

## **ORDINANCE # 2016-313**

### **AN ORDINANCE ESTABLISHING TITLE 18, CHAPTER 2 OF THE WALDEN MUNICIPAL CODE PROVIDING FOR A COMPREHENSIVE SET OF RULES, REGULATIONS, AND REQUIREMENTS WITH RESPECT TO STORMWATER**

**WHEREAS**, a comprehensive set of rules, regulations and requirements with respect to storm water, is necessitated by the effective date of certain Federal legislation; and

**WHEREAS**, the Town is authorized to enter into this Ordinance pursuant to Tennessee Code Annotated § § 5-1-113; 5-1-114; and 12-9-101 *et seq.*; and to provide for interlocal agreements and cooperation; and

**WHEREAS**, the Town is required to conform to the requirements of the Phase II Stormwater Pollution Control Program ("the Program") as promulgated by the United States Environmental Protection Agency ("US EPA") as authorized under the Clean Water Act of 1977 and the Water Quality Act of 1987; and

**WHEREAS**, the participants in this program are the municipalities of Collegedale, East Ridge, Lakesite, Lookout Mountain, Red Bank, Ridgeside, Soddy-Daisy, and Walden, as well as designated unincorporated areas within Hamilton County, and other eligible communities which may join the Hamilton County Water Quality Program (hereinafter called the Program) and enact this Ordinance from time to time.

**WHEREAS**, the expertise in this area is limited, it would be costly for each participant to initiate their own program, and in light of the need for conformity among the various participants to encourage uniform development.

**WHEREAS**, the Parties are co-permittees pursuant to that certain NPDES Permit No. TNS075566 issued by the Tennessee Department of Environment & Conservation (TDEC) on or about April 19, 2011 and set to expire on or about September 1, 2015 or until such time as said department issues new permits.

**THEREFORE, BE IT ORDAINED BY THE TOWN OF WALDEN, TENNESSEE**, as follows:

Section 1: That Title 18, Water and Sewers, be hereby amended to reserve Chapter 1, and to establish a new Chapter 2, Stormwater Pollution Control, which shall be the attached Rules and Regulations, their sections to be enumerated in any subsequent codification of the same in the Municipal Code as Sections 18-601 through 18-614.

Section 2: That this ordinance repeals all prior stormwater regulations, Ordinance # 2003-234, Ordinance # 2013-295, and Ordinance # 2014-297.

Section 3: That this ordinance take effect upon publication, the public welfare requiring it.

## Hamilton County Water Quality Program Rules and Regulations

### SECTION

- 1 – General Provisions
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- 3 – Land Disturbance Permit
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### Section 1. General Provisions.

- (1) Program Area. This Ordinance and Resolution is applicable and uniformly enforceable within the Tennessee municipalities of Collegedale, East Ridge, Lakesite, Lookout Mountain, Red Bank, Ridgeside, Soddy-Daisy, and Walden designated unincorporated areas within Hamilton County, and other eligible communities which may join the Hamilton County Water Quality Program (hereinafter called the Program) and enact this Ordinance and Resolution from time to time. All such participating communities are hereinafter collectively identified as “the parties.”
- (2) Authorization. The Program is authorized under an Interlocal Agreement dated April 16, 2004, adopted by all of the parties pursuant to Tennessee Code Annotated (TCA) §5-1-113 and 12-9-101. Said Interlocal Agreement specifies that the Program shall be enforced by Hamilton County under applicable County Resolution pursuant to TCA §5-1-121 and 123. Applicable terms and provisions of said Interlocal Agreement and the Standard Operating Procedures for the Hamilton County Water Quality Program, adopted by the parties subsequent to the Interlocal Agreement, are hereby incorporated into and made a part of this Resolution by reference and shall be as binding as if reprinted in full herein.
- (3) Purpose. It is the purpose of this Ordinance and Resolution to:
  - (a) Protect, maintain, and enhance the environment of the Program Area and the public health, safety and general welfare of the citizens by controlling discharges of pollutants to the Program’s stormwater system and to maintain and improve the quality of the

receiving waters into which the stormwater outfalls flow including, without limitation, lakes, rivers, streams, pond, wetlands, and groundwater;

- (b) Enable the Program to comply with the National Pollution Discharge Elimination System (NPDES) and applicable Federal regulations as set out in 40 CFR 122.26 regarding stormwater discharges;
  - (c) Allow the Program to exercise the powers granted in TCA 68-221-1105 and all other appropriate statutes with respect to stormwater facilities;
  - (d) Exercise general regulation over the planning, location, construction and operation and maintenance of stormwater facilities in the Program Service Area and/or municipalities whether owned and operated by the Program and/or municipalities or not;
  - (e) Adopt rules and regulations deemed necessary to accomplish the purposes of the Ordinance and Resolution including fees for service and permits;
  - (f) Establish standards to regulate stormwater contaminants as may be necessary to protect water quality;
  - (g) Review and approve plans and plats for stormwater management in proposed subdivisions and residential and commercial development;
  - (h) Issue permits for stormwater discharges and for the construction, alteration, extension and maintenance of stormwater facilities;
  - (i) Suspend or revoke permits when it is determined that the permittee has violated any provision in this Ordinance and Resolution or provision of the permit;
  - (j) Regulate and prohibit discharges into stormwater facilities of sanitary, industrial or commercial sewage or waters that have otherwise been contaminated; and
  - (k) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of stormwater contamination whether public or private.
- (4) Administering entity. The Program shall administer the provisions of this Ordinance and Resolution through its manager under the direction of the Management Committee, composed of representatives of the parties. The operating mechanism for the Program is defined by an Interlocal Agreement among the parties and the Standard Operating Procedures adopted by same. The Management Committee is authorized to enforce this Ordinance and Resolution and to use its judgment in interpreting the various provisions of this Ordinance and Resolution, the Interlocal Agreement, and the Standard Operating Procedures to ensure that the Program's goals are accomplished. If any Management Committee member is concerned about the

appropriateness of any action of the committee, he should report his concerns to the County Attorney, who shall review the situation and issue an opinion within 90 calendar days. Should the County Attorney find that the committee has, in his judgment, acted inappropriately, but a majority of the committee, after due deliberation, disagree with said finding, the committee shall bring the matter before the County Commission for consideration. The determination of the County Commission with regard to the issue shall be final.

- (5) Right of Entry. The Program shall make inspections and investigations, carry on research or take on such other actions as may be necessary to carry out this administration of regulations; enter at all reasonable times upon any property other than dwelling places for the purpose of conducting investigations and studies or enforcing any of the provisions of this Ordinance and Resolution, pursuant to TCA 69-3-107 (5) and (6).
- (6) Jurisdiction. The Program shall administer the provisions of this Ordinance and Resolution on all property inside the municipal boundaries of Collegedale, East Ridge, Lakesite, Lookout Mountain, Red Bank, Ridgeside, Soddy-Daisy, Walden, as well as designated unincorporated areas within Hamilton County, and other eligible communities which may join the Hamilton County Water Quality Program.

**Section 2. Definitions.** For the purpose of this Ordinance and Resolution the definitions set out below shall apply. Additionally, words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The words "shall" or "will" are mandatory and not discretionary. The word "may" is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

- (1) ***As built plans***. Drawings depicting conditions as they were actually constructed.
- (2) ***Administrative or Civil Penalties***. Under the authority provided in *Tennessee Code Annotated* § 68-221-1106, the Program declares that any person violating the provisions of this Ordinance and Resolution may be assessed a civil penalty by the Program of not less than fifty dollars (\$50.00) and not more than five thousand dollars (\$5,000.00) per day for each day of violation. Each day of violation shall constitute a separate violation.
- (3) ***Best Management Practices (BMPs)***. The schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of stormwater runoff. BMPs also include treatment requirements, operating procedures, and practices to control runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- (4) ***BMP Manual***. A book used for technical guidance which includes additional policies, criteria, and information for the proper implementation of the requirements of the Program.

- (5) ***Climax Successional Vegetation.*** The native plant community that would be established on a Site if all successional sequences were completed without interferences by man under the present environmental conditions. Natural disturbances are inherent in its development.
- (6) ***Channel.*** A natural or artificial watercourse with a definite bed and bank that conducts flowing water continuously or periodically.
- (7) ***Co-permittees.*** Operators who by mutual consent request joint and severed responsibility for coverage purpose of the Tennessee NPDES General Permit for Discharges from MS4s.
- (8) ***Common plan of development or sale.*** This term is broadly defined as any announcement or documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, survey markings, etc.) indicating construction activities may occur on a specific plot. A common plan of development or sale identifies a situation in which multiple areas of disturbance are occurring on contiguous areas. This applies because the activities may take place at different times, on different schedules, by different operators.
- (9) ***Construction.*** Any placement, assembly, or installation 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.
- (10) ***Construction Site Operator.*** For the purpose of this Ordinance and Resolution and in the context of stormwater associated with construction activity, means any person associated with a construction project that meets either of the following two criteria:
- (a) This person has operational or design control over construction plans and specifications, including the ability to make modifications to those plans and specifications. This person is typically the owner or developer of the project or a portion of the project, and is considered the primary permittee; or
  - (b) This person has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a SWPPP for the site or other permit conditions. This person is typically a contractor or a commercial builder who is hired by the primary permittee, and is considered a secondary permittee.
- It is anticipated that at different phases of a construction project, different types of parties may satisfy the definition of the "construction site operator."
- (11) ***Contaminant.*** Any physical, chemical, or radiological substance or matter in water.

- (12)**Control Measure.** As used in this Ordinance and Resolution, refers to any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to Waters of the State.
- (13)**Design storm event.** A hypothetical storm event of a given frequency interval and duration used in the analysis and design of a stormwater facility. The estimated design rainfall amounts, for any return period interval (e.g., 2-yr, 5-yr, 25-yr, etc.,) in terms of either 24-hour depths or intensities for any duration, can be found by accessing the following NOAA National Weather Service Atlas 14 data for Tennessee: [http://hdsc.nws.noaa.gov/hdsc/pfds/pfds\\_map\\_cont.html?bkmrk=tn](http://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html?bkmrk=tn). Other data sources may be acceptable with prior written approval by TDEC Water Resources.
- (14)**Development.** The alteration of undeveloped land that disturbs one acre or more, or less than an acre if part of a larger common plan of development, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials.
- (15)**Discharge.** When used without a qualifier, refers to “discharge of a pollutant” as defined at 40 CFR §122.2.
- (16)**Easement.** An acquired privilege or right of use or enjoyment that a person, party, firm, corporation, municipality or other legal entity has in the land of another.
- (17)**Ecological Integrity.** The quality of a natural unmanaged or managed ecosystem in which the natural ecological processes are sustained, with species diversity and ecosystem diversity assured for the future.
- (18)**Enforcement Response Plan (ERP).** A matrix of enforcement actions to be taken for noncompliance incidents. Permittees are required to include in their ordinance, or other regulatory mechanism, penalty provisions to ensure compliance with construction requirements, to require the removal of illicit discharges, and to address noncompliance with post-construction requirements. In complying with these requirements, EPA recommends the use of enforcement responses that vary with the type of permit violation, and escalate if violations are repeated or not corrected.
- (19)**Erosion.** The removal of soil particles by the action of water, wind, ice or other geological agents, whether naturally occurring or acting in conjunction with or promoted by human activities or effects.
- (20)**Erosion Prevention.** Practices implemented to prevent, through shielding, binding, or other mechanism(s), the suspension of soil particles.

- (21)**Erosion Prevention and Sediment Control Plan (EPSC Plan).** A written plan (including drawings or other graphic representations) that is designed to minimize the erosion and sediment runoff at a site during construction.
- (22)**Exceptional Tennessee Waters (ETW).** Surface waters of the State of Tennessee that satisfy the characteristics as listed in Rule 1200-4-3-.06 of the official compilation - rules and regulations of the State of Tennessee. Characteristics include waters within state or national parks, wildlife refuges, wilderness or natural areas; State or Federal Scenic Rivers; Federally designated critical habitat; waters within an areas designated as Lands Unsuitable for Mining; waters with naturally reproducing trout; waters with exceptional biological diversity or; other waters with outstanding ecological or recreational value as determined by the department.
- (23)**Fully Completed Application.** The completed, signed application form accompanied by the appropriate permit fee and the required items indicated on the application form.
- (24)**Green Infrastructure.** The interconnected network of natural areas and other open spaces that conserves natural ecosystem values and functions, sustains clean air and water, and provides environmental and community benefits.
- (25)**Green Infrastructure Practices (GIPs).** Management measures that are designed, built and maintained to infiltrate, evapotranspire, harvest and/or use rainwater though the use of natural hydrologic features.
- (26)**Greenways.** Linear undeveloped areas linking various types of development by such facilities as bicycle paths, footpaths, and bridle paths. Greenways are usually kept in their natural state except for the pathway and areas immediately adjacent to the pathway.
- (27)**Green Right-of-Way.** The property that has been designed for use by a City or the County in support of greenway activities. This may include, but does not require, the use of trails or walkways to provide access to the general public. A greenway that is not defined with a right-of-way may have restricted access.
- (28)**Hotspot.** An area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater. Examples might include operations producing concrete or asphalt, auto repair shops, auto supply shops, large commercial parking areas and restaurants.
- (29)**Illicit Connections.** Illegal and/or unauthorized connections to the Municipal Separate Storm Sewer System (MS4) whether or not such connection result in discharges into that system.
- (30)**Illicit Discharge.** Defined at 40 CFR §122.26(b)(2) and refers to any discharge to a Municipal Separate Storm Sewer System (MS4) that is not entirely composed of stormwater, except

discharges authorized under an NPDES permit (other than the NPDES permit for discharges from the MS4) and discharges resulting from firefighting activities.

(31)**Impaired Waters.** Any segment of surface waters that has been identified by the Tennessee Department of Environment and Conservation (TDEC) as failing to support classified uses. The TDEC periodically compiles a list of such waters known as the "303(d) List".

(32)**Impervious Surface.** A term applied to any ground or structural surface that water cannot penetrate or through which water penetrates with great difficulty.

(33)**Inspection and Maintenance Agreement (I&M Agreement).** A legally recorded document which acts as a property deed restriction and which provides for long-term maintenance of stormwater management practices.

(34)**Inspector.** An inspector is a person that has successfully completed (has a valid certification from) the "Fundamentals of Erosion Prevention and Sediment Control Level I" course or equivalent course. An inspector performs and documents the required inspections, paying particular attention to time-sensitive permit requirements such as stabilization and maintenance activities. An inspector may also have the following responsibilities:

- (a) Oversee the requirements of other construction-related permits, such as Aquatic Resources Alteration Permit (ARAP) or Corps of Engineers permit for construction activities in or around Waters of the State;

- (b) Update field SWPPPs;

- (c) Conduction pre-construction inspection to verify that undisturbed areas have been properly marked and initial measures have been installed; and

- (d) Inform the permit holder of activities that may be necessary to gain or remain in compliance with the Construction General Permit (CGP) and other environmental permits.

(35)**Invasive Exotic Plants.** Plants that have been introduced from other regions and compete so successfully against native plants that they can crowd out their competitors, thus providing a monoculture that discourages the growth of native plant species.

(36)**Land Disturbance Activity.** Any activity on property that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land-disturbing activities include, but are not limited to, development, re-development, demolition, construction, reconstruction, clearing, grading, filling, and excavation.



(37)**Management Committee.** A group of people composed of one representative of the County and one representative of each of the municipalities participating in the Program.

(38)**Maintenance.** Any activity that is necessary to keep a stormwater facility in good working order so as to function as designed. Maintenance shall include complete reconstruction of a stormwater facility if reconstruction is needed in order to restore the facility to its original operational design parameters. Maintenance shall also include the correction of any problem on the site property that may directly impair the function of the stormwater facility.

(39)**Municipal Separate Storm Sewer System (MS4).** Defined at 40 CFR §122.26(b) (8) and means the conveyances or system of conveyances for the collection and transportation of stormwater, including the roads and streets and their drainage systems, catch basins, curbs, gutters, ditches, man-made channels, or storm drains that are:

- (a) Owned or operated by State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over 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 CWA that discharges to Waters of the State;

- (b) Designed or used for collecting or conveying stormwater;

- (c) Which is not a combined sewer; and

- (d) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR §122.2.

(40)**Municipality.** As used herein refers to Hamilton County, Tennessee, a county and political subdivision of the State of Tennessee; the Cities of Collegedale, East Ridge, Lakesite, Red Bank, Ridgeside, Soddy-Daisy, Tennessee, and the Towns of Lookout Mountain and Walden, Tennessee, all of which are chartered municipalities of the State of Tennessee; and/or any other participating governmental entity which may join the Program in the future.

(41)**National Pollutant Discharge Elimination System or (NPDES) permit.** The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the federal CWA. The term includes an "approved program."

(42)**Native Vegetation.** The normal vegetation that grows or would reestablish normally after a disturbance. This does not include Invasive Exotic Plants.

(43)**Notice of Intent (NOI).** The mechanism used to “register” for coverage under a general permit from the Tennessee Department of Environment and Conservation (TDEC).

(44)**Organization.** A corporation, government, government subdivision or agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(45)**Person or Owner.** Any individual, firm or association and any public or private corporation or entity organized or existing under the laws of this or any other state, and includes the plural i.e. “owner” and “owners” are interchangeable.

(46)**Program.** Refers the department created by Hamilton County and the Management Committee to administer the provisions of this Ordinance and Resolution and to manage the quality of stormwater discharged in or from the Program Area’s municipal separate storm sewer system (MS4).

(47)**Program Cost.** Refers to any monetary cost incurred by the Program in order to fulfill the responsibilities and duties assigned to the Program under this Ordinance and Resolution. Program costs specifically include costs incurred by any participating municipality for actions performed on behalf of or at the request of the Program.

(48)**Program Manager.** The person designated by Hamilton County and the Management Committee to lead the Program.

(49)**Program Service Area.** The entire physical area within the corporate limits of each participating municipality together with the urbanized unincorporated area of the County.

(50)**Program Staff.** The group of people hired to assist the Program Manager in carrying out the duties of the Program.

(51)**Redevelopment.** The alteration of developed land that disturbs one acre or more, or less than an acre if part of a larger common plan of development, and increases the site or building impervious footprint, or offers a new opportunity for stormwater controls. The term is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse stormwater quality impacts.

(52)**Responsible Party.** Owners and/or occupants of property within the Program Area who are subject to penalty in case of default.

(53)**Riparian Buffer.** For the purpose of this Ordinance and Resolution, is an undisturbed area, measured from Top of Bank of the Water Resource, which consists of a Riparian Zone comprised

of Native Vegetation, original or reestablished, bordering Streams, seeps, springs, Wetlands, lakes or other Water Resources.

(54)**Riparian Zone.** The area adjacent to a Water Resource with a differing density, diversity, and productivity of plant and animal species relative to nearby uplands. This area provides a transition from an aquatic ecosystem to a terrestrial ecosystem.

(55)**Runoff.** The portion of the precipitation on a drainage area that is discharged from the area into separate storm sewer system. Also see stormwater runoff.

(56)**Sediment.** Solid material, both mineral and organic, that is in suspension, is being transported or has been moved from its site of origin by air, water, gravity or ice and has come to rest on the earth's surface either above or below sea level.

(57)**Sediment Control.** Practices implemented to manage through filtering, settling or other mechanism(s) to remove suspended particles (soil, organic or mineral) from water.

(58)**Sedimentation.** Soil particles suspended in stormwater that can settle in stream beds and disrupt the natural flow of the stream.

(59)**Soil reports.** A study of soils on a subject property with the primary purpose of characterizing and describing the soils. The soils report shall be prepared by a qualified soil engineer who shall be directly involved in the soil characterization either by performing the investigation or by directly supervising employees.

(60)**Stabilization.** Providing adequate measures, vegetative or structural, that will prevent erosion from occurring.

(61)**Steep Slope.** A natural or created slope of 35% grade or greater. Designers of sites with steep slopes must pay attention to stormwater management in the SWPPP to engineer runoff non-erosively around or over a steep slope. In addition, site managers should focus on erosion prevention on the slope(s) and stabilize the slope(s) as soon as practicable to prevent slope failure and/ or sediment discharges from the project.

(62)**Stormwater.** Stormwater runoff, snow melt runoff, and surface runoff and discharge resulting from precipitation.

(63)**Stormwater Manager.** See Program Manager.

(64)**Stormwater Management.** The programs to maintain quality and quantity of stormwater runoff to pre-development levels.

(65)**Stormwater Management Plan.** The set of drawings and other documents that comprise all the information and specifications for the programs, drainage systems, structures, BMPs, concepts and techniques intended to maintain or restore quality and quantity of stormwater runoff to pre-development levels.

(66)**Stormwater Pollution Prevention Plan (SWPPP).** A written plan that includes site map(s), an identification of construction/contractor activities that could cause pollutants in the stormwater, and a description of measures or practices to control these pollutants. It must be prepared and approved before construction begins. In order to effectively reduce erosion and sedimentation impacts, Best Management Practices (BMPs) must be designed, installed, and maintained during land disturbing activities. The SWPPP shall be prepared in accordance with the Tennessee Erosion and Sediment Control Handbook or local BMP Manual, whichever is more stringent and protective of waters of the state. The handbook is designed to provide information to planners, developers, engineers, and contractors on the proper selection, installation, and maintenance of BMPs. The handbook is intended for use during the design and construction of projects that require erosion and sediment controls to protect waters of the state. It also aids in the development of SWPPPs and other reports, plans, or specifications required when participating in Tennessee's water quality regulations.

(67)**Stormwater Runoff.** The flow on the surface of the ground resulting from precipitation.

(68)**Stream.** Surface water that is not a Wet weather conveyance

(69)**Structural BMPs.** The devices that are constructed to provide control of stormwater runoff.

(70)**Surface water.** Water upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other water courses, lakes and reservoir;

(71)**TDEC.** Tennessee Department of Environment and Conservation is the state agency having water pollution control oversight.

(72)**Top of Bank.** The ordinary high water level and break in slope for a Water Resource.

(73)**Tributary Area.** The area upstream of a specified point including all overland flow that directly or indirectly connects down-slope to the specified point.

(74)**Water Resources.** For the purpose of this Ordinance and Resolution, means Streams, seeps, springs, Wetlands, lakes or other surface Waters of the State that are not Wet weather conveyances, as determined by the Program Manager.

(75)**Water Quality Buffer** see Riparian Buffer

(76)**Watercourse.** A man-made or natural hydrologic feature with a defined linear channel which discretely conveys flowing water, as opposed to sheet-flow.

(77)**Waters of the State (or waters).** 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.

(78)**Watershed.** All the topographically defined land area that contributes runoff to a particular point along a waterway.

(79)**Wet weather conveyance.** Man-made or natural watercourses, including natural watercourses that have been modified by channelization:

- (a) That flow only in direct response to precipitation runoff in their immediate locality;
- (b) Whose channels are at all times above the ground water table;
- (c) That are not suitable for drinking water supplies; and
- (d) In which hydrological and biological analyses indicate that, under normal weather conditions, due to naturally occurring ephemeral or low flow there is not sufficient water to support fish, or multiple populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two months.

(80)**Wetlands.** Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted to life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs and similar areas.

### **Section 3. Land Disturbance Permit**

(1) Land disturbance activities. Every person or entity shall obtain a Land Disturbance Permit from the Program in the following cases:

- (a) Land disturbing activity, including New Development and Redevelopment that disturbs one (1) or more acres of land;
- (b) Land disturbing activity that disturbs less than one (1) acre of land if such activity is part of a larger common plan of development that affects one or more acres of land as determined by the Program Manager.

(c) Land disturbing activity that disturbs less than one (1) acre of land if:

- (i) The Program has determined that the stormwater discharge from a site or activity is causing, contributing to, or is likely to contribute to a violation of a state water quality standard;
- (ii) The Program has determined that the stormwater discharge is, or likely to be a significant contributor of pollutants to Waters of the State; ,
- (iii) Changes in state or federal rules require sites of less than one acre that are not part of a larger common plan of development or sale to obtain a stormwater permit;
- (iv) Any new development or redevelopment, regardless of size, that is determined by the Program to be a significant Hotspot land use; or
- (v) Minimum applicability criteria set forth in item A above if such activities are part of a larger common plan of development, even multiple, that is part of a separate and distinct land development activity that may take place at different times on different schedules.

(2) Exemption. The following activities are exempt from the permit requirement:

- (a) Any emergency activities that are immediately necessary for the protection of life, property or natural resources;
- (b) Agricultural land management activities;
- (c) Additions or modifications to existing family residential structures that disturb less than one (1) acre.

The owner or developer whose land disturbing activity has been exempted from requirements for registration shall nevertheless be responsible for otherwise conducting such activity in accordance with the provisions of this Ordinance and Resolution and other applicable laws including responsibility for controlling erosion and sedimentation. Where individual lots or sections in a subdivision are being developed by different property owners, all earth disturbing activities related to the subdivision shall be covered by the approved stormwater pollution prevention plan (SWPPP); such developments are subject to the terms of the requirements therein, including but not limited to: gravel construction entrance/exits, necessary erosion controls, concrete washout restrictions, etc.

(3) Land disturbance permits. Each application shall include the following:

- (a) Name, address and telephone number of owner or developer of land;
- (b) Address and legal description of subject property including the tax map and parcel number;
- (c) Name, address and telephone number of the contractor and any subcontractor(s) who will perform the land disturbing activity and who will implement the erosion and sediment control plan;
- (d) A statement describing the land disturbance activity, including the size of the area for which the permit is applicable, and a schedule for the starting and estimated completion dates of the land disturbing activity;
- (e) Each application shall be accompanied by:
  - (i) A Sediment and Erosion Control Plan to address Construction Site Runoff Control, as described in Section 4.
  - (ii) A Post Construction Stormwater System Design and Maintenance Plan to address Permanent Stormwater Management in New Development and Redevelopment as described in Section 4.
- (f) Each application for a land disturbance permit shall be accompanied by payment of Land Disturbance Permit fee and any other necessary Stormwater Management fees as established by the Program under the provisions of the Standard Operating Procedures.
- (g) Where applicable, an application shall be accompanied by a Hydrologic Determination performed by a Qualified Hydrologic Professional (QHP) for review by the Program Manager.

(4) Review and approval of application.

- (a) The Program shall review each application for a Land Disturbance Permit to determine its conformance with the provisions of this Ordinance and Resolution. Within thirty (30) days after receiving the application the Program shall provide one of the following responses in writing to the applicant:
  - (i) Approval of permit application;

(ii) Approval of permit application, subject to reasonable conditions as may be necessary substantially to secure the objectives of this Ordinance and Resolution and other applicable regulations, and issue the permit subject to these conditions; or

(iii) Denial of the permit application indicating the reason(s) for the denial.

(b) The Program shall not consider stormwater pollution prevention plan (SWPPP) "approved" without the inclusion of an approval stamp accompanied by a signature and date on the plans. The stamp of approval on the plans is solely an acknowledgement of satisfactory compliance with the requirements of these regulations. The approval stamp does not constitute a representation or warranty to the applicant or any other person(s) concerning the safety, appropriateness or effectiveness of any provision or omission from the stormwater pollution prevention plan (SWPPP).

(c) No site plan, planned unit development plan, nor subdivision plat shall be considered as having received final approval from the appropriate planning office until such time as all conditions have been met to allow the issuance of a Land Disturbance Permit under the provisions of this Ordinance and Resolution.

(d) A Land Disturbance Permit shall expire and become null and void if substantial work authorized by such permit has not commenced within (1) calendar year of issuance.

(e) A Land Disturbance Permit shall expire twelve (12) months after its issuance. If work is to continue after the expiration of the permit, the permit holder shall submit a written request for renewal of the permit to the Program Manager. If work is complete at the time of permit expiration, the permit holder shall submit a Request for Termination to the program as outlined below.

(f) Pre-Submittal and Pre-Construction meetings shall be held for all Development activities receiving Land Disturbance permits.

(5) Transfer of ownership.

(a) Some construction projects, such as residential or commercial subdivisions and/ or developments or industrial parks are subdivided. Subdivided lots are sometimes sold to new owners prior to completion of construction. The site wide developer/ owner must describe erosion control and sediment prevention measures implemented at those lots. Once the property is sold, the new operator must obtain coverage under this permit by submitting a Transfer of Ownership Form to the Program.

(b) If the transfer of ownership is due to foreclosure or a permittee filing for bankruptcy proceedings, the new owner (including but not limited to a lending institution) must



obtain permit coverage if the property is inactive, but is not stabilized sufficiently. If the property is sufficiently stabilized permit coverage may not be necessary, unless and until construction activity at the site resumes.

(6) Renewal of a permit.

- (a) The applicant is solely responsible for submitting a written request for renewal to the Program Manager, if work is to continue after the expiration of the permit.
- (b) Renewal of the permit shall require payment of an additional land disturbance permit fee.

(7) Amendment of a permit.

- (a) A land disturbing permit may be amended when significant changes from the initial permit occurs as follows:
  - (i) Project changes resulting in an increased or decreased amount of disturbed land from what was indicated in the original permit application; or
  - (ii) Changes resulting in different permanent runoff characteristics from those that were permitted in the initial permit.
- (b) Amendments to a permit shall be submitted in writing to the Program Manager, and shall include documentation of the changes requiring the amendment. Such documentation may include, but is not limited to, site drawings, amended SWPPP, hydrology reports and permanent stormwater management plans.
- (c) Additional fees may be required for an amended permit.

(8) Notice of Termination.

- (a) Land disturbance permits shall remain in effect as stated in this Ordinance and Resolution until a Request for Termination (RFT) is submitted to the Program and the request is processed and approved by the Program. The RFT applies only to the construction component of the permit. The permanent stormwater management component(s) (Inspection and Maintenance Agreement and related documentation) of the permit shall have no expiration.
- (b) Supporting documents required for the submittal of the Request for Termination shall be outlined on the Request for Termination form and provided to the applicant at permit issuance.

- (c) Failure to submit the RFT and supporting documentation and receive approval of Termination of a permit may result in the Program Manager's request to withhold the issuance of a Certificate of Occupancy or approval of a final plat.
  - (d) Permit holders shall be notified in writing when their permit has been terminated. Termination of the land disturbance component of the permit does not relieve responsibility for proper operation and maintenance of the permanent stormwater management devices and facilities as described in the Inspection and Maintenance Agreement.
- (9) Disclaimer of liability. The submission of a plan under the provisions herein, the compliance with the provisions of these regulations, and/ or the satisfaction of any requirements or any approvals of the Program shall not relieve any person from responsibility for damages to any person or property otherwise imposed by law; nor shall the foregoing impose any liability upon Hamilton County, its officials, its representatives, and/ or agents for damages to any person or property.

(10) Inspections.

- (a) The permit holder shall perform inspections of erosion and sediment control practices on construction sites as indicated by the current NPDES Permit twice weekly and at least 72 hours apart. Based on the results of the inspection(s), any inadequate control measures or control in disrepair shall be replaced, modified or repaired as necessary. Inspections shall be documented;
- (b) Quality assurance site assessments of erosion prevention and sediment controls shall be done by performing site assessment at a construction site. The site assessment shall be conducted at each outfall involving drainage totaling 10 acres or more (of disturbed and undisturbed acreage combined) or 5 or more acres if draining to impaired or exceptional quality waters, within 1 month of construction commencing. The site assessment shall be performed by individuals with the following qualifications:
  - (i) A licensed professional engineer or landscape architect;
  - (ii) A Certified Professional in Erosion and Sediment Control (CPESC); or
  - (iii) A person that has successfully completed the "Level II Design Principles for Erosion Prevention and Sediment Control for Construction Sites" course.

At a minimum, a site assessment should be performed to verify the installation, functionality and performance of the erosion prevention and sediment control

measures described in the SWPPP. The site assessment findings shall be documented and the documentation kept with the SWPPP on site. The site assessment should be performed with the site inspector who conducts the twice weekly inspections, and should include a review and update (if applicable) of the SWPPP. Modifications of plans and specifications for any building or structure, including the design of sediment basin or other sediment controls involving structural, hydraulic, hydrologic or other engineering calculations shall be performed by a licensed engineer or landscape architect and stamped and certified in accordance with state law.

The site assessment can take the place of one of the twice weekly inspections.

- (c) The Program shall perform inspections on priority construction sites and other construction sites as warranted by site location and complaints. If the Program determines that the permit holder has failed to properly install, maintain, or use proper structural or vegetative erosion and sediment control practices as specified in the erosion and sediment control plan and the post construction design and maintenance plan, the permit holder may be subject to a stop work order or additional penalties as set forth in Enforcement Response Plan.
- (d) The Program may require an inspection by an engineer licensed in the State of Tennessee for any erosion and sediment control measure or post construction stormwater management facility to ensure they meet the design standards as described in the Construction Site and Post Construction Site plans.
- (e) If the Program determines that significant erosion or sedimentation is occurring on a graded site despite approved structural or vegetative erosion and sediment control practices, the Program shall require the permit holder to take additional corrective action to protect the adversely affected area. The additional corrective action required shall be part of an amended erosion and sediment control plan.
- (f) Inspections and maintenance for post construction stormwater facilities shall be performed as required in Section 5 for post construction design and maintenance.

#### **Section 4. Stormwater System Design: Construction and Permanent Stormwater Management**

This section shall be applicable to all Land Development, including new Development and Redevelopment, subject to a Land Development Permit as described in Section 3.

- (1) MS4 Stormwater design or BMP manuals.

- (a) Adoption. The Program adopts as its MS4 stormwater design and best management practices (BMP) manuals for stormwater management, construction and permanent,

- (i) Clearing and grubbing plan;
  - (ii) Interim grading plan; and
  - (iii) Final grading plan.
- (n) Specific remediation measures to prevent erosion and sedimentation run-off. Plans shall include detailed drawings of all control measures used; stabilization measures including vegetation and non-vegetation measures, both temporary and permanent, will be detailed. Detailed construction notes and a maintenance schedule shall be included for all control measures in the plan.
- (o) Specific details for the construction of stabilized construction entrance/exits, concrete washouts, and sediment basins for controlling erosion; road access points; eliminating or keeping soil, sediment, and debris on streets and public ways at a level acceptable to the Program. Soil, sediment, and debris brought onto streets and public ways must be removed by the end of the work day to the satisfaction of the Program. Failure to remove the sediment, soil or debris shall be deemed a violation of this Ordinance and Resolution.
- (p) Proposed structures: location and identification of any proposed additional buildings, structures or development on the site.
- (q) A description of on-site measures to be taken to recharge surface water into the ground water system through runoff reduction practices.
- (r) Specific details for construction waste management. Construction site operators shall control waste such as discarded building materials, concrete truck washout, petroleum products and petroleum related products, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality. When the material is erodible, such as soil, the site must be treated as a construction site.
- (s) Other Items Needing Control
  - (i) No solid materials, including building materials, shall be placed in waters of the state, except as authorized by a section 404 permit and/ or ARAP permit.
  - (ii) For installation of any waste disposal systems on site, or sanitary sewer or septic system, the SWPPP shall identify these systems and provide for the necessary erosion prevention and sediment controls. Permittees must also comply with applicable state and/ or local waste disposal, sanitary sewer or septic system

- (vi) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible; and
  - (vii) Minimize soil compaction and, unless infeasible, preserve topsoil.
- (b) Temporary measures may be removed at the beginning of the day but must be replaced at the end of the work day.
  - (c) Construction shall be sequenced and phased on all projects regardless of size as a major practice to minimize exposure of bare soil and limit sediment discharges. Construction shall be phased to keep the total disturbed area less than 50 acres at any one time.
  - (d) Pre-construction vegetative ground cover shall not be disturbed more than fifteen (15) days prior to grading or earth moving unless the area is seeded or mulched or other temporary cover is installed. Erosion prevention and sediment control measures must be in place and functional before earth moving activities begin, and must be constructed and maintained throughout the construction period.
  - (e) For common drainage locations that serve ten (10) or more acres disturbed at one time, a temporary or permanent sediment basin must be installed, or 5 or more acres if draining to impaired or exceptional quality waters.
  - (f) Soil stabilization measures shall be initiated within fifteen (15) days on a portion where construction activity has temporarily or permanently ceased. Where precluded by snow cover or frozen ground conditions stabilization measures shall be initiated as soon as possible. Stabilization measures do not have to be initiated where disturbing activities will resume within fifteen (15) days.
  - (g) Temporary or permanent soil stabilization shall be accomplished within fifteen (15) days after final grading or other earth work. For steep slopes, temporary stabilization must begin no later than seven (7) days after construction activity on the slope has temporarily or permanently ceased.
  - (h) Public roads should be thoroughly cleaned of any sediment transported off the site by the end of each day or more often if deemed necessary.
  - (i) Operators of construction sites must control waste such as litter, construction debris, chemicals, concrete truck washout and sanitary waste from being a source of stormwater pollution. After use, silt fences should be removed and disturbed areas stabilized.

(4) Permanent (Post Construction) Stormwater System Design and Management Plan Requirements. The stormwater management plan shall include sufficient information to allow the Program to evaluate the environmental characteristics of the project site, the potential impacts of all proposed development of the site, both present and future, on the water resources, and the effectiveness and acceptability of the measures proposed for managing stormwater generated at the project site. To accomplish this goal the stormwater management plan shall include the following:

(a) Topographic base map: Topographic base map of the site which extends a minimum of 100 feet beyond the limits of the proposed development and indicates:

- (i) Existing surface water drainage including streams, ponds, culverts, ditches, sink holes, wetlands; and the type, size, elevation, etc., of nearest upstream and downstream drainage structures;
- (ii) Current land use including all existing structures, locations of utilities, roads, and easements;
- (iii) All other existing significant natural and artificial features; and
- (iv) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses; drainage patterns; locations of utilities, roads and easements; the limits of clearing and grading.

(b) Proposed structural and non-structural BMPs.

(c) A written description of the site plan and justification of proposed changes in natural conditions may also be required.

(d) Calculations: Hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storms specified in the BMP manual. These calculations must show that the proposed stormwater management measures are capable of controlling runoff from the site in compliance with this Ordinance and Resolution and the guidelines of the BMP manual. Such calculations shall include:

- (i) A description of the design storm frequency, duration, and intensity where applicable;
- (ii) Time of concentration;
- (iii) Soil curve numbers or runoff coefficients including assumed soil moisture conditions;

- (iv) Peak runoff rates and total runoff volumes for each watershed area;
  - (v) Infiltration rates, where applicable;
  - (vi) Culvert, stormwater sewer, ditch and/or other stormwater conveyance capacities;
  - (vii) Flow velocities;
  - (viii) Data on the increase in rate and volume of runoff for the design storms referenced in the BMP manual; and
  - (ix) Documentation of sources for all computation methods and field test results.
- (e) Soils information: If a stormwater management control measure depends on the hydrologic properties of soils (e.g., infiltration basins), then a soils report shall be submitted. The soils report shall be based on on-site boring logs or soil pit profiles and soil survey reports. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soil types present at the location of the control measure.
- (5) General Performance Criteria for Permanent Stormwater Controls. The following performance criteria shall be addressed for permanent stormwater management at all development, including new development and redevelopment, sites:
- (a) Runoff Reduction Requirements. All new Development and Redevelopment shall utilize site design standards that reduce stormwater runoff volume through the use of Green Infrastructure Practices which are designed to infiltrate, evapotranspire, and/or reuse rainwater. The Green Infrastructure Practices shall be designed to reduce the volume of stormwater runoff using the Runoff Reduction Method (RRM) as defined in the BMP Manual.
  - (b) The Program Manager may approve alternative practices in lieu of runoff reduction/Green Infrastructure when site limitations exist. Criteria to determine the circumstances under which alternatives are available shall not be based solely on the difficulty or cost of implementing practices. The determination shall be based on one or more of the following site limitations:
    - (i) Where the potential for introducing Pollutants into groundwater exists, unless pretreatment is provided;

- (ii) Where pre-existing soil contamination is present in areas subject to having contact with infiltrated runoff;
  - (iii) Where sinkholes or other karst features are present on the Site as determined in a geotechnical report stamped by a Professional Engineer or Professional Geologist registered in Tennessee;
  - (iv) Where steep slopes are present and slope failure may occur as determined in a geotechnical report stamped by a Professional Engineer registered in Tennessee;
  - (v) Other unique site specific circumstances as approved by the Program Manager.
- (c) Pollutant Removal Requirements. New Development and Redevelopment will be required to minimize impact to stormwater quality by applying structural and/or nonstructural management practices selected to address site-specific conditions. New Development and Redevelopment that cannot meet one hundred percent (100%) of the RRM must implement pollutant removal BMPs that are designed and constructed in accordance with the site design standards, criteria, and specifications for pollutant removal BMPs that are provided in the BMP Manual. The water quality treatment for the runoff resulting from a rainfall depth of one (1) inch shall be a minimum of eighty (80%) total suspended solids (TSS) removal through appropriate use of BMP controls as detailed in the BMP Manual.
- (d) To protect stream channels from degradation, specific channel protection criteria shall be provided as prescribed in the MS4 BMP manual.
- (e) Stormwater discharges to critical areas with sensitive resources (i.e., cold water fisheries, shellfish beds, swimming beaches, recharge areas, water supply reservoirs) may be subject to additional performance criteria, or may need to utilize or restrict certain stormwater management practices.
- (f) Stormwater discharges from hot spots may require the application of specific structural BMPs and pollution prevention practices.
- (g) Prior to or during the site design process, applicants for land disturbance permits shall consult with the Program to determine if they are subject to additional stormwater design requirements.
- (h) Methods and calculations for determining peak flows as found in the BMP manual shall be used for sizing all stormwater facilities.



## **Section 5. Permanent Stormwater Management Operation, Maintenance and Inspection**

(1) As-built plans. All applicants are required to submit as-built drawings that are substantially in conformance with applicable State rules and policies adopted by the Tennessee Board of Architectural and Engineering Examiners. A final inspection by the Program is required before any performance security or performance bond will be released. The Program shall have the discretion to adopt provisions for a partial pro-rate release of the performance security or performance bond on the completion of various stages of development. In addition, occupation permits shall not be granted until corrections to all BMPs have been made and accepted by the Program.

(2) Landscaping and Stabilization Requirements.

(a) 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. Unpacked gravel containing fines (silt and clay sized particles) or crusher runs will not be considered a non-eroding surface.

(b) The following criteria shall apply to revegetation efforts:

- (i) Reseeding must be done with an annual or perennial cover crop accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until such time as the cover crop is established over ninety percent (90%) of the seeded area.
- (ii) Replanting with native woody and herbaceous vegetation must be accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until the plantings are established and are capable of controlling erosion.
- (iii) Any area of revegetation must exhibit survival of a minimum of seventy-five percent (75%) of the cover crop throughout the year immediately following revegetation. Revegetation must be repeated in successive years until the minimum seventy-five percent (75%) survival for one (1) year is achieved.
- (iv) In addition to the above requirements, a landscaping plan must be submitted with the final design describing the vegetative stabilization and management techniques to be used at a site after construction is completed. This plan will explain not only how the site will be stabilized after construction, but who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved.

- (3) Inspection and Maintenance Plan. The design and planning of all stormwater management facilities shall include detailed inspection and maintenance procedures to ensure their continued performance. These plans will identify the parts or components of a stormwater management facility that need to be maintained and the equipment and skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for permanent elevation benchmark shall be identified in the plans to assist in the periodic inspection of the facility.
- (4) Maintenance Easements. The applicant must ensure access to the site for the purpose of inspection and repair by securing all the accessible maintenance easements needed. These easements must be binding on the current property owners and all subsequent owners of the property and must be properly recorded in the Register of Deeds Office.
- (5) Inspection and Maintenance Agreement. The owner of property to be served by an on-site stormwater management facility must execute an inspection and maintenance agreement that shall operate as a deed restriction or otherwise be binding on the current property owner and all subsequent property owners. The maintenance agreement shall:
- (a) Assign responsibility for the maintenance and repair of the stormwater facility to the property owners upon which the facility is located and be recorded as such on the plat for the property by appropriate notation;
  - (b) Provide for a periodic inspection by the property owner for the purpose of documenting maintenance and repair needs and ensure compliance with the purpose and requirements of this Ordinance and Resolution. Permission shall be granted to the staff of the Program to enter the property at reasonable times to inspect the stormwater facility to ensure that it is being properly maintained;
  - (c) Provide that the minimum maintenance and repair needs to include, but are not limited to the removal of silt, litter and other debris, the cutting of grass, and vegetation removal and the replacement of landscape vegetation in detention and retention basins and inlets and drainage pipes and any other stormwater facilities. It shall also provide that the property owner shall be responsible for additional maintenance and repair needs consistent with the needs and standards outlined in the BMP manual;
  - (d) Provide that maintenance needs must be addressed in a timely manner on a schedule to be determined by the Program;
  - (e) Provide that if the property is not maintained or repaired within the prescribed schedule, the Program shall perform the maintenance and repair at its expense, and bill the owner three times the Program's cost to the property owner. The maintenance

agreement shall also provide that the Program's cost of performing the maintenance shall be a lien against the property.

(6) Inspection of stormwater facilities.

(a) Periodic inspections of facilities shall be performed by the Program.

(b) In order to ensure that all Post Construction (Permanent) stormwater BMPs are operating correctly and being properly maintained, the Program shall, at a minimum, require owners or operators of stormwater management facilities to:

(i) Perform routine inspections to ensure that the BMPs are properly functioning. These inspections shall be conducted on an annual basis, at a minimum. These inspections shall be conducted by a person familiar with control measures implemented at a site. Owners or operators shall maintain documentation of these inspections.

(ii) Perform comprehensive inspections of all stormwater management facilities and practices. These inspections shall be conducted once every five (5) years, at a minimum. Such inspections must be conducted by either a professional engineer or landscape architect. Complete inspection reports for these five year inspections shall include:

1. Facility type;
2. Inspection date;
3. Latitude and longitude and nearest street address;
4. BMP owner information (e.g. name, address, phone number, fax, and email);
5. A description of BMP conditions including: vegetation and soils, inlet and outlet channels and structures, embankments, slopes, safety benches, spillways, weirs, and other structures as well as any sediment and debris accumulation;
6. Photographic documentation of BMPs;
7. Specific maintenance items or violations that need to be corrected by the BMP owner along with deadlines and re-inspection dates.

Owners or operators shall maintain documentation of these inspections. The Program may require submittal of this documentation.

- (7) Records of installation and maintenance facilities. Parties responsible for the operation and maintenance of a stormwater management facility shall make records of the installation of the stormwater facility and of all maintenance and repairs to the facility and shall retain the records for at least five (5) years. These records shall be made available to the Program during inspection of the facility and at other reasonable times upon request.
- (8) Failure to meet maintenance design or maintenance standards. Upon the failure of the party responsible for maintenance to meet or maintain design or maintenance standards, the Program shall notify in writing the party responsible for the stormwater facility. Upon receipt of such notice, the responsible person shall cause the failure to be corrected within the time set out by the Program in the written notice. In the event correction is not successfully made within that time, among its other sanctions the Program may cause the corrections to be made. In such event the person responsible for the stormwater facility shall reimburse Hamilton County or the Program for the expense, which expense shall be a lien against the subject real property until paid in full.

#### **Section 6. Riparian Buffer Requirements.**

A Riparian Buffer shall be applied to all Water Resources located in, or adjacent to, New Construction, Development, or Redevelopment. The following performance criteria shall apply:

- (1) Riparian Buffers shall be maintained on all properties in a manner that allows for growth of Climax Successional Vegetation, and shall consist of undisturbed vegetation, preferably Native Vegetation, along both sides of a Water Resource measured linearly perpendicular from Top of Bank.
- (2) Riparian Buffer Width Requirements shall be established according to the size of the drainage area of the Water Resource and shall be applied according to the following criteria:
  - (a) Water Resources not listed as Impaired or Exceptional Tennessee Waters with drainage areas less than one (1) square mile shall have a buffer width of thirty (30) feet minimum.
  - (b) Water Resources with drainage areas equal to or greater than one (1) square mile and/or are listed as Impaired or Exceptional Tennessee Waters shall have a buffer width of sixty (60) feet minimum.
  - (c) Every attempt shall be made for construction, New Development and Redevelopment activities not to take place within the buffer. If existing land use, physical conditions or type of project preclude the use of these practices, the sixty (60) feet Riparian Buffer width may be averaged in conjunction with targeted restoration plans that make

comparable improvements to both the Ecological Integrity within the Riparian Buffer and water quality of the Water Resource. Restoration Plans may include stream bank restoration, revegetation, habitat improvements, or other bioengineering methods as approved by the Program Manager. Reduction of the Riparian Buffer width may apply to specific areas of an overall Development, and shall be approved on a case-by-case basis. In no case shall the minimum Riparian Buffer width be less than 30 feet on both sides of the Water Resource measured from Top of Bank. A determination that standards cannot be met shall not be based solely on difficulty or cost associated with implementation.

- (d) Final determination shall be made by the Program Manager regarding Riparian Buffer delineation, Top of Bank, areas where the Riparian Buffer shall apply and Riparian Buffer width requirements.

(3) The following uses may be allowed within the Riparian Buffer:

- (a) Utility Crossings and Driveway or Road Crossings.
- (b) Passive Recreation, biking or hiking paths and Greenways. View Corridors shall be allowed along Greenways as approved by the Program Manager. Paths and Greenways shall be designed to prevent the channelization of Stormwater runoff, and should be constructed of pervious and/or permeable materials.
- (c) Stormwater Channels necessary to create positive drainage for a site, and changes to existing stormwater channels.
- (d) Stabilization practices to prevent channelization and Erosion in the Riparian Buffer from Stormwater runoff adjacent to the Water Resource.
- (e) Landscaping to allow for Climax Successional Vegetation through the removal of Invasive Exotic Plants and the establishment of Native Vegetation, and/or other practices that restore the Ecological Integrity of the Riparian Buffer.
- (f) Removal of individual trees within the Riparian Buffer which are in danger of falling, causing damage to dwellings or other structures, or causing blockage of the Water Resource.

- (4) Riparian Buffer areas shall be protected during all Development activities. Construction layout survey shall include fencing and labeling of the Riparian Buffer areas. Use of a combination of fencing and flagging to ensure adequate visibility is required. Riparian Buffer boundaries should be marked with signs that persist before, during and after construction to prevent entry of construction equipment, storage and stockpiling.

- (5) All Riparian Buffers should be placed in open space lot, community lot, or easement and shall be maintained per the Inspection and Maintenance Agreement.

**Section 7. Existing Locations and Developments.**

- (1) Requirements for all existing locations and developments. Requirements applying to all locations and developments at which land disturbing activities occurred prior to the enactment of this Ordinance and Resolution are described in the BMP Manual. At a minimum, those locations and developments shall control stormwater runoff to the maximum extent practicable to prevent its pollution.
- (2) Inspection of existing facilities. The Program may, to the extent authorized by state and federal law, establish inspection programs to verify that all permanent stormwater management devices or facilities, including those built both before and after the adoption of this Ordinance and Resolution, are functioning within design limits as established within the Program BMP Manual. These inspection programs may include, but are not limited to, routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as sources of increased sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with increased discharges of contaminants or pollutants or with discharges of a type more likely than the typical discharge to cause violations of the municipality's NPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include but are not limited to reviewing maintenance and repair records; sampling discharges, surface water, ground water, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other BMPs.
- (3) Requirements for existing problem locations.
- (a) The Program shall provide written notification to the owners of existing locations and developments of specific drainage, erosion, or sediment problems originating from such locations and developments and the specific actions required to correct those problems.
- (b) The notice shall also specify a reasonable time for compliance.
- (c) Should the property owner fail to act within the time established for compliance, the Program may act directly to implement the required corrective actions.
- (d) The cost of any action to the Program incurred under this section shall be charged to the responsible party. In addition, the responsible party shall be responsible for the proper maintenance and operation of any device, facility or facilities installed as a part of the corrective action. Failure of the responsible party to properly install, operate, and/or maintain the device, facility or facilities installed as part of the corrective action may

subject the responsible party to a civil penalty from the Program as described in a subsequent section of this Ordinance and Resolution.

- (4) Corrections of problems subject to appeal. Corrective measures imposed by the Program under this section are subject to appeal under Section 12 of this Ordinance and Resolution.

#### **Section 8. Illicit Discharges**

- (1) Scope. This section shall apply to all water generated on developed or undeveloped land entering the Program's MS4.
- (2) Prohibition of illicit discharges. 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 or any discharge that flows from stormwater facilities that are not inspected in accordance with Sections 5 and 7 of this Ordinance and Resolution shall be an illicit discharge. Non-stormwater discharges shall include, but shall not be limited to, sanitary wastewater, car wash wastewater, radiator flushing disposal, spills from roadway accidents, carpet cleaning wastewater, effluent from septic tanks, improper oil disposal, laundry wastewater/gray water, improper disposal of auto and household toxics. The commencement, conduct or continuance of any non-stormwater discharge to the municipal separate storm sewer system is prohibited except as described as follows:
- (a) Uncontaminated discharges from the following sources:
- (i) Water line flushing or other potable water sources;
  - (ii) Landscape irrigation or lawn watering with potable water;
  - (iii) Diverted stream flows;
  - (iv) Rising ground water;
  - (v) Groundwater infiltration to storm drains;
  - (vi) Pumped groundwater;
  - (vii) Foundation or footing drains;
  - (viii) Crawl space pumps;
  - (ix) Air conditioning condensation;

- (x) Springs;
  - (xi) Non-commercial washing of vehicles;
  - (xii) Natural riparian habitat or wetland flows;
  - (xiii) Swimming pools (if dechlorinated - typically less than one PPM chlorine); and
  - (xiv) Firefighting activities.
- (b) Discharges specified in writing by the Program as being necessary to protect public health and safety.
- (c) Dye testing is an allowable discharge if the Program has so specified in writing.
- (d) Discharges authorized by the Construction General Permit (CGP), which comply with Section 3.5.9 of the same:
- (i) dewatering of work areas of collected stormwater and ground water (filtering or chemical treatment may be necessary prior to discharge);
  - (ii) waters used to wash vehicles (of dust and soil, not process materials such as oils, asphalt or concrete) where detergents are not used and detention and/or filtering is provided before the water leaves site;
  - (iii) water used to control dust in accordance with CGP section 3.5.5;
  - (iv) potable water sources including waterline flushing from which chlorine has been removed to the maximum extent practicable;
  - (v) routine external building washdown that does not use detergents or other chemicals;
  - (vi) uncontaminated groundwater or spring water; and
  - (vii) foundation or footing drains where flows are not contaminated with pollutants (process materials such as solvents, heavy metals, etc.).
- (3) Prohibition of illicit connections. The construction, use, maintenance or continued existence of illicit connections to the municipal separate storm sewer system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether



the connection was permissible under law or practices applicable or prevailing at the time of connection.

- (4) Reduction of stormwater pollutants by the use of best management practices. Any 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 BMPs necessary to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section. Discharges from existing BMPs that have not been maintained and/or inspected in accordance with this Title shall be regarded as illicit.
- (5) Notification of spills. Notwithstanding other requirements 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 the municipal separate storm sewer system, the person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials the person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, the person shall notify the Program in person or by telephone, fax, or email, no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the Program within three (3) business days of the telephone notice. 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 three (3) years.

#### **Section 9. Enforcement.**

- (1) Enforcement authority. The Program shall have the authority to issue notices of violation and citations, and to impose the civil penalties provided in this section. Measures authorized include:
  - (a) Verbal Warnings – At a minimum, verbal warnings must specify the nature of the violation and required corrective action.
  - (b) Written Notices – Written notices must stipulate the nature of the violation and the required corrective action, with deadlines for taking such action.
  - (c) Citations with Administrative Penalties – The Program shall have the authority to assess monetary penalties, which may include civil and administrative penalties.

- (d) Stop Work Orders – Stop work orders that require construction activities to be halted, except for those activities directed at cleaning up, abating discharge, and installing appropriate control measures.
- (e) Withholding of Plan Approvals or Other Authorizations – Where a facility is in noncompliance, the Program's own approval process affecting the facility's ability to discharge to the MS4 can be used to abate the violation.
- (f) Additional Measures – The Program may also use other escalated measures provided under local legal authorities. The Program may perform work necessary to improve erosion control measures and collect the funds from the responsible party in an appropriate manner, such as directly billing the responsible party to pay for work and materials.

(2) Notification of violation:

- (a) Verbal warning. Verbal warning may be given at the discretion of the Program staff when it appears the condition can be corrected by the violator within a reasonable time, which time shall be approved by the Program staff.
- (b) Written notice. Whenever the Program finds that any permittee or any other person discharging stormwater has violated or is violating this Title or a permit or order issued hereunder, the Program may serve upon such person written notice of the violation. Within ten (10) days of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the Program. Submission of this plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the notice of violation.
- (c) Consent orders. The Program is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the person to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as administrative orders issued pursuant to paragraphs (d) and (e) below.
- (d) Show cause hearing. The Program may order any person who violates this chapter or permit or order issued hereunder, to show cause why a proposed enforcement action should not be taken. Notice shall be served on the person specifying the time and place for the meeting, the proposed enforcement action and the reasons for such action, and a request that the violator show cause why this proposed enforcement action should

not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing.

- (e) Compliance order. When the Program finds that any person has violated or continues to violate this chapter or a permit or order issued thereunder, he may issue an order to the violator directing that, following a specific time period, adequate structures or devices be installed and/or procedures implemented and properly operated. Orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the construction of appropriate structures, installation of devices, self-monitoring, and management practices.
- (f) Cease and desist and stop work orders. When the Program finds that any person has violated or continues to violate this chapter or any permit or order issued hereunder, the Program may issue a stop work order or an order to cease and desist all such violations and direct those persons in noncompliance to:
  - (i) Comply forthwith; or
  - (ii) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation; including halting operations except for terminating the discharge and installing appropriate control measures.
- (g) Suspension, revocation or modification of permit. The Program may suspend, revoke or modify the permit authorizing the land development project or any other project of the applicant or other responsible person within the Program Service Area. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated upon such conditions as the Program may deem necessary to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.
- (h) Conflicting standards. Whenever there is a conflict between any standard contained in this chapter and in the BMP manual adopted by the Program under this Ordinance and Resolution, the strictest standard shall prevail.

#### **Section 10. Penalties**

- (1) Violations. The following shall be considered civil offenses: any act declared unlawful under this chapter; or, any act that fails to comply with any provision of this chapter or any provision of any

permit issued pursuant to this chapter; or, any failure or refusal to comply with any lawful communication of notice issued by the Program to abate or take corrective action.

(2) Penalties. Under the authority provided in Tennessee Code Annotated § 68-221-1106, the Program declares that any person violating the provisions of this chapter may be assessed a civil penalty by the Program of not less than fifty dollars (\$50.00) and not more than five thousand dollars (\$5,000.00) per day for each day of violation. Each day of violation shall constitute a separate violation.

(3) Measuring civil penalties. In assessing a civil penalty, the Program may consider:

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

(4) Recovery of damages and costs. In addition to the civil penalty in subsection (2) above, the Program may recover:

- (a) All damages proximately caused by the violator to the Program, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this Ordinance and Resolution, or any other actual damages caused by the violation.
- (b) Three times the costs of the Program's maintenance of stormwater facilities when the user of such facilities fails to maintain them as required by this Ordinance and Resolution.

(5) Referral to TDEC. Where the Program has used enforcement to achieve compliance with this Ordinance and Resolution, the Program may refer the violation to TDEC.

- (6) Other remedies. The Program may bring legal action to enjoin the continuing violation of this chapter, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.
- (7) Remedies cumulative. The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one (1) or more of the remedies set forth herein has been sought or granted.

#### **Section 11. Program Fees**

- (1) Annual Program fees. The Program shall be financed primarily through an annual fee charged to all residential, commercial, and industrial stormwater dischargers located within the Program Service Area.

- (a) Initial Annual Program Fees.

- (i) Residential Properties: A single residential annual fee of \$9.00 shall be adopted initially for all households in the Program Service Area. Property used for agricultural or residential purposes and shown with a structure or structures of some positive value on the records of the Hamilton County Assessor of Property shall be charged a residential annual Program fee as described above. Multi-family residential complexes shall be charged one residential annual Program fee for each unit in the complex regardless of the actual occupancy of a given unit. Manufactured home parks and developments shall be charged one residential annual Program fee for each space in the development regardless of the actual occupancy of a given space.
    - (ii) Commercial and Industrial Properties: Property used for commercial or industrial purposes within the Program Service Area and shown with a structure or structures of some positive value on the records of the Hamilton County Assessor of Property shall initially be charged an annual fee of \$108 per impervious acre of development on the property but not less than the annual residential Program fee. Annual stormwater fees for commercial and Industrial properties shall be rounded to the nearest dollar. Such rounding shall be applied to all annual stormwater program fees collected by the County Trustee and shall be accomplished by rounding amounts ending in \$0.01 to \$0.49 down to the nearest dollar and amounts ending in \$0.50 to \$0.99 up to the nearest dollar. Such rounding only applies to the base stormwater fee, and not to any interest or penalty added to delinquent fee.

- (iii) Governmental, institutional, other tax-exempt properties, state tax-relief recipient properties, and properties exempted by statute or action of the Management Committee shall not be charged an annual Program fee.
- (b) Annual fee revision procedures: The annual Program fee shall only be changed through the following multi-step procedure:
  - (i) During the first quarter of each calendar year, the Program Manager shall perform a review of the Program's financial condition, including an estimate of probable income and expenses for the upcoming year. Should the annual review indicate that the Program will experience a significant budget imbalance in the coming year; the Program Manager shall present to the Management Committee a request to revise the annual fee structure to correct the imbalance.
  - (ii) The Management Committee shall, at the next meeting following the receipt of the Program Manager's recommendation, examine the annual financial review and the Program Manager's recommendation for the adjustment in the annual fees. If no regular meeting of the Management Committee is scheduled within 30 calendar days of the issuance of the Program Manager's recommendation, the Chair of the committee shall call a special meeting. The Management Committee shall be free to adjust the proposed revisions, if any, in the amounts of the annual fees to any amounts which are supported by three-fourths of the members of the Management Committee.
  - (iii) Once the Management Committee adopts an annual fee revision recommendation, the Program Manager shall prepare a draft resolution incorporating the recommendation for action by the Hamilton County Commission. The Program Manager shall submit the draft resolution for consideration at an upcoming meeting of the County Commission, as allowed by the rules and procedures of the County Commission. The County Commission may adopt the recommendation, reject the recommendation, or adopt a different annual fee revision based on their own assessment of the Program's financial situation, subject to the limitations described in the Interlocal Agreement establishing the Program. The action of the County Commission shall be final.
- (c) Annual Fee Incorporation in Municipal Stormwater Fee: Nothing contained herein shall prohibit or restrict any participating municipality from enacting and collecting an annual stormwater fee within its own jurisdictional boundaries which is higher than the Program's annual fee. The Program's annual fee shall be incorporated in the municipality's annual fee. The municipality may collect and utilize the excess funds

derived from a higher annual stormwater fee to address stormwater issues within its boundaries as the municipality judges to be in its own best interest.

- (d) Collection of Delinquent Annual Fee Payments: When any owner of any property subject to the annual Program fee, fails to pay the annual Program fee on or before the date when such Program fee is required to be paid, interest and penalty shall be added to the amount of the Program fee due, at the same rate and in the same amount as that set by State Law for delinquent property tax. (See T.C.A. §67-1-801). Should the owner of any property subject to the annual Program fee fail to remit payment for said fee within the time period adopted by the Management Committee for such payments, the Program is authorized to take any and all actions which the Management Committee deems appropriate to try to collect the delinquent fee.
- (2) Special Program Fees. The Program shall be allowed to charge special Program fees to individuals and organizations for specific activities which require input from the Program Staff. Because of the service-related nature of the special Program fees, they shall be applicable to all stormwater dischargers located within the Program Service Area, including dischargers who may be exempt from the annual Program fee. Special Program fees shall comply with the following provisions:
- (a) Types: Special Program fees may be charged for the following types of services:
    - (i) Development Plans Review: Any person or organization with planned construction that will disturb one acre or more shall submit development plans to the Program Staff which describe in detail the planned construction's conformance with Program requirements for stormwater pollution control at the site of the development. "Disturb" as used in this section shall identify any activity which covers, removes, or otherwise reduces the area of existing vegetation at a site, even on a temporary basis.
    - (ii) Erosion Control Plans Review: Any person or organization with planned construction that will disturb one acre or more shall submit erosion control plans to the Program Staff which describe in detail the planned construction's conformance with Program requirements for erosion control at construction sites. It is understood that the Erosion Control Plans Review fee shall include on-site inspections by qualified member(s) of the Program Staff of the installed erosion control measures as defined by the approved erosion control plans.
    - (iii) Erosion Control Non-Compliance Re-Inspection: Should any on-site inspection of installed erosion control measures reveal that the measures have been improperly installed, prematurely removed, damaged, or have otherwise failed and that such deficiency does not pose an imminent threat to the public safety

or welfare or the downstream water environment, the Program shall inform the responsible party of the deficiency, the responsible party's obligation to bring the installation into compliance with the approved plan, and the assessment of a re-inspection fee. The re-inspection fee shall reimburse the Program for the costs associated with an inspector's returning to a specific site out of the normal inspection sequence.

- (iv) Other: The Management Committee may from time to time identify other specific activities which warrant a Special Program Fee. No such fee shall be enacted unless it is endorsed by the County Mayor and approved by the County Commission. Procedures for establishing a Special Program Fee other than those identified above shall generally comply with the procedures for making revisions to the Annual Program Fee as described in the preceding section.

(b) Initial Special Program Fees: The initial amounts of the various Special Program Fees shall be as noted in Appendix A of this Ordinance and Resolution.

(c) Special Program Fee revision procedures: Special Program Fees shall be changed only through the following multi-step procedure:

- (i) The Program Manager shall review the special Program fees during the annual Program financial review required under the "Annual Fee Revision Procedures" described in a previous section. The Program Manager shall determine the financial viability of each special Program fee and present to the Management Committee requests for revision of those fees, if any, which the Program Manager believes should be adjusted.
- (ii) Once the Program Manager has submitted his or her recommendations, revisions of the special Program fees shall comply with the procedures for Management Committee review and County Commission action identified under the "Annual Fee Revision Procedures" described hereinbefore.

**Section 12 Appeals.** All actions of the Program Staff, except for possible criminal violations which the staff has reported to the appropriate enforcement agency, shall be subject to an appeals process under the initial jurisdiction of the Management Committee. Appealable staff actions specifically include the assessment of civil penalties. Written appeals of staff actions must be filed with the Program Manager within thirty (30) days of the actions issuance (TCA § 68-221-1106). Following receipt of a written "Notice of Appeal" from an appellant, the appeals process shall function as follows:

- (1) Administrative Review. An administrative review of all appeals and/or requests for review shall initially be conducted by the Program Manager. The Program Manager shall review the record



of the situation and, if the Program Manager is not satisfied that both of the following conditions have been met, the Program Manager shall notify the appellant of the finding and grant the relief or a portion of the relief, as determined by the Program Manager, sought by the appellant:

- (a) The matter under dispute has been handled correctly by the Program Staff under the applicable rules and procedures of the Program.
- (b) The matter under dispute has been handled fairly by the Program Staff and the appellant has not, in any way, been treated differently than other dischargers with similar circumstances.

If the Program Manager determines that both items (1) and (2) immediately above have been satisfied, the Program Manager shall notify the appellant in writing that no relief can be granted at the Program Staff level and that the appellant is free to pursue the appeal with the Management Committee. Such notification shall include instructions as to the proper procedure for bringing the matter before the committee. Notification shall be made by hand-delivery; verifiable facsimile transmission; or certified mail, return receipt requested. A copy of the notification shall be provided to the Management Committee member representing the municipality in which the discharger is located and other administrative official as designated by each participating community. The Program Manager shall complete the review and issue a decision within 20 calendar days of the receipt of the appeal.

- (2) Committee hearing. Appeals rejected by the Program Manager, in accordance with the procedure outlined immediately above, may be brought before the Management Committee if filed in writing with the Program within 30 days of the Program Manager's prior decision (TCA § 68-221-1106). Within 30 calendar days of receipt of a notification of an appeal, the committee shall determine if the appeal is to be heard by the committee as a whole, if the matter is to be referred to a standing subcommittee, or if a new subcommittee is to be appointed specifically to hear the appeal. If a special committee is appointed, the officer presiding at the meeting of the Management Committee at which the special subcommittee is appointed shall name a chair and vice chair for said subcommittee. Once the appropriate forum for the appeal is decided, a date and time for hearing the appeal shall be set. Such date and time shall be within 15 calendar days following the date of the Management Committee's initial considerations regarding the appeal.
- (3) Hearing procedures. Appeal hearings shall be conducted in a formal and orderly manner. However, the hearing is not a "court of law" and the rules of evidence, testimony, and procedures for such courts shall not apply. The Program Manager or his designee shall first brief the committee or subcommittee on the history of the situation, including the actions of the Program Staff leading up to the appeal. The appellant shall then present his or her arguments as to why the relief sought should be granted. The Program Manager or his designee shall then

have the opportunity to rebut or refute the appellant's arguments. The committee or subcommittee shall then conduct deliberations concerning the appeal in an open session. During such deliberations, the members may ask questions of and/or seek additional input from the appellant or the Program Staff to clarify the situation. At the close of these deliberations the committee or subcommittee shall vote to accept or reject the appeal or to adopt a modified position regarding the matter in question. The outcome of this vote shall be considered the final action of the Program with regard to the appeal. The chair of the committee or subcommittee hearing the appeal shall sign a written order reflecting the committee's or subcommittee's determination regarding the appeal. A tape recording, minutes, or other record of the hearing shall be made and maintained by the Program Staff. The Management Committee member from whose jurisdiction the appeal is being heard shall recuse himself from the hearing of that matter.

- (4) Appealing decisions of the Management Committee. Any appellant dissatisfied with the decision of the Management Committee, as described in the preceding paragraph, may appeal the Management Committee's decision by filing an appropriate request for judicial review to the Chancery Court of Hamilton County within 30 days of the Management Committee's decision.

### **Section 13. Variances**

- (1) The Hamilton County Water Quality Management Committee (Management Committee) may grant a variance from the requirements in this Ordinance and Resolution, provided to do so would not result in the violation of any state or federal law or regulation and if exceptional circumstances applicable to the Site exist such that strict adherence to the provisions of this Ordinance and Resolution will result in unnecessary hardship and will not result in a condition contrary to the intent of the Ordinance and Resolution.
- (2) The applicant shall submit a complete written request containing specific justifications, and any other information necessary to the Program for the variance request. The Program shall conduct a review of the request for a variance within thirty (30) days after receipt and recommend for approval or denial of the petition to the Management Committee. Once the Program's review is complete or the time for review has expired, the petition shall be subject to Management Committee action at the next regularly scheduled meeting or at a special meeting called at the discretion of the chair.
- (3) Variance requests shall be reviewed by the Management Committee and may be granted using the following criteria:
  - a) Those projects or activities where it can be demonstrated that strict compliance with the Ordinance and Resolution would result in practical difficulty. Each of the following criteria must be satisfied to show practical difficulty:
    - i. The problem is not self-created.

- ii. The situation of the landowner is due to the unique conditions of the property. A unique condition is a condition that is peculiar to the subject property that relates to a physical aspect of the subject property.
  - iii. Compliance with the strict letter of the restrictions governing physical requirements such as lot area, setbacks, and lot coverage unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
- b) Those projects or activities serving a public need where no feasible alternative is available.
  - c) In approving a variance, the Management Committee may impose conditions on the approval. The conditions shall be identified in the variance approval.
  - d) The decisions of the Management Committee shall be final and conclusive.
- (4) Effect of a Variance. The issuance of a variance shall authorize only the particular variation that is approved. A variance, including any conditions, shall run with the land and shall not be affected by a change in ownership.
- (5) Subsequent Development. Development authorized by the variance shall not be carried out until the applicant has secured all other approvals required by this Ordinance and Resolution or any other applicable local, state or federal law or regulation. A variance shall not ensure that the Development feature approved as a variance shall receive subsequent approval for other applications for Development approval unless the relevant and applicable portions of this Ordinance and Resolution's other applicable provisions are met.
- (6) Time Limit. Unless otherwise specified in the variance, an application for a Land Disturbance Permit shall be applied for and approved within one (1) year of the date of the variance approval; otherwise the variance shall become invalid. Permitted time frames do not change with successive owners.

**Section 14 Overlapping Jurisdiction.** The State of Tennessee, working through the Tennessee Department of Environment and Conservation (TDEC), is or may be required by federal regulations to address stormwater pollution issues in ways which appear to overlap the goals and requirements of the Program described by this Ordinance and Resolution. Where such overlaps occur and where TDEC's regulations and determinations are more restrictive, the TDEC regulations and determinations shall control.

A requirement to comply with TDEC regulations and determinations shall not, in any way, relieve any party from complying with the provisions of this Ordinance and Resolution.

## APPENDIX A

### SPECIAL PROGRAM FEES

1. **Each application for a Land Disturbance Permit** shall be accompanied by a minimum nonrefundable fee of \$100 plus an additional \$5 per each additional disturbed acre, or part thereof, in excess of one (1) acre.
2. If an inspector returns to a specific site out of the normal inspection sequence, an **Erosion Control Non-Compliance Re-inspection Fee** of \$50 may be assessed for each inspection visit prompted by erosion control measures found to be out of compliance with permit requirements.
3. The Program shall require Performance Securities, Performance Bonds, or other maintenance fees for permanent stormwater facilities and controls. Calculation of said securities or bond shall be established in the Program Stormwater Management BMP Manual. Hamilton County nor the Program accepts responsibility for the upkeep, maintenance, and/or operation of the stormwater facilities, including amenities such as retaining walls, shoreline treatments, walkways, boardwalks, docks, fountains, mechanical aeration devices, lighting, landscaping (not associated with functionality), and other aesthetic enhancements. Provisions for the inspection, maintenance and operation of the basin and such amenities must be included in the Inspection and Maintenance Agreement and Stormwater Management Plan.

Ordinance # 2016-313


Date 10/11/2016

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Mayor William Trohanis

A handwritten signature in cursive script, appearing to read "Fern Lockhart", written over a horizontal line.

Fern Lockhart, Recorder