

MARYVILLE, TENNESSEE



Enforcement Response Plan for

Permanent Stormwater Management

State of Tennessee
*NPDES General Permit for Discharges from
Small Municipal Separate Storm Sewer Systems*
Permit No. TNS075434

October 2012

I. Introduction

Parts 4.2.5 and 4.5.1 of the State of Tennessee NPDES General Permit for Discharges from Small Municipal Storm Sewer Systems (Permit No. TNS075434) requires the City of Maryville (City) to develop an Enforcement Response Plan, (ERP) for compliance with the permanent stormwater management minimum control measure. The permit requires the City to develop, implement and enforce a program of practices and tools (including this ERP) to control discharges from new development and redevelopment projects¹ such that water quality impacts are minimized.

A. Background

The City currently implements a stormwater management program in accordance with the State of Tennessee NPDES General Permit for Discharges from Small Municipal Storm Sewer Systems, henceforth called the NPDES Phase II permit. The City's compliance with the permit centers on Title 19 of the City's Code of Ordinance (the City's stormwater ordinance). Chapter 7 of the ordinance, entitled *Vegetated Buffer Zone and Stormwater Quality Management* addresses the City's permanent stormwater management requirements and establishes the City's authority to enforce them. Enforcement will be conducted mainly by the City unless it is necessary to make a referral to TDEC. For more information on referrals, see Section V of this ERP.

This ERP is intended to guide city personnel in enforcement by identifying the City's potential responses to violations of Chapter 7 of the stormwater ordinance. The ERP also addresses repeat violations through progressive enforcement as needed to require property owners or their designee to achieve compliance. The use of this ERP should result in the consistent and effective application of the City's available enforcement tools. Professional judgment must be used when implementing all enforcement actions. The City has the legal ability to employ any combination of enforcement actions, and to escalate enforcement responses where necessary to address persistent non-compliance, repeat or escalating violations, or incidents of major environmental harm.

B. Terminology Used in Enforcement Response Plan

A comprehensive list of definitions is available through the stormwater ordinance. For purposes of this ERP, the following definitions are of note:

Best management practices (BMPs) – Structural or non-structural controls to manage stormwater runoff.

Municipal separate storm sewer system (MS4) - A conveyance or system of conveyances, including roads with drainage systems, streets, roads, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, further defined in ordinance and used interchangeably with the term "stormwater system" in this ERP.

Policy manual - The *Policy Manual for Stormwater Quality Management* prepared and maintained by the City of Maryville that contains policies, technical criteria, tools,

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

guidelines and other supporting documentation for implementation of the provisions of the ordinance. This manual may be superseded as a new permanent stormwater management program is developed in accordance with the requirement.

Water Quality Management Plan (WQMP) An engineering plan for the location and/or design of BMPs within a proposed development or redevelopment. A WQMP includes a map showing the extent of the land development activity and location of BMPs, design calculations for BMPs, and, when applicable, includes as-built plans and covenants for permanent maintenance of best management practices.

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

This ERP references Chapter 7 of the stormwater management ordinance and the City’s Policy Manual, which can be found on the City’s website. A summary of key provisions of Chapter 7 is provided in Table 1 below.

Table 1. Provisions of Chapter 7 that are Key to Enforcement

Citation	Description	Usefulness for Enforcement
§19-704	Authority	Establishes the City’s authority to promulgate rules, regulations, policies and guidance consistent with the chapter and carry out the meaning and intent through a policy manual.
§19-705	Plans	Sets forth the requirement for developer to submit a Water Quality Management Plan.
§19-706	General Criteria	Outlines the requirements for the use of BMPs or water quality buffer areas.
§19-724	Right of Entry	Authorizes city personnel to enter upon property for the purpose of investigating discharges, potential discharges and conformance with plans.
§19-725	Inspections and Maintenance	States the requirements for property owners to conduct inspection and maintenance activities.
§19-734	Penalties	Authorizes the City to assess penalties for violations of the ordinance.
§19-735	Notice of Violation	Notifies the owner or operator of a violation and states the required action to be taken to correct the violation.

C. Roles and Responsibilities

The Director of Engineering and Public Works or his/her designee is responsible for enforcement of the stormwater ordinance and implementation of the policies and standard procedures related to stormwater quality management. Duties related to enforcement of vegetated buffer zone and stormwater management include:

- review of applicable plans that are submitted by applicants for compliance with Chapter 7 of the stormwater ordinance and associated policies and processes;
- oversight of city inspectors and inspection programs;
- oversight, and participation as necessary, in enforcement actions related to vegetated buffer zones and/or stormwater quality management;
- development and maintenance of Chapter 7 of the stormwater ordinance and related policies, tools (tracking systems and checklists) and procedures to implement the permanent stormwater management program.

City inspectors enforce the Chapter 7 of the stormwater ordinance through the following activities:

- inspection of permitted activities for compliance with the approved required plans;
- inspection of permitted or unpermitted activities to evaluate the potential of the discharge of pollutants, and/or impacts to water quality;
- completion of applicable inspection reports;
- initiation of corrective actions, enforcement actions and penalties.

Property owners (or designee) are person(s) who own BMPs, water quality buffer areas or water quality volume reduction areas and therefore are responsible for compliance with Chapter 7 of the stormwater ordinance and related policies and processes. Specific activities that will be performed by the property owner or his/her designee to achieve compliance include, but are not limited to:

- acquisition of, and compliance with all applicable Federal, state and local permits, including the preparation and submittal of required plans;
- design, construction, installation, inspection, and maintenance of BMPs, water quality buffer areas or water quality volume reduction areas for the purposes of water quality treatment, channel erosion protection, or water quality volume reduction for adherence with local performance standards;
- cooperation, in good faith, with City inspectors, and for being truthful and answering inspector questions to the best of his or her ability;
- timely compliance of any and all plan updates/amendments, inspection and documentation requests and corrective actions that are required by City plan reviewers and/or inspectors and/or enforcement actions or penalties as defined in the ordinances.

II. Enforcement Responses

A. Corrective Actions

Corrective actions are activities performed to properly maintain BMPs, water quality buffer areas or water quality volume reduction areas so as to achieve the full and intended function of the features as designed. The City can require corrective actions through an informal or formal enforcement process (see paragraphs below). However, if the property owner fails to perform corrective actions, the City may elect to do so. §19-726 authorizes the City to require property owners to reimburse the City for double its direct and related expenses for performance of correctives actions. Funds from a performance bond (when one exists) can be used for this purpose. If the property owner fails to reimburse the City, the City is authorized to file a lien for said costs against the property and to enforce the lien by judicial foreclosure proceedings.

B. Informal Enforcement

Informal enforcement may be an appropriate enforcement response in situations where incidents of non-compliance are found, but there is not an immediate detriment to water quality and no prior violations have occurred and/or where the owner's understanding of the violation awareness of the potential for violation is low. (For example, the BMP owner may be a resident who does know that they have a BMP located on their lot. Or, there may be a lapse in inspection records for a non-residential BMP owner, but the violation does not result in the compromise of integrity of the BMP).

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

Informal enforcement measures should always be documented by the City inspector in their log book, in inspection checklists or in the construction project's file notes.

C. Formal Enforcement

Written notices are the main response available to the City to enforce its program, although other mechanisms, including bond forfeiture, and measures for repeat offenders (see part V of this ERP), are also allowable. Descriptions of available enforcement responses are provided in the paragraphs that follow.

Notices of Violation- §19-736 authorizes the City to issue Notices of Violation (NOV) that serve as written acknowledgement that a violation has occurred. The NOV provides a description of the violation and the location where it occurred. It will state a required action with a deadline for compliance, or to stop work if conditions warrant. NOVs also convey requirements for corrective actions to be taken by the owner or operator; or they may require the owner or operator to develop a compliance plan that details how compliance will be achieved. If the NOV requires action to be taken by the owner or operator, it must also provide deadline by which he/she should comply.

Written Requirement for Corrective Action- §19-726 and §19-736 establish that the City is to provide a written requirement for corrective actions, when such actions are needed to reestablish compliance with Chapter 7 of the stormwater ordinance. The written requirement should clearly identify the violation include the deadline for compliance.

Civil Penalties and Damages- §19-734 allows the City to impose penalties on property owners responsible for violations. The City is permitted to assess penalties between \$50 and \$5,000 per violation per day. The City may also recover all damages proximately caused to the city by such violation. Additionally, the City attorney may seek legal action to enjoin the continuing violation of the stormwater ordinance. Table 2 provides guidance on penalty amounts for different types of violations of Chapter 7 of the stormwater ordinance.

Table 2. Suggested Minimum Penalty Amounts

Violation	Minimum Penalty*
During Construction of Development or Redevelopment	
Failure to comply with an approved WQMP or buffer enhancement plan. This includes failure to protect water quality buffer areas from land disturbance, vegetation removal, construction of impervious surfaces and discharges of sediment and other construction related wastes during construction activities)	<ul style="list-style-type: none"> • \$1,000 • May also include the cost equivalent of any measures that were intentionally bypassed to cause the violation
Failure to submit revised WQMP or buffer enhancement plan, if directed to do so by the City	<ul style="list-style-type: none"> • \$500
After Construction of Development or Redevelopment	
Failure to maintain BMPs or Alteration, improvement, or disturbance to water quality buffers or water quality volume reduction areas without authorization from the Director of Engineering and Public Works (except for maintenance necessary to preserve functionality of the features)	<ul style="list-style-type: none"> • \$500 • May also include the cost equivalent of any measures that were intentionally bypassed to cause the violation
Failure to provide an as-built drawing and executed covenant	<ul style="list-style-type: none"> • \$500
Failure to document and/or perform BMP inspections	<ul style="list-style-type: none"> • \$500
Failure to allow entry by the City inspector	<ul style="list-style-type: none"> • \$500
Failure to comply with order for corrective action	<ul style="list-style-type: none"> • \$1,000

* All penalty amounts are adjustable up to \$5,000 per day per violation, and may also incorporate any significant costs to the City for enforcement or correction of the violation, exclusive of separate damage assessments.

Stop Work Orders- Stop work orders may be issued as a method to obligate compliance or corrective actions quickly and effectively. If work continues after a stop work order has been issued, additional penalties may be sought. §19-730(2) provides that stop work orders are effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred, and the City has released the stop work order. The written notice states the necessary corrective actions with a completion date before other activities can resume. For the City's permanent stormwater management program, stop work orders will likely not be an option for most situations after construction is completed, especially where a BMP, buffer or volume reduction area is located on residential property and is owned and maintained by one or more residents.

Other Enforcement Measures- The City has a number of other enforcement measures that are supported by Chapter 7 of the stormwater ordinance and/or City policies. These include:

- withholding City inspections (during construction only);
- suspension of grading permit (during construction only);
- forfeiture of the performance bond (during construction only);
- court citations, which is provided for in Chapter 7 of the stormwater ordinance; and,
- payment of the City's costs for enforcement and/or corrective actions.

D. Guidance for Enforcement Response Selection

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

- *Awareness of the owner* is the level of understanding of the owner of the BMP, the buffer area or the water quality buffer area, of their responsibilities for these features as identified by Chapter 7 of the stormwater ordinance. Water quality BMPs, buffers and volume reduction areas are new concepts in the City and in the State of Tennessee. Therefore, it is conceivable that owners may not understand that they have such features and therefore are responsible for inspection and maintenance, or the role that such features can play in the control of water quality from the development. This is especially the case when the BMP, buffer or volume reduction area is in a residential area and owned by one or more private residents. Low owner awareness should be seen as an opportunity to include educational measures as part of the enforcement action.
- *Damages*. Damages are negative impacts, or the potential for negative impacts, to waters of the State or the public property as a result of the violation. Damage severity can range from no or minimal damage to severe damage.
- *Number of violations*. The number of prior violations of the stormwater ordinance that have been incurred by the owner can be considered in determining the level of enforcement response. A lower level of enforcement, combined with appropriate education of the BMP or buffer owner, is often acceptable for a first offense so long as other factors (damage, owner awareness, cost of enforcement to the City) support this judgment. Repeated violations by and owner, especially those where persistent non-compliance and/or escalating violations are evident, should always receive a higher level of enforcement. NOVs issued on a per day basis combined with civil penalties that graduate rapidly with each violation can be an effective approach for enforcement on repeat offenders.

Table 3 presents guidance for enforcement responses related to permanent stormwater management.

Table 3. Enforcement Responses for Permanent Stormwater Management

Violation Scenario	Mitigating Factors	Suggested Enforcement Response*
<p>Failure to comply with an approved WQMP or buffer enhancement plan (includes failure to protect water quality buffer areas)</p>	<ul style="list-style-type: none"> • Number of similar violations • Evidence of willful negligence 	<ul style="list-style-type: none"> • First violation <ul style="list-style-type: none"> ○ Verbal Warning ○ Written requirement for corrective actions ○ Increased frequency of City inspections • Second violation <ul style="list-style-type: none"> ○ Notice of Violation ○ Stop Work Order pending correction of violation ○ Withholding City inspections pending correction of violation ○ Possible suspension of grading permit, if egregious violation ○ Possible forfeit of performance bond, if egregious violation ○ Increased frequency of City inspections • Third or greater violation <ul style="list-style-type: none"> ○ Same as second violation, plus, ○ Court citation ○ Civil penalty
<p>Failure to submit revised WQMP or buffer enhancement plans, if directed to do so by the City</p>	<ul style="list-style-type: none"> • Number of similar violations • Evidence of willful negligence 	<ul style="list-style-type: none"> • First violation <ul style="list-style-type: none"> ○ Verbal Warning with maximum of two working days for compliance • Second violation <ul style="list-style-type: none"> ○ Notice of Violation ○ Withholding City inspections pending plans approval • Third or greater violation <ul style="list-style-type: none"> ○ Same as second violation, plus, ○ Civil penalty

Violation Scenario	Mitigating Factors	Suggested Enforcement Response*
<p>Failure to maintain BMP <i>or</i> Alteration, improvement, or disturbance to water quality buffers or water quality volume reduction areas without authorization from the Director of Engineering and Public Works (except for maintenance necessary to preserve functionality of the features)</p>	<ul style="list-style-type: none"> • Number of similar violations • Extent of damage to buffer or volume reduction area • Evidence of willful negligence 	<ul style="list-style-type: none"> • First violation (minor damage only) <ul style="list-style-type: none"> ○ Verbal Warning ○ Written requirement for corrective actions (maintenance or repair of BMP or restoration of damaged area) with appropriate deadline for compliance ○ Educational information and inspection and maintenance guidance, as appropriate ○ Increased frequency of City inspections • Multiple violations or Moderate to Severe Damage <ul style="list-style-type: none"> ○ Notice of Violation ○ Written requirement for corrective actions with appropriate deadline for compliance ○ Civil penalty ○ Payment of up to two times the cost of assessed damages ○ Payment of up to two times the cost of enforcement and corrective actions, if performed by the City ○ Court citation ○ Stop Work Order pending correction of violation (non-residential only) ○ Increased frequency of City inspections
<p>Failure to provide an as-built drawing and executed covenant</p>	<ul style="list-style-type: none"> • Number of similar violations • Willful negligence as evidenced by time of non-compliance after verbal warning 	<ul style="list-style-type: none"> • First violation <ul style="list-style-type: none"> ○ Verbal Warning with maximum of 45 days to comply • Multiple violations <ul style="list-style-type: none"> ○ Notice of Violation, where each day of non-compliance constitutes a new violation ○ Civil penalty, with a minimum penalty per Table 2 for each day of violation

Violation Scenario	Mitigating Factors	Suggested Enforcement Response*
Failure to document and/or perform BMP inspections	<ul style="list-style-type: none"> • Number of similar violations • Willful negligence as evidenced by time of non-compliance after verbal warning 	<ul style="list-style-type: none"> • First violation <ul style="list-style-type: none"> ○ Verbal Warning with maximum of 30 days to comply ○ Provide educational information as appropriate ○ Provide inspection and maintenance guidance, as appropriate • Multiple violations <ul style="list-style-type: none"> ○ Notice of Violation + Civil Penalty ○ City inspection of BMP
Failure to allow entry by the City inspector	None	<ul style="list-style-type: none"> • Stop Work Order (non-residential only) • Civil Penalty • Payment of up to two times the cost of enforcement • Court citation
Failure to comply with order for corrective action	<ul style="list-style-type: none"> • Evidence of willful negligence 	<ul style="list-style-type: none"> • Stop Work Order (non-residential only) • Civil Penalty • Payment of up to two times the cost of enforcement and corrective actions, if performed by the City • Court citation

III. NPDES Permit Referrals

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

TDEC-Knoxville Field Office
3711 Middlebrook Pike
Knoxville, TN 37921
(865)594-6035

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

- The nature of the violation;
- the name of the owner;
- the location/address where the violation exists; and,
- records of communication with the owner and enforcement efforts to date.

IV. Requirements for Chronic Violators

Part 4.5.4 of the NPDES Phase II permit requires the City to identify chronic violators of any Stormwater Management Program component and reduce the rate of noncompliance recidivism. The City tracks violations through its Asist database and considers the appropriateness of increasing the inspection frequency at the property owner's sites. If corrective actions are not taken, the City pursues progressive enforcement and, if need be, performs the necessary work and assesses against the owner the costs incurred for repairs.

V. Enforcement Tracking

Part 4.5.3 of the NPDES Phase II permit requires the City to track instances of non-compliance either in paper files or electronically. The enforcement case documentation is entered into the City's Asist database and tracks the information listed below.

- Contact Information
- Location
- Nature of noncompliance
- Inspection Information
- Enforcement Response
- Compliance Deadline/Outcome
- Close-out Information