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Storm Water Management

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Storm Water Management

Reference Number: CTAS-555

Many counties, particularly those in urbanized areas, are required to establish a program for storm water management in order to comply with the mandates of the Environmental Protection Agency's (EPA) Storm Water Management program. The Storm Water Program is a series of regulations promulgated by the EPA. The purpose of these regulations is to implement amendments to the Clean Water Act, National Pollutant Discharge Elimination System (NPDES) Storm Water Program. The Storm Water Program is designed to regulate and clean up runoff that is entering water bodies from storm sewer systems, construction sites, and industrial sources.

According to the EPA Office of Water Quality, the quality of waters in the United States has improved dramatically since the passage of the Clean Water Act; however, degraded waterbodies still exist.

According to the 1996 National Water Quality Inventory, approximately 40 percent of surveyed U.S. waterbodies are still impaired by pollution and do not meet EPA standards. A major source of the pollution found in our rivers, lakes and streams is runoff. The purpose of the storm water program is to regulate and clean up that runoff.

Phase I

Reference Number: CTAS-556

Storm Water Phase I regulations were promulgated by the EPA in 1990. Phase I uses a permit system set up under the NPDES to regulate storm water discharges from three sources:

1. Medium and large municipal separate storm sewer systems (MS4s) serving populations of 100,000 or greater;
2. Construction activity disturbing five acres of land or more; and
3. Ten categories of industrial activity.

Phase II Coverage

Reference Number: CTAS-557

Phase II of the program expands Phase I by requiring additional parties to implement programs and practices to control polluted runoff again by using NPDES permits. The Phase II Final Rule automatically covers two groups on a nationwide basis:

1. Operators of small municipal separate storm sewer systems (MS4s) located in "urbanized areas." (As a practical matter, a small MS4 is any MS4 not covered in Phase I.); and
2. Operators of small construction activities that disturb from one to five acres of land.

Further, small MS4s outside of urban areas, construction activity affecting less than one acre and any other storm water discharges may be covered if the NPDES permitting authority or the EPA decides they need to be regulated.

For the most part, the authority to issue permits for storm water discharges has been delegated to the states. (In a few cases, the EPA retains the authority.) In Tennessee, anyone needing an NPDES permit applies to the Tennessee Department of Environment and Conservation (TDEC) for the permit.

How to Comply with Phase II

Reference Number: CTAS-558

An operator of a small municipal separate storm sewer system has to apply to TDEC for a permit to discharge storm water and has to implement a series of storm water discharge "best management practices." These practices include the following:

1. An operator must develop, implement and enforce a storm water management program designed to reduce the discharge of pollutants from its MS4 to the "maximum extent practicable," to protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act.
2. An operator's program must include six minimum control measures: (1) public education and outreach; (2) public participation/involvement; (3) illicit discharge detection and elimination; (4) construction site runoff control; (5) post-construction runoff control; and, (6) pollution prevention/good housekeeping.

3. An operator must also identify its best management practices and measurable goals in its permit application. An evaluation and assessment of those goals and practices must be included in periodic reports to the NPDES permitting authority.

Deadlines and Important Dates

Reference Number: CTAS-559

The Tennessee Department of Environment and Conservation began issuing general permits for small MS4s and small construction activity on December 9, 2002. Counties automatically covered in the program obtain permit coverage within 90 days of permit issuance. After obtaining permit coverage, operators of small MS4s must fully implement storm water management programs by the end of the first permit term, typically a five-year period

Authority to Comply and Regulatory Powers

Reference Number: CTAS-560

In 1993, the Tennessee General Assembly passed a series of statutes to help larger municipalities comply with Phase I of the storm water regulations. These statutes are found in Title 68, Chapter 221, Part 11, of the *Tennessee Code Annotated*. They were intended to facilitate compliance with the environmental regulations by authorizing municipalities to regulate storm water discharges, establish a system of drainage facilities, and fix and require payment of fees for the privilege of discharging storm water. The statutes also authorized municipalities to construct and operate a system of drainage facilities for storm water management and flood control. "Municipality," as defined under that law, included only incorporated cities or towns, metropolitan governments, or special districts of the state that had a population of at least 75,000.

In 2001, the General Assembly passed Public Chapter 119 to expand the definition of municipality under these Tennessee storm water management statutes to include more local governments. T.C.A. § 68-221-1102. Since Phase II of the EPA storm water regulations will affect a significant number of cities and counties that were not under Phase I, the intent of the act was to give those cities and counties the ability to exercise the authority that larger municipalities had under T.C.A. § 68-221-1101 *et seq.* The bill accomplishes this by removing the population limitations from the law and by including "county" within the definition of "municipality."

Under the storm water management statutes, counties are authorized to:

1. Exercise general regulation over the planning, location, construction, and operation and maintenance of storm water facilities in the municipality, whether owned and operated by the county or not;
2. Adopt any rules and regulations deemed necessary to accomplish the purposes of this part, including adopting a system of fees for services and permits;
3. Establish standards to regulate the quantity of storm water discharged and to regulate storm water contaminants as may be necessary to protect water quality;
4. Review and approve plans and plats for storm water management in proposed subdivisions and commercial developments;
5. Issue permits for storm water discharges, or for the construction, alteration, extension, or repair of storm water facilities;
6. Suspend or revoke permits when it is determined that the permit holder has violated any applicable ordinance, resolution, or condition of the permit;
7. Regulate and prohibit discharges into storm water facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and
8. Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources or storm water contamination, whether public or private.

T.C.A. § 68-221-1105 (as amended by Acts of 2001 Public Chapter 119).

It is important to note that as the law currently reads, county authority over storm water discharge may be exercised only outside of municipal boundaries.

In counties that are not in the state's computer assisted appraisal system, the county trustee is authorized to bill and collect storm water fees for the county as a designated item on the ad valorem tax notice issued by the trustee. Municipalities in these counties are authorized to contract with the county to have their storm water fees collected in the same manner. T.C.A. § 68-221-1107.

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