters, ditches, man-made channels, or storm drains.

² New development or redevelopment projects that are 1 acre or larger, or less than one acre that are part of a larger common plan of development or sale, that discharge into the MS4 or waters of the State.

Water Quality BMP Manual – A manual adopted by the City which contains policies, design standards and criteria, technical specifications and guidelines, maintenance guidelines, and other documentation to be used for implementation of the water quality management ordinance.

Water Quality Management Facilities – Structures and constructed features designed to prevent or reduce the discharge of pollution in stormwater runoff from a development or redevelopment

Water Quality Management Plan (WQMP) – An engineering plan for the design of water quality management facilities and best management practices within a proposed development or redevelopment.

Waters or waters of the State – Any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through or border upon Tennessee or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.

Authority

The water quality management ordinance specifically addresses controlling post construction discharges from new development and redevelopment projects such that water quality impacts are minimized. A summary of key provisions of the ordinance and their usefulness for enforcement is provided in Table 1.

Table 1 – Water Quality Management Ordinance Provisions that are Key to Enforcement

Citation	Description	Usefulness for Enforcement
§74-401	Definitions	Establishes the meaning of several terms used in the Article.
§74-402	Authority	Authorizes the City to adopt a Water Quality BMP Manual as the appropriate criteria for BMP design, installation and maintenance.
§74-411 to 419	Water Quality Management	Establishes general requirements, including the submittal and approval of WQMP and covenants for the permanent maintenance of the required facilities in accordance with the BMP Manual.
§74-432	Inspections	Authorizes the City to enter onto private property for the purpose of conducting inspections to verify compliance with the approved plan, to determine whether such a plan is necessary, to perform corrective actions or to investigate a suspected violation.
§74-433 to 435	Enforcement	Provides that violations of any provisions in the Article are subject to a stop work order, withholding of a certificate of occupancy, penalties or damages.

II. Roles and Responsibilities

The City Manager is responsible for enforcement of the ordinances and implementation of the policies and standard procedures related to water quality management of the City. Duties related to enforcement of water quality management include:

- oversight of City personnel and related plan review/approval and inspection programs;
- development and maintenance of codes, ordinances, policies, tools and procedures as required to implement a water quality management program that complies with relevant Federal, State or local permits and regulations,
- inspection of sites, activities, or projects to assess compliance with the approved water quality management plan and to evaluate the potential for impacts to water quality;
- completion of applicable inspection reports; and,
- initiation of corrective actions, enforcement actions and penalties as defined by the terms of the water quality management ordinance.

Property Owners are persons who own BMPs, water quality buffer areas or water quality volume reduction areas and therefore are responsible for compliance with the water quality management ordinance and related policies and processes. Specific activities that will be performed by the property owner to achieve compliance include, but are not limited to:

- acquisition of, and compliance with, the City's water quality management ordinance and all required permits (Federal, State and local), including the development and implementation of a water quality management plan;
- design, construction, installation, inspection, and maintenance of BMPs, water quality buffer areas or water quality volume reduction areas for the purposes of water quality treatment, channel erosion protection, or water quality volume reduction in accordance with the water quality management plan;
- cooperating, in good faith, with the City providing requested documents and truthful testament to questions; and,
- timely compliance of any and all water quality management plan updates/amendments, inspections, documentation requests, corrective actions, enforcement actions or penalties.

III. Enforcement of Water Quality Management

Corrective Actions

Corrective actions are activities performed to properly maintain BMPs, water quality buffer areas or water quality volume reduction areas so as to achieve the full and intended function of the features as designed. The City can require corrective actions through an informal or formal enforcement process (see paragraphs below). If the property owner fails to perform corrective actions ordered, the City Manager may cause such corrective actions to be performed with the cost thereof to be charged to the owner. Should the owner fail to timely reimburse the City for such cost, then the City Manager may cause a lien to be recorded against the property as provided in the covenant for protective maintenance, and he may take such other actions as he deems appropriate to collect the same.

Informal Enforcement

Informal enforcement may be an appropriate enforcement response in situations of non-compliance, where there is no immediate threat or impact to water quality, no prior violations have occurred and the owner's understanding of the potential for violation is low.

Informal enforcement includes such measures as verbal warnings, increased inspection frequency, the provision of educational materials, and inspection or maintenance guidance to the owner. The City may, at its discretion, choose to perform informal enforcement prior to, or in lieu of, more formal notices and impactful penalties or other measures. In general, informal enforcement measures should be used to advise or educate the property owner of the potential for a violation and to allow a reasonable amount of time for the owner to initiate a corrective action.

Informal enforcement measures should always be documented by the City inspector in their log book, in inspection checklists or in the construction project's file notes. Failure to respond to informal enforcement measures is a separate violation which may lead to more stringent enforcement measures.

Notice of Violation

The notice of violation (NOV) is an official communication from the City which informs the owner that a violation of the water quality management ordinance has occurred. The authority to issue a NOV is held by the City Manager.

Notices of Violation serve as an effective method to initiate enforcement actions because they provide the violator with the opportunity to correct noncompliance on their own initiative, which fosters a cooperative environment between the City and the violator. The NOV tracks the violation and the corrective action of the violator should incidents of noncompliance escalate. The NOV is a relatively inexpensive and prompt enforcement approach that can garner satisfactory results for addressing issues of noncompliance.

All NOVs must include a deadline for response or corrective action by the violator. The recipient must respond to the notice within the time specified in the NOV. Failure to respond to a NOV is a separate violation, which may lead to more stringent enforcement measures.

Civil Penalties and Damages

A civil penalty is a monetary penalty assessed by the City for violations of water quality standards and requirements. Civil penalties are made at the City's discretion and penalty amounts may be determined on an individual basis. T.C.A. §68-221-1106 allows permitted MS4 entities to impose penalties between \$50 and \$5,000 per day, per violation.

Civil penalties may be used as escalated enforcement, particularly when responses such as NOVs have not prompted a return to compliance.

In general, the amount of the civil penalty should have a correlation to the severity of the violation, the violation history of the owner/operator and/or the significance of damages or costs to the City. However, many other factors can be used to determine penalty amounts. When

assessing the amount of a civil penalty, the following factors may be considered:

- The harm done to the public health or the environment.
- Whether the civil penalty imposed will be a substantial economic deterrent to illegal activity.
- The economic benefit gained by the violator.
- The amount of effort put forth by the violator to remedy the violation.
- Any unusual or extraordinary enforcement costs incurred by the City.
- Any amount of penalty established by ordinance or resolution for specific categories of violations.
- Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

In addition to the civil penalty, the City may assess:

- All damages proximately caused by the violator to the City, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, the water quality management ordinance, or any other actual damages caused by the violation.
- The costs of the City's maintenance of stormwater facilities when the user of such facilities fails to maintain them as required by the water quality management ordinance.

Other Enforcement Responses

Stop Work Order

Upon issuance of a Stop Work Order, the owner/operator must halt all activities until the condition that caused the issuance of the order is addressed and the City authorizes work to resume.

Denial of Service

Suspension of utility service and/or the withholding of inspections, approvals, or Certificates of Occupancy are administrative responses that can be implemented by the City to spur a corrective action or other positive response for a violation. Typically, this response is used when there is a lack of response from previous notices, or in an emergency situation.

Judicial Responses

Civil litigation is usually invoked when the owner/operator of a facility/site/activity refuses to pay penalties or damages.

Guidance for Enforcement Response Selection

The enforcement response selected should be appropriate for the violation. However, in selecting an enforcement response, the City must always exercise professional judgment for the situation at hand and attempt to communicate with the property owner of the site where the violation occurred. When considering an appropriate response, the following factors should be considered:

- Awareness of the owner regarding proper installation, maintenance and inspection of the water quality management device.
- The potential for, or actual, negative impacts to the quality of waters of the State.

- The compliance history of the owner. See guidance for enforcement responses for repeating offenders.

Table 2 below presents a number of scenarios that are typical violations of water quality regulations. All scenarios are not equal in terms of severity and enforcement outcomes. The column entitled “Mitigating Factors” attempts to discern where distinctions can be made when evaluating the scenario that caused the noncompliance. Violations are classified as minor, moderate or major. The classification assigned generally depends on the frequency, intent and impact of the violation. Typically, a minor violation is a first offense, unintentional and has no or minimal impact to the water quality in waters of the State. A moderate violation may be a second or more offense, intentional or unintentional, or has a minimal or moderate impact, or the potential to impact, the water quality in waters of the State. A major violation may be a repeat offence, intentional or unintentional, and have caused, or have the potential to cause a major impact to water quality in waters of the State. More detail is provided in the table. Note that the “Suggested Enforcement Responses” column serves as guidance and does not preclude the City from pursuing elevated enforcement responses if dictated by the situation.

Table 2 – Guidance for Enforcement Response Selection

Violation Scenario	Mitigating Factors	Violation Type	Suggested Progressive Enforcement Responses
Unapproved alteration or disturbance to water quality features.	<ul style="list-style-type: none"> ➤ First offence. ➤ No impact to water quality in waters of the State. ➤ Minor alteration to water quality features. 	Minor	<ul style="list-style-type: none"> • Verbal warning with requirement to mitigate alteration within 24 hours. • Education on proper inspection/maintenance of water quality features.
	<ul style="list-style-type: none"> ➤ Owner/operator history of alterations at the site or other sites. ➤ Moderate or Major alteration to water quality features. ➤ Caused or potential to cause moderate or major impacts to water quality in waters of the State. 	Moderate or Major	<ul style="list-style-type: none"> • Notice of Violation • Stop Work Order • Denial of services. • Civil Penalty • Damages, if warranted. • Referral to TDEC.
Failure to comply with approved water quality management plan.	<ul style="list-style-type: none"> ➤ First offence. ➤ No impact to water quality in waters of the State. ➤ Minor water quality feature maintenance issues. ➤ Improper inspections or documentation. 	Minor	<ul style="list-style-type: none"> • Verbal warning with requirement to correct deficiency within 24 hours. • Education on proper inspection/maintenance of water quality features.
	<ul style="list-style-type: none"> ➤ Owner/operator history of noncompliance at the site or other sites. ➤ Moderate or major water quality maintenance issues. ➤ Caused or potential to cause moderate or major impacts to water quality in waters of the State. 	Moderate or Major	<ul style="list-style-type: none"> • Notice of Violation • Stop Work Order • Denial of services. • Civil Penalty • Damages, if warranted. • Referral to TDEC.
Failure to allow inspections by the City.	None	Major	<ul style="list-style-type: none"> • Stop Work Order • Denial of services. • Civil Penalty • Damages, if warranted. • Referral to TDEC.
Persistent failure to pay a penalty or damages.	None	Major	<ul style="list-style-type: none"> • Civil Litigation

Enforcement Timeframes

The City will establish the timeframe for the owner to address the violation based on the severity. For minor violations, the owner will be given a maximum 24 hour timeframe to mitigate the violation. The timeframe for mitigating moderate and major violations will be based on the complexity of the repairs and the likelihood of negative impact to waters of the State. In situations where a negative impact is imminent or could be significant, an immediate response by the owner will be required. The NPDES Phase II MS4 permit requires that *“the BMP owner must initiate corrective action within 30 days”* of notification of the deficiency. In no instance will the owner be given a timeframe to mitigate a violation greater than that allowed by the permit.

Appeals

Any person aggrieved by the imposition of a civil penalty or damage assessment as provided by the water quality management ordinance may appeal the penalty or damage assessment to the city council. The appeal shall be in writing and filed with the city recorder within 30 days after the civil penalty or damage assessment is served in any manner authorized by law. Upon receipt of an appeal, the city council shall hold a public hearing on the appeal within 45 days unless otherwise agreed by the aggrieved party. At least ten days prior to the hearing, notice of the time, date, and location of the hearing shall be mailed to the aggrieved party at the address provided by the aggrieved party at the time of appeal. The decision of the city council shall be final, and the aggrieved party may appeal therefrom in the manner provided by Tennessee law. If an appeal of a civil penalty or damage assessment is not filed with the city recorder within 30 days as provided in the water quality management ordinance, the violator shall be deemed to have consented to the civil penalty or damage assessment and it shall become final.

IV. NPDES Referrals

The City may choose to notify TDEC, at the local Environmental Field Office for persistent noncompliance by the property owner if the situation appears to be non-reconcilable through the City's enforcement efforts. The contact information for the local EFO is as follows:

TDEC-Johnson City Field Office
2305 Silverdale Road
Johnson City, TN 37601

City personnel who plan to make referrals to TDEC should be prepared to provide the following information:

- Nature of the violation.
- Name of the owner.
- Location/address of the violation.
- Records of communication with the owner.

V. Requirements for Chronic Violators

Section 4.5.4 of the NPDES Phase II MS4 permit requires the City to identify chronic violators of any Stormwater Management Program component and reduce the rate of noncompliance

recidivism. The City tracks enforcement through its tracking system and considers the appropriateness of increasing the inspection frequency at the property owner's sites. If corrective actions are not taken, the City pursues progressive enforcement in accordance with Table 2. If necessary, the City will perform the corrective action and assess the cost against the owner.

VI. Enforcement Tracking

Section 4.5.3. of the NPDES Phase II MS4 permit requires the City to track enforcement. The City's enforcement documentation tracks the information listed below.

- Name of owner.
- Location
- Description of violation.
- Required schedule for returning to compliance.
- Description of enforcement response used, including escalated responses if repeat violations occur or violations are not resolved in a timely manner.
- Accompanying documentation of enforcement response.
- Any referrals to different departments or agencies.
- Date violation was resolved.

Appendix

Appendix A

Code of Ordinances

Chapter 74-Article V Control of Erosion and Sediment Into the Stormwater System

ARTICLE V:

CONTROL OF EROSION AND SEDIMENT INTO THE STORMWATER SYSTEM

DIVISION 1. - GENERALLY

Sec. 74-271. - Purposes.

Sec. 74-272. - Definitions.

Secs. 74-273—74-283. - Reserved.

Sec. 74-271. - Purposes.

The purposes of this article are as follows:

- (1) To protect, maintain, and enhance the environment of the City of Bristol and the public health, safety and general welfare of the citizens of the city, by preventing the discharge of sediment and construction related waste into the city's stormwater system; and
- (2) To maintain and improve the quality of the receiving waters into which stormwater runoff flows, including streams, rivers, lakes, ponds, and wetlands.

(Ord. No. 04-23, § 1, 1-4-05)

Sec. 74-272. - Definitions.

As used in this article:

Best management practices (BMP) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to the municipal separate storm sewer system. This term also includes treatment requirements, operating procedures, and practices to control plant site runoff, spillage, or leaks, sludge or waste disposal, or drainage from raw material storage.

City means the City of Bristol Tennessee.

City manager means the city manager of the city or his designee, who is responsible for the approval of development and redevelopment plans, grading permits, and the implementation of this article.

Clearing means the removal of vegetation and disturbance of soil prior to grading or excavation in anticipation of construction activities or a wide area land disturbance in anticipation of non-construction activities such as the clearing of forested land for conversion to pasture for wildlife management purposes. This term does not include the clearing of vegetation along roadways,

highways or power lines for site distance or other maintenance or safety concerns, or cold planing, milling, or removal of concrete or bituminous asphalt roadway pavement surfaces.

Commencement of construction or commencement of land disturbing activities means the initial disturbance of soils associated with clearing, grading or excavating activities or other construction activities.

Construction means any installation, building, placement or assembly of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

Construction related waste means refuse or unused materials that result from construction activities. Construction related waste can include, but not limited to, unused building and landscaping materials, chemicals, litter, sanitary waste, and concrete truck washout.

Development means any manmade change to improved or unimproved property including, but not limited to, the construction of buildings or other structures, clearing, dredging, drilling operations, filling, grading, paving, excavation, or storage of equipment or materials.

Erosion means the removal of soil particles by the action of water, wind, ice or other agents, whether naturally occurring or acting in conjunction with or promoted by manmade activities or effects.

Erosion and sediment control plan means a written plan, including drawings or other graphic representations, that is designed to eliminate or reduce erosion and off-site sedimentation from a site during construction activities.

Filling means any deposition or stockpiling of dirt, rock, stumps, or other natural or manmade solid waste material.

Final stabilization means when all soil disturbing activities at the site have been completed, and a perennial vegetative cover sufficient to prevent erosion has been well established on all unpaved areas, or equivalent permanent stabilization measures have been employed.

Grading means any excavation, filling (including fill placed in watercourses), or stockpiling of earth materials or any combination thereof, including the land in its excavated or filled condition.

Grading permit means a permit issued by the city authorizing the commencement of land disturbing activities.

High quality waters means surface waters of the State of Tennessee that are identified by TDEC as "high quality waters."

Land disturbing activity means any activity on a property that results in a change in the existing soil cover, whether vegetative or non-vegetative, or the existing soil topography. Land

disturbing activities include, but are not limited to, development, re-development, demolition, construction, reconstruction, clearing, grading, filling, land transporting, and excavation.

Municipal separate storm sewer system (MS4) means a conveyance or system of conveyances, including roads with drainage systems, streets, roads, catch basins, curbs, gutters, ditches, manmade channels, or storm drains, which are:

- (1) Owned or operated by a state, county, city, town, district, association, or other public body created by or pursuant to state law having jurisdiction over the disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the federal Clean Water Act that discharges to waters of the state;
- (2) Designed or used for collecting or conveying stormwater;
- (3) Which is not a combined sewer; and
- (4) Which is not part of a publicly owned treatment works (POTW) as defined by 40 C.F.R. § 122.2, as amended from time to time.

Owner or *operator* means any person or entity associated with a construction project that meets either of the following two criteria:

- (1) The person or entity has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications, typically be the owner or developer; or
- (2) The person or entity has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit conditions, e.g., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan (SWPPP) or comply with other permit conditions. This would typically include the general contractor and erosion control contractors.

Plan means an erosion and sediment control plan, or a small lot erosion and sediment control plan.

Priority construction activity means construction activities that discharge directly into or immediately upstream from waters the state recognizes as impaired for siltation or those waters designated as high quality waters. A property is considered to have a direct discharge if stormwater runoff from the property does not cross any other property before entering the water of the state.

Section 404 permit means a permit issued by the United States Army Corps of Engineers under Section 404 of the federal Clean Water Act.

Sediment means solid material, either mineral or organic, that is in suspension, being transported, or has been moved from its site of origin by erosion.

Small lot erosion and sediment control plan means a plan that is designed to eliminate or reduce erosion and off-site sedimentation from a site during construction activities, applicable to development and redevelopment sites that disturb less than one acre and are not part of a larger plan of development.

State means the State of Tennessee or, where the context indicates, any state of the United States.

Stormwater pollution prevention plan (SWPPP) means a document describing how an owner or operator intends to provide stormwater management during land disturbing or construction activities.

Subdivision means the division, subdivision, or resubdivision of any lot or parcel of land as defined in the subdivision regulations of the city.

Tennessee Erosion and Sediment Control Handbook or *handbook* means the handbook bearing such title, as amended from time to time, published by the Division of Water Pollution Control of TDEC.

Tennessee general permit means State of Tennessee General Permit No. TNR10-0000 Storm Water Discharges from Construction Activities.

TDEC means the Department of Conservation and Environment of the State of Tennessee.

Transporting means any moving of earth materials from one place to another, other than such movement incidental to grading, as authorized on an approved plan.

Waters or *waters of the state* means any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through or border upon Tennessee or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.

(Ord. No. 04-23, § II, 1-4-05)

Cross reference— *Definitions and rules of construction generally, § 1-2.*

Secs. 74-273—74-283. - Reserved.

DIVISION 2. - GENERAL REQUIREMENTS

Sec. 74-284. - Applicability.

Sec. 74-285. - Exemptions from plans submittal.

Secs. 74-286—74-295. - Reserved.

Sec. 74-284. - Applicability.

- (a) All land disturbing or construction activities that cause off-site sedimentation or sediment discharges to waters of the state shall be in violation of this ordinance.
- (b) No owner or operator of any property within the city shall commence landdisturbing activities unless an erosion and sediment control plan is submitted to and approved by the city manager.
- (c) For construction resulting in less than one acre of disturbed area a small lot erosion and sediment control plan shall be submitted to and approved by the city manager prior to commencement of any land disturbing activity. Notwithstanding the foregoing, such a plan shall not be required for the construction of a single-family residence on property which is part of a larger common plan of development for which an erosion and sediment control plan has been approved.
- (d) The issuance of a grading permit shall be conditioned upon the approval of the erosion and sediment control plan by the city manager. The city shall serve as the plan approval agency only, and in no instance are its regulations to be construed as designing erosion and sediment control or other stormwater systems.
- (e) No building permit shall be issued until the owner or operator has obtained a grading permit and is in compliance with the grading permit, where the same is required by this article.
- (f) All landdisturbing activities shall employ adequate erosion and sediment control best management practices.

(Ord. No. 04-23, § III, 3.1, 1-4-05)

Sec. 74-285. - Exemptions from plans submittal.

- (a) The following activities shall not require submittal and approval of an erosion and sediment control plan, or small lot erosion and sediment control plan:
 - (1) Minor landdisturbing activities such as home gardens and individual home landscaping, repairs or maintenance work;
 - (2) Additions or modifications to existing, individual, single-family structures;
 - (3) Emergency work to protect life, limb or property, and emergency repairs, provided that the land area disturbed shall be shaped and stabilized in accordance with the requirements of this article;
 - (4) Existing nursery and agricultural operations conducted as a permitted main or accessory use; and
 - (5) State and federal projects subject to the submission requirements of TDEC.
- (b) All other provisions of this article shall apply to the exemptions noted in subsection (a) above.

(Ord. No. 04-23, § III, 3.2, 1-4-05)

Secs. 74-286—74-295. - Reserved.

DIVISON 3. - EROSION AND SEDIMENT CONTROL DESIGN STANDARDS

Sec. 74-296. - Adoption of standards.

Sec. 74-297. - General criteria and requirements.

Sec. 74-298. - Stabilization practices.

Sec. 74-299. - Structural practices.

Sec. 74-300. - Other requirements.

Secs. 74-301—74-310. - Reserved.

Sec. 74-296. - Adoption of standards.

- (a) The city adopts as its erosion and sediment control design standards and best management practices manual the *Tennessee Erosion and Sediment Control Handbook*. This handbook is incorporated by reference into this article. This handbook includes a list of acceptable BMPs, including the specific design performance criteria and operation and maintenance requirements for each BMP.
- (b) The design, operation and maintenance criteria presented in the handbook may be updated and expanded upon, at the discretion of the city manager, based on improvements in engineering, science, monitoring, and local maintenance experience.
- (c) Erosion and sediment control BMPs that are designed, constructed and maintained in accordance with the BMP criteria presented in the handbook shall be presumed to meet the minimum water quality performance standards required by the city.

(Ord. No. 04-23, § IV, 4.1, 1-4-05)

Sec. 74-297. - General criteria and requirements.

The following standards, as set forth in the *Tennessee General Permit*, and the *Tennessee Erosion and Sediment Control Handbook*, are adopted:

- (1) Erosion and sediment controls shall be designed to retain sediment on-site.
- (2) All control measures must be properly selected, installed, and maintained in accordance with the manufacturer's specifications and good engineering practices. If periodic inspections or other information indicate a control has been used inappropriately, or incorrectly, the owner or operator must replace or modify the control for site situations.
- (3) Sediment should be removed from sediment traps, silt fences, sedimentation ponds, and other sediment controls as necessary, and must be removed when design capacity has been reduced by 50 percent.
- (4) Construction related waste, litter, construction debris, and construction chemicals exposed to stormwater shall be removed, covered or properly stored prior to anticipated storm events, or otherwise prevented from becoming a pollutant source

for stormwater discharges. After use, silt fences should be removed or otherwise prevented from becoming a pollutant source for stormwater discharges.

- (5) Off-site material storage areas, including overburden and stockpiles of dirt and other materials, used solely by the permitted project are considered part of the project and shall be addressed in the plan.
- (6) Pre-construction vegetative ground cover shall not be destroyed, removed, or disturbed more than 20 calendar days prior to grading or earth moving unless the area is seeded or mulched or other temporary cover is installed.
- (7) Clearing and grubbing must be held to the minimum necessary for grading and construction equipment.
- (8) Construction must be sequenced to minimize the exposure time for graded or denuded areas.
- (9) Construction must be phased for projects in which more than 50 acres of soil will be disturbed. Areas of the completed phase must be stabilized within 21 days after another phase has been initiated.
- (10) Erosion and sediment control measures must be in place and functional before commencement of land disturbing activities, and must be constructed and maintained throughout the construction period. Temporary measures may be removed at the beginning of the workday, but must be replaced at the end of the workday or prior to a rain event, whichever is sooner.
- (11) The following records shall be maintained on site: the dates when major grading activities occur; the dates when construction activities temporarily or permanently cease on a portion of the site; and the dates when stabilization measures are initiated.
- (12) The city manager has the discretion to require BMPs that conform to a higher than minimum standard for priority construction activities, for high quality waters, or where deemed necessary.

(Ord. No. 04-23, § IV, 4.2, 1-4-05)

Sec. 74-298. - Stabilization practices.

The plan shall include a description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Plans should ensure that existing vegetation is preserved where feasible and that disturbed portions of the site are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. Use of impervious surfaces for stabilization should be avoided.

- (1) Stabilization measures shall be initiated as soon as practicable on portions of the site where construction activities have temporarily or permanently ceased, but in no case more than seven days after the construction activity in that portion of the site has temporarily or permanently ceased, except in the following two situations:

- a. Where the initiation of stabilization measures by the seventh day is precluded by snow cover or frozen ground conditions, stabilization measures shall be initiated as soon as practicable; or
 - b. Where construction activity on a portion of the site is temporarily closed, and land disturbing activities will be resumed within 15 days, temporary stabilization measures do not have to be initiated on that portion of the site.
- (2) Temporary or permanent soil stabilization shall be accomplished within 15 days after final grading or other land disturbing activity. Permanent stabilization with perennial vegetation, using native herbaceous and woody plants where practicable, or other permanently stable, non-eroding surface shall replace any temporary measures as soon as practicable.

(Ord. No. 04-23, § IV, 4.3, 1-4-05)

Sec. 74-299. - Structural practices.

The plan shall include a description of structural best management practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable. Such best management practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural controls shall not be placed in streams or wetlands except as authorized by Section 404 permit or Tennessee Aquatic Resource Alteration Permit.

- (1) Erosion and sediment control best management practices shall be designed according to the size and slope of disturbed or drainage areas to detain runoff and trap sediment. In addition, best management practices shall be designed to control the rainfall and runoff from a two-year, 24-hour storm, as a minimum.
- (2) When temporary or permanent sediment basins are used to control sedimentation at a site, the basin must provide storage for a calculated volume of runoff from a two-year, 24-hour storm and runoff coefficient from each disturbed acre drained until final stabilization of the site. Where no such calculation has been performed, a temporary or permanent sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measure, shall be provided until final stabilization of the site. When computing the number of acres draining into a common location, it is not necessary to include flows from off-site areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin.
- (3) Discharges from sediment basins and traps must be through a pipe, or through a channel lined with riprap or other stabilized spillway, so that the discharge does not cause erosion.

- (4) Muddy water to be pumped from excavation and work areas must be held in settling basins or filtered prior to its discharge into surface waters. Water must be discharged onto a stabilized outlet point so that the discharge does not cause erosion and sedimentation.

(Ord. No. 04-23, § IV, 4.4, 1-4-05)

Sec. 74-300. - Other requirements.

- (a) No solid materials, including building materials, shall be discharged to waters of the State, except as authorized by a Section 404 permit or Tennessee Aquatic Resource Alteration Permit.
- (b) Off-site vehicle tracking of sediments is prohibited.
- (c) Dust generation shall be minimized.
- (d) For installation of any waste disposal systems on site, or sanitary sewer or septic system, the plan shall provide for the necessary sediment controls. Owners and operators shall comply with all applicable state or local waste disposal, sanitary sewer or septic system regulations for such systems to the extent that these are located within the permitted area.

(Ord. No. 04-23, § IV, 4.5, 1-4-05)

Secs. 74-301—74-310. - Reserved.

DIVISION 4. - EROSION AND SEDIMENT CONTROL PLANS

Sec. 74-311. - Requirements.

Sec. 74-312. - Plan contents.

Sec. 74-313. - Small lot erosion and sediment control plan contents.

Secs. 74-314—74-325. - Reserved.

Sec. 74-311. - Requirements.

- (a) The erosion and sediment control plan shall present in detail the best management practices that will be employed to reduce erosion and control sedimentation.
- (b) The plan shall be sealed by a registered professional licensed to practice stormwater management design in the State of Tennessee.
- (c) Best management practices presented in the plan shall conform to the requirements found in the *Tennessee Erosion and Sediment Control Handbook*, and shall meet or exceed the requirements of the Tennessee General Permit.
- (d) The plan shall include measures to protect legally protected state or federally listed threatened or endangered aquatic fauna or critical habitat (if applicable).

- (e) The plan submitted shall be subject to any additional requirements set forth in the city's subdivision regulations, planning and zoning ordinance, or other city regulations.
- (f) Construction of the site in accordance with the approved plan must commence within one year from the issue date of the grading permit, or the grading permit will become null and void and the plan must be resubmitted for approval.

(Ord. No. 04-23, § V, 5.1, 1-4-05)

Sec. 74-312. - Plan contents.

Erosion and sediment control plans shall include a fully engineered erosion and sediment control plan containing such information as may be required by the city manager consistent with this article.

(Ord. No. 04-23, § V, 5.2, 1-4-05)

Sec. 74-313. - Small lot erosion and sediment control plan contents.

- (a) Landdisturbing activities that affect less than one acre and are not part of a larger common plan of development with an approved plan shall submit and obtain approval of a small lot erosion and sediment control plan prior to obtaining a building permit.
- (b) The plan shall include such information as may be required by the city manager consistent with this article.
- (c) The city manager has the discretion to require a fully engineered erosion and sediment control plan.

(Ord. No. 04-23, § V, 5.3, 1-4-05)

Secs. 74-314—74-325. - Reserved.

DIVISION 5. - COMPLIANCE

Sec. 74-326. - Conformity to approved plan.

Sec. 74-327. - Amendments to approved plan.

Sec. 74-328. - Maintenance.

Sec. 74-329. - Inspections by the city.

Sec. 74-330. - Enforcement, penalties, and liability.

Sec. 74-331. - Violations.

Secs. 74-332—74-360. - Reserved.

Sec. 74-326. - Conformity to approved plan.

- (a) The approved erosion and sediment control plan, shall be followed during the entire duration of construction at the site.

- (b) The city manager may require reports or records from the permittee or person responsible for carrying out the plan to insure compliance.
- (c) No land disturbing activity shall be commenced without prior plan approval by the city manager.

(Ord. No. 04-23, § VI, 6.1, 1-4-05)

Sec. 74-327. - Amendments to approved plan.

- (a) The owner or operator shall amend the plan for any of the following conditions:
 - (1) Whenever there is a change in the scope of the project, which would be expected to have a significant effect on the discharge of pollutants to the municipal separate storm sewer system and which has not otherwise been addressed in the plan;
 - (2) Whenever inspections or investigations by site operators or local officials indicate the plan is proving ineffective in eliminating or significantly minimizing erosion or off-site sedimentation or discharge of other construction related wastes, or is otherwise not achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activity;
 - (3) To identify any new contractor or subcontractor that will implement a measure of the plan;
 - (4) To include measures necessary to prevent a negative impact to legally protected state or federally listed or proposed threatened or endangered aquatic fauna.
- (b) The amended plan shall be submitted for approval by the city manager.

(Ord. No. 04-23, § VI, 6.2, 1-4-05)

Sec. 74-328. - Maintenance.

- (a) Maintenance and inspections of the best management practices shall be implemented in the manner specified by the by *Tennessee Erosion and Sediment Control Handbook*, as amended by qualified personnel that are provided by the owner or operator of the land disturbing activity.
- (b) The owner or operator shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the owner or operator to achieve compliance with this article. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by an owner or operator only when necessary to achieve compliance with the conditions of this article.
- (c) Any inadequate control measures or control measures in disrepair shall be replaced or modified, or repaired as necessary, before the next rain event if possible, but in no case more than seven days after the need is identified. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable.

- (d) If sediment escapes the permitted property, off-site accumulations of sediment that have not reached a stream shall be removed promptly so as to minimize off-site impacts. For example, fugitive sediment that has escaped the construction site and has collected in the street shall be removed so that it is not subsequently washed into storm sewers and streams by the next rain and so that it does pose a safety hazard to users of public streets. Removal of fugitive sediments will be done by the owner or operator at his expense. Nothing in this article shall be construed as authorizing remediation or restoration of a stream without consultation with TDEC, or as authorizing access by the owner or operator to other private property.

(Ord. No. 04-23, § VI, 6.3, 1-4-05)

Sec. 74-329. - Inspections by the city.

- (a) The city manager shall have the right to enter onto private property for the purposes of conducting unrestricted periodic inspections of all land disturbing activities to verify compliance with the approved plan or to determine whether such a plan is necessary.
- (b) The city manager shall have the right to enter onto private property for the purposes of investigating a suspected violation of this article.
- (c) Failure on the part of a owner or operator to allow such inspections by the city manager shall be cause for the issuance of a stop work order, withholding of a certificate of occupancy, and civil penalties.

(Ord. No. 04-23, § VI, 6.4, 1-4-05)

Sec. 74-330. - Enforcement, penalties, and liability.

- (a) Any person failing to have an approved erosion and sediment control plan prior to starting a land disturbing activity shall be in violation of this article. Each day such violation shall continue shall constitute a separate violation.
- (b) Any owner, operator or contractor who fails to comply with an approved erosion and sediment control plan shall be in violation of this article, and shall be subject to the issuance of a stop work order, the withholding of a certification of occupancy or civil damages. Each day such violation shall continue shall constitute a separate violation.
- (c) Any failure of an owner, operator or contractor to comply with a stop work order issued by the city shall be in violation of this article. Each day such violation shall continue shall constitute a separate violation.
- (d) The owner, operator or contractor shall allow periodic inspections by the city of all land disturbing activities. Any failure to allow such an inspection shall be considered a failure to follow the approved plan, and shall constitute a violation of this article, and shall be subject to the issuance of a stop work order or the withholding of a certificate of occupancy.
- (e) In order to obtain compliance with this article, the city manager may notify departments of the city to deny service to the property until the site has been brought into compliance.
- (f) Upon the request of the city manager, the city attorney shall initiate appropriate legal action to enforce the provisions of this article.

- (g) The remedies provided for in this article are cumulative and not exclusive, and shall be in addition to any other remedies provided by law.
- (h) Neither the approval of a plan under this article, nor compliance with the conditions of such plan, shall relieve any person of responsibility for damage to other persons or property or impose any liability upon the city for damage to other persons or property.

(Ord. No. 04-23, § VI, 6.5, 1-4-05)

Sec. 74-331. - Violations.

The violation of any provision of this article shall be subject to penalty as provided in section 1-8 of the Code of Ordinances of the city.

(Ord. No. 04-23, § VII, 1-4-05)

Secs. 74-332—74-360. - Reserved.

Appendix B

Code of Ordinances

Chapter 74-Article VI

Illicit Discharges and Connections to the Municipal
Storm Sewer System

ARTICLE VI:

ILLICIT DISCHARGES AND CONNECTIONS TO THE MUNICIPAL STORM SEWER SYSTEM

DIVISION 1. - GENERALLY

Sec. 74-361. - Purposes.

Sec. 74-362. - Definitions.

Secs. 74-363—74-370. - Reserved.

Sec. 74-361. - Purposes.

The purposes of this article are as follows:

- (1) To protect, maintain, and enhance the environment of the City of Bristol and the public health, safety and general welfare of the citizens of the city, by controlling discharges of pollutants to the city's stormwater system; and
- (2) To maintain and improve the quality of the receiving waters into which the storm water outfalls flow, including streams, rivers, lakes, ponds, wetlands, and groundwater of the city.

(Ord. No. 04-24, § 1, 1-4-05)

Sec. 74-362. - Definitions.

As used in this article:

Best management practices (BMP) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to the municipal separate storm sewer system. This term also includes treatment requirements, operating procedures, and practices to control plant site runoff, spillage, or leaks, sludge or waste disposal, or drainage from raw material storage.

City means the City of Bristol Tennessee.

City manager means the city manager of the city or his designee, who is responsible for the implementation of this article.

Contaminant means any physical, chemical, biological, or radiological substance or matter in water.

Discharge means to dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked, or

placed by any means, including any direct or indirect entry, of any non-stormwater solid or liquid matter into the municipal separate storm sewer system.

Illicit connection means any unauthorized or illegal connection to the municipal separate stormwater system whether or not such connection results in a discharge into that system.

Municipal separate storm sewer system (MS4) means a conveyance or system of conveyances, including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains, which are:

- (1) Owned or operated by a state, county, city, town, district, association, or other public body created by or pursuant to state law having jurisdiction over the disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the federal Clean Water Act that discharges to waters of the state;
- (2) Designed or used for collecting or conveying stormwater;
- (3) Which is not a combined sewer; and
- (4) Which is not part of a publicly owned treatment works (POTW) as defined by 40 C.F.R. § 122.2, as amended from time to time.

National pollutant discharge elimination system (NPDES) permit means a permit issued pursuant to 33 U.S.C. § 1342, as amended from time to time.

Pollutant means sewage, industrial waste, or other waste or materials, whether liquid or solid.

Stormwater or *stormwater runoff* means that portion of the precipitation on a drainage area that is discharged from the area into the municipal separate storm sewer system.

Surface water means waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, rivers, other water courses, lakes and reservoirs.

TDEC means the Department of Conservation and Environment of the State of Tennessee.

Waters or *waters of the state* means any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through or border upon Tennessee or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.

(Ord. No. 04-24, § II, 1-4-05)

Cross reference— *Definitions and rules of construction generally, § 1-2.*

Secs. 74-363—74-370. - Reserved.

DIVISION 2. - ILLICIT DISCHARGES

Sec. 74-371. - Prohibition of illicit discharges.

Sec. 74-372. - Prohibition of illicit connections.

Sec. 74-373. - Elimination of discharges and connections.

Sec. 74-374. - Notification of spills.

Secs. 74-375—74-385. - Reserved.

Sec. 74-371. - Prohibition of illicit discharges.

- (a) No person shall introduce or cause to be introduced into the municipal separate storm sewer system any discharge that is not composed entirely of stormwater. The commencement, conduct, or continuance of any non-stormwater discharge to the municipal separate storm sewer system is prohibited.
- (b) Notwithstanding the foregoing, uncontaminated discharges from the following sources are permitted:
 - (1) Landscape irrigation or lawn watering with potable water;
 - (2) Diverted stream flows permitted by the State of Tennessee;
 - (3) Rising groundwater;
 - (4) Groundwater infiltration, as defined by 40 C.F.R. § 35.2005(20), as amended from time to time, to separate storm sewers;
 - (5) Pumped groundwater;
 - (6) Foundation or footing drains;
 - (7) Water discharged from crawl space pumps;
 - (8) Air conditioning condensate;
 - (9) Springs;
 - (10) Individual, residential washing of vehicles;
 - (11) Flows from natural riparian habitat or wetlands;
 - (12) Swimming pools, if dechlorinated to less than one part per million chlorine;
 - (13) Discharges from governmental operations;
 - (14) Discharges pursuant to a valid and effective NPDES permit issued by the State of Tennessee;
 - (15) Discharges necessary to protect public health and safety, as specified in writing by the city; and
 - (16) Dye testing authorized by the city.

(Ord. No. 04-24, § III, 3.1, 1-4-05)

Sec. 74-372. - Prohibition of illicit connections.

- (a) The construction, use, maintenance, or continued existence of illicit connections to the city's separate municipal storm sewer system is prohibited.

- (b) Illicit connections to the city's separate municipal storm sewer system made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection, are prohibited.

(Ord. No. 04-24, § III, 3.2, 1-4-05)

Sec. 74-373. - Elimination of discharges and connections.

- (a) Any owner or person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at the person's expense, the best management practices necessary to prevent the further discharge of pollutants to the municipal separate storm sewer system.
- (b) Any person responsible for a property or premises where an illicit connection is located may be required, at the person's expense, to eliminate the connection to the municipal separate storm sewer system.

(Ord. No. 04-24, § IV, 1-4-05)

Sec. 74-374. - Notification of spills.

- (a) Notwithstanding other requirement of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting in, or may result in, illicit discharges or pollutants discharging into stormwater or the municipal separate stormwater system, the person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.
- (b) In the event of a release of hazardous materials, the person shall immediately notify the appropriate emergency response agency or agencies of the occurrence. The person shall notify the city manager in person or by telephone or facsimile no later than the next business day.
- (c) In the event of a release of non-hazardous materials, the person shall notify the city manager in person or by telephone or facsimile no later than the next business day.
- (d) Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the city manager within three business days of the telephone notice.
- (e) If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least five years.

(Ord. No. 04-24, § V, 1-4-05)

Secs. 74-375—74-385. - Reserved.

DIVISION 3. - COMPLIANCE

Sec. 74-386. - Notices.

Sec. 74-387. - Inspections by city.

Sec. 74-388. - Enforcement, penalties and liability.

Sec. 74-389. - Violations.

Sec. 74-390. - Civil penalties, damages and expenses; appeals.

Secs. 74-391—74-400. - Reserved.

Sec. 74-386. - Notices.

- (a) The city manager shall have the authority to issue notices of violation and citations.
- (b) The city manager may require reports or records from the permittee or person responsible for eliminating the illicit discharge or illicit connection to insure compliance.

(Ord. No. 04-24, § VI, 6.1, 1-4-05)

Sec. 74-387. - Inspections by city.

- (a) The city manager shall have the right to enter onto private properties for the purposes of investigating a suspected violation of this article.
- (b) The owner or person in control of any premises, facility, operation or residence where an illicit discharge or illicit connection is known or suspected shall allow the city manager to have access to and copy at reasonable times, any applicable state or federal permits related to the suspected or known discharge or connection, and any reports or records maintained in accordance with this article.
- (c) The failure of an owner or person in control of any premises to allow such inspection by the city manager shall be cause for the issuance of a stop work order, withholding of a certificate of occupancy, and civil penalties.

(Ord. No. 04-24, § VI, 6.2, 1-4-05)

Sec. 74-388. - Enforcement, penalties and liability.

- (a) Any person who fails to comply with the ordinance shall be in violation of this article. Each day such violation shall continue shall constitute a separate violation.
- (b) Any person who violates this article shall be subject to the issuance of a stop work order, the withholding of a certification of occupancy, and civil damages. Each day such violation shall continue shall constitute a separate violation.
- (c) Any failure of a person to comply with a stop work order issued by the city shall be in violation of this article. Each day such violation shall continue shall constitute a separate violation.
- (d) In order to obtain compliance with this article, the city manager may notify other departments or the city to deny service to the property until the site has been brought into compliance.

- (e) Upon the request of the city manager, the city attorney shall initiate appropriate legal action to enforce the provisions of this article.
- (f) The remedies provided for in this article are cumulative and not exclusive, and shall be in addition to any other remedies provided by law.
- (g) Neither the approval of a discharge under this article, nor compliance with the conditions of such approval, shall relieve any person of responsibility for damage to other persons or property or impose any liability upon the city for damage to other persons or property.

(Ord. No. 04-24, § VI, 6.3, 1-4-05)

Sec. 74-389. - Violations.

The violation of any provision of this article shall be subject to penalty as provided in section 1-8 of the Code of Ordinances of the city.

(Ord. No. 04-24, § VII, 1-4-05)

Sec. 74-390. - Civil penalties, damages and expenses; appeals.

- (a) Any person who violates any provision of this article may be assessed an administrative civil penalty by the city manager of not less than \$50.00 and not more than \$5,000.00 for each day of violations in accordance with T.C.A. § 68-221-1106. Each day of violation shall constitute a separate violation.
 - (b) In assessing a civil penalty, the city manager may consider:
 - (1) The harm done to the public health or the environment;
 - (2) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
 - (3) The economic benefit gained by the violator;
 - (4) The amount of effort put forth by the violator to remedy the violation;
 - (5) Any unusual or extraordinary enforcement costs incurred by the city;
 - (6) Any amount of penalty established by ordinance or resolution for specific categories of violations; and
 - (7) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.
- (c) In addition to the civil penalty, the city manager may assess:
 - (1) All damages proximately caused by the violator to the city, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this article, or any other actual damages caused by the violation; and
 - (2) The costs of the city's maintenance of stormwater facilities when the user of such facilities fails to maintain them as required by this section.
- (d) The remedies provided in this section shall be cumulative, and the existence of any other remedy at law or in equity shall not be a defense to any such actions.
- (e) Any person aggrieved by the imposition of a civil penalty or damage assessment as provided by this section may appeal the penalty or damage assessment to the city council. The appeal

shall be in writing and filed with the recorder within 30 days after the civil penalty or damage assessment is served in any manner authorized by law. Upon receipt of an appeal, the city council shall hold a public hearing on the appeal within 45 days unless otherwise agreed by the aggrieved party. At least ten days prior to the hearing, notice of the time, date, and location of the hearing shall be mailed to the aggrieved party at the address provided by the aggrieved party at the time of appeal. The decision of the city council shall be final, and the aggrieved party may appeal therefrom in the manner provided by Tennessee law. If an appeal of a civil penalty or damage assessment is not filed with the city recorder within 30 days as provided herein, the violator shall be deemed to have consented to the civil penalty or damage assessment and it shall become final.

(Ord. No. 07-29, 10-4-07)

Secs. 74-391—74-400. - Reserved.

Appendix C

Code of Ordinances

Chapter 74-Article VII

Post-Construction Water Quality Management

ARTICLE VII:

POST-CONSTRUCTION WATER QUALITY MANAGEMENT

DIVISION 1. - GENERALLY

Sec. 74-401. - Definitions.

Sec. 74-402. - Administration.

Secs. 74-403—74-410. - Reserved.

Sec. 74-401. - Definitions.

As used in this article:

Best management practices (BMPs) means various practices, procedures and devices designed to prevent or reduce the pollution of waters as set forth in the Water Quality BMP Manual.

Channel means a natural or manmade watercourse of perceptible extent, with definite bed and banks to confine and conduct continuously or periodically flowing water.

City means the City of Bristol, Tennessee.

City manager means the city manager of the city or his designee.

Construction means any installation, building, placement or assembly of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

Covenant for permanent maintenance means a legally enforceable and recorded covenant by a property owner or a homeowner's association containing provisions for the perpetual maintenance of required facilities on the property.

Development means any manmade change to improved or unimproved land that alters its hydrologic or hydraulic conditions. This term includes, but is not limited to, providing access to a site, clearing of vegetation, grading, earth moving, providing utilities, roads and other services such as parking facilities, water quality management and erosion control systems, potable water and wastewater systems, altering land forms, or construction or demolition of a structure on the land.

Hotspot means an area where the land use or activities cause highly contaminated water runoff with concentrations of pollutants in excess of those typically found in stormwater.

Owner means the legal owner of land as reflected on the official land records of the county where the land is located.

Recorded means recorded or registered in the official land records of the county where the land is located.

Redevelopment means the improvement of land that has been previously developed.

Required facilities means those water quality management facilities, BMPs, vegetated buffers, water quality reduction areas and other devices and practices which are required by this article, or are required by an approved water quality management plan or the Water Quality BMP Manual.

Stormwater, stormwater runoff or runoff means surface water resulting from rain, snow or other form of precipitation, which is not absorbed into the soil and results in surface water flow and drainage.

Stream means a linear surface water conveyance with either perennial or ephemeral base flow and (a) is regulated by the city as a Special Flood Hazard Area (SFHA), or (b) has been identified as a stream by the city, the United States Army Corps of Engineers or the Tennessee Department of Environment and Conservation.

Structure means anything that is constructed or erected such that its use requires a permanent location on or in the ground.

Transporting means any moving of earth materials from one place to another, other than such movement incidental to grading, as authorized on an approved plan.

Vegetated buffer means a use-restricted vegetated area located along the perimeter of streams, ponds, lakes or wetlands which contains natural vegetation and grasses, or enhanced or restored vegetation.

Water Quality BMP Manual means a manual adopted by the city which contains policies, design standards and criteria, technical specifications and guidelines, maintenance guidelines, and other documentation to be used for implementation of this article.

Water quality management facilities means structures and constructed features designed to prevent or reduce the discharge of pollution in stormwater runoff from a development or redevelopment.

Water quality management plan means an engineering plan for the design of water quality management facilities and best management practices within a proposed development or redevelopment.

Water quality volume reduction means a decrease in the water quality volume for one or more areas of a proposed development which is obtained only for specific site development features or approaches that can reduce or eliminate the discharge of pollutants in stormwater runoff.

Water quality volume reduction areas means areas within the proposed development or redevelopment for which a water quality volume reduction can be obtained.

Wetland means an area that has been designated as such by the United States Army Corps of Engineers, the Tennessee Department of Environment and Conservation or the Natural Resources Conservation Service.

(Ord. No. 08-2, 3-4-08)

Sec. 74-402. - Administration.

- (a) The city manager shall administer the provisions of this article.
- (b) The city manager is authorized to establish and adopt policies, criteria, specifications and standards for the proper implementation of this article in a Water Quality BMP Manual.

(Ord. No. 08-2, 3-4-08)

Secs. 74-403—74-410. - Reserved.

DIVISION 2. - REQUIREMENTS AND STANDARDS

Sec. 74-411. - Applicability.

Sec. 74-412. - Exemptions from plan submittal.

Sec. 74-413. - Requirements of plan.

Sec. 74-414. - Adherence to plan.

Sec. 74-415. - Covenant for permanent maintenance.

Sec. 74-416. - Waiver and modification.

Sec. 74-417. - Stricter standard.

Sec. 74-418. - Performance bond.

Sec. 74-419. - Special pollution abatement.

Secs. 74-420—74-430. - Reserved.

Sec. 74-411. - Applicability.

- (a) Prior to undertaking any development or redevelopment activity which is not exempt under section 74-412, the owner shall submit to the city a water quality management plan and receive approval thereof.
- (b) All federal and state permits that may be necessary for construction in and around streams and wetlands shall be obtained prior to submission of the water quality management plan.

(Ord. No. 08-2, 3-4-08)

Sec. 74-412. - Exemptions from plan submittal.

Unless the city manager has determined that treatment of stormwater runoff for water quality is needed to comply with other applicable water quality regulations, the following shall not require submittal and approval of a water quality management plan:

- (a) Developments or redevelopments that disturb less than one acre of land unless such is part of a larger common plan that would disturb at least one acre and the stormwater runoff therefrom is not treated for water quality in a manner that meets the requirements of this article;
- (b) Gardens (at residential premises only), landscaping, repairs or maintenance work;
- (c) Installation of utility service connections, unless such is in conjunction with the clearing, grading, excavating, transporting, or filling of a lot or lots for which a water quality management plan would otherwise be required;
- (d) Installation, maintenance or repair of septic tank lines or drainage fields, unless such is carried in conjunction with the clearing, grading, excavating, transporting, or filling of a lot or lots for which a water quality management plan would otherwise be required;
- (e) Farming and agricultural activities; and
- (f) Emergency work to protect life, limb or property, and emergency repairs.

(Ord. No. 08-2, 3-4-08)

Sec. 74-413. - Requirements of plan.

- (a) The water quality management plan shall be prepared in accordance with the Water Quality BMP Manual. The city manager may authorize the use of other methods when he determines such will meet or exceed the standards provided in the Water Quality BMP Manual.
- (b) A listing of any legally protected state or federally listed threatened or endangered species or critical habitat located in the area of land disturbing activities, and a description of the measures that will be used to protect them during and after grading and construction, shall be included in the water quality management plan.
- (c) The city manager may require the water quality management plan to include any additional items and information which he deems necessary.
- (d) The water quality management plan shall be prepared and stamped by an engineer or landscape architect licensed to practice in the State of Tennessee. Those portions of the plan that require hydraulic or hydrologic calculations and design shall be prepared and stamped by a professional engineer or landscape architect competent in civil and site design and licensed to practice in the State of Tennessee.

(Ord. No. 08-2, 3-4-08)

Sec. 74-414. - Adherence to plan.

- (a) Required facilities shall be designed, constructed and maintained in accordance with the approved water quality management plan.
- (b) All grading and construction activity shall be conducted in accordance with the approved water quality management plan.
- (c) All required facilities shall be located within a permanent water quality easement that is identified on a recorded instrument.
- (d) There shall be no deviation from the approved water quality management plan in the absence of an amendment to the plan approved by the city manager.
- (e) If there are material changes in the conditions of the development site after the water quality management plan is approved, the city manager may require that the plan be amended to address those conditions.

(Ord. No. 08-2, 3-4-08)

Sec. 74-415. - Covenant for permanent maintenance.

- (a) The owner shall provide a protective covenant for the permanent maintenance of the required facilities in accordance with the Water Quality BMP Manual which covenant shall be recorded.
- (b) A right-of-way or easement for maintenance of the required facilities, having a minimum width of 20 feet shall be provided in the protective covenant or by such other recorded instrument as may be approved by the city manager.
- (c) The protective covenant shall be recorded promptly upon its approval by the city manager.

(Ord. No. 08-2, 3-4-08)

Sec. 74-416. - Waiver and modification.

The city manager may waive or modify any of the requirements for the water quality management plan if adequate water quality treatment and channel protection are provided by a downstream or shared off-site water quality management facility, or if engineering studies determine that installing the required water quality management facilities or BMPs would actually cause adverse impact to water quality or cause increased channel erosion or downstream flooding, or for other good cause.

(Ord. No. 08-2, 3-4-08)

Sec. 74-417. - Stricter standard.

Where the provisions of this article and another regulation conflict or overlap, the provision which is more restrictive or imposes higher standards or requirements shall control.

(Ord. No. 08-2, 3-4-08)

Sec. 74-418. - Performance bond.

- (a) The city manager may require a performance bond which guarantees satisfactory completion of work related to required facilities.
- (b) The performance bond shall name the city as its beneficiary and shall be guaranteed in the form of a surety bond, cashier's check or letter of credit from an approved financial institution or insurance company. The bond shall be in a form and an amount determined by the city manager based on submission of plans and estimated installation or potential maintenance and remediation expenses.
- (c) The city manager may reject a surety on the bond based on past performance, ratings of the financial institution, or other appropriate reason.
- (d) Prior to the release of a performance bond the following shall be submitted to and approved by the city manager:
 - (1) "As built" drawings, prepared by a licensed professional showing the required facilities and certifying they were constructed in accordance with the approved water quality management plan together with such other information as may be required by the city manager;
 - (2) A copy of the recorded covenant for permanent maintenance; and
 - (3) A copy of a recorded plat showing the location of all required facilities and associated easements.

(Ord. No. 08-2, 3-4-08)

Sec. 74-419. - Special pollution abatement.

- (a) A special pollution abatement plan shall be required for the following land uses, which are considered pollutant hotspots:
 - (1) Motor vehicle or equipment maintenance, fueling, washing or storage areas, including but not limited to, automotive dealerships, automotive repair shops and vehicle wash facilities;
 - (2) Recycling or salvage yard facilities;
 - (3) Restaurants, grocery stores and other food service facilities;
 - (4) Commercial facilities with outside animal housing areas including animal shelters, fish hatcheries, kennels, livestock stables, veterinary clinics and zoos; and
 - (5) Any other use which is identified by the city manager as a pollutant hotspot.
- (b) A special pollution abatement plan may be required for land uses or activities that are determined by the city manager to have the potential to generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater.
- (c) The special pollution abatement plan shall be submitted as part of the water quality management plan and shall be in accordance with the Water Quality BMP Manual.

(Ord. No. 08-2, 3-4-08)

Secs. 74-420—74-430. - Reserved.

DIVISION 3. - COMPLIANCE

Sec. 74-431. - Maintenance and integrity.

Sec. 74-432. - Inspections by the city.

Sec. 74-433. - Corrective actions.

Sec. 74-434. - Violations.

Sec. 74-435. - Civil penalties, damages and expenses; appeals.

Sec. 74-431. - Maintenance and integrity.

- (a) The required facilities shall be maintained in accordance with the approved water quality management plan and the Water Quality BMP Manual.
- (b) All maintenance shall be documented by the owner, and such documentation shall be maintained for at least three years, and shall be available for inspection by the city manager upon request.
- (c) There shall be no alteration, improvement or disturbance to a required facility without the approval of the city manager except as may be necessary to maintain its intended performance.

(Ord. No. 08-2, 3-4-08)

Sec. 74-432. - Inspections by the city.

- (a) The city manager shall have the right to enter onto private property for the purposes of conducting periodic inspections to verify compliance with the approved plan, to determine whether such a plan is necessary or to perform corrective actions.
- (b) The city manager shall have the right to enter onto private property for the purposes of investigating a suspected violation of this article.
- (c) Failure on the part of an owner or occupier to allow such inspection by the city manager shall be cause for the issuance of a stop work order, withholding of a certificate of occupancy or the assessment of civil penalties and damages.

(Ord. No. 08-2, 3-4-08)

Sec. 74-433. - Corrective actions.

- (a) The city manager may order corrective actions as may be necessary to properly maintain the required facilities.
- (b) If the owner fails to perform the corrective actions ordered, the city manager may cause such corrective actions to be performed with the cost thereof to be charged to the owner. Should the owner fail to timely reimburse the city for such cost, then the city manager may cause a lien to be recorded against the property as provided in the covenant for protective

maintenance, and he may take such other actions as he deems appropriate to collect the same.

(Ord. No. 08-2, 3-4-08)

Sec. 74-434. - Violations.

- (a) The violation of any provision of this article shall be subject to penalty as provided in section 1-8 of this Code.
- (b) In addition, any such violation shall be cause for the requiring for corrective action, issuance of a stop work order, withholding of a permit, withholding of a certificate of occupancy and the assessment of civil penalties and damages.
- (c) Should the city manager determine that a violation of this ordinance has occurred, or that construction activity does not have a required plan or permit, or that work does not comply with an approved plan or permit, the city manager may issue a notice of violation to the owner, or to any other person or entity having responsibility for such work.

(Ord. No. 08-2, 3-4-08)

Sec. 74-435. - Civil penalties, damages and expenses; appeals.

- (a) Any person who violates any provision of this article may be assessed an administrative civil penalty by the city manager of not less than \$50.00 and not more than \$5,000.00 for each day of violations in accordance with T.C.A. § 68-221-1106. Each day of violation shall constitute a separate violation.
- (b) In assessing a civil penalty, the city manager may consider:
 - (1) The harm done to the public health or the environment;
 - (2) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
 - (3) The economic benefit gained by the violator;
 - (4) The amount of effort put forth by the violator to remedy the violation;
 - (5) Any unusual or extraordinary enforcement costs incurred by the city;
 - (6) Any amount of penalty established by ordinance or resolution for specific categories of violations; and
 - (7) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.
- (c) In addition to the civil penalty, the city manager may assess:
 - (1) All damages proximately caused by the violator to the city, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this article, or any other actual damages caused by the violation; and
 - (2) The costs of the city's maintenance of stormwater facilities when the user of such facilities fails to maintain them as required by this article.
- (d) The remedies provided in this section shall be cumulative, and the existence of any other remedy at law or in equity shall not be a defense to any such actions.

- (e) Any person aggrieved by the imposition of a civil penalty or damage assessment as provided by this section may appeal the penalty or damage assessment to the city council. The appeal shall be in writing and filed with the recorder within 30 days after the civil penalty or damage assessment is served in any manner authorized by law. Upon receipt of an appeal, the city council shall hold a public hearing on the appeal within 45 days unless otherwise agreed by the aggrieved party. At least ten days prior to the hearing, notice of the time, date, and location of the hearing shall be mailed to the aggrieved party at the address provided by the aggrieved party at the time of appeal. The decision of the city council shall be final, and the aggrieved party may appeal therefrom in the manner provided by Tennessee law. If an appeal of a civil penalty or damage assessment is not filed with the city recorder within 30 days as provided herein, the violator shall be deemed to have consented to the civil penalty or damage assessment and it shall become final.

(Ord. No. 08-2, 3-4-08)