

**ORDINANCE #16-01**

**AN ORDINANCE OF THE BOARD OF MAYOR AND ALDERMEN OF THE TOWN OF NOLENSVILLE TO ADOPT STORM WATER REGULATIONS**

**WHEREAS**, the Town of Nolensville Board of Mayor and Aldermen declares that it is in the best interest of the citizens to regulate the discharge of storm water; and,

**WHEREAS**, on December 2, 2004, by Ordinance #04-17, the Town Of Nolensville Board of Mayor and Aldermen adopted storm water regulations to comply with the Clean Water Act of 1972, Water Quality Act of 1977, and Water Quality Act of 1987 and to meet the requirements for a Phase II MS4 permit regulating smaller communities; and,

**WHEREAS**, the Town of Nolensville is at the end of its second five-year MS4 permit term; and,

**WHEREAS**, additional requirements for the next MS4 permit, anticipated in the spring of 2016, call for updates to the regulations adopted by Ordinance #04-17; and,

**NOW THEREFORE, BE IT ORDAINED, BY THE BOARD OF MAYOR AND ALDERMEN OF THE TOWN OF NOLENSVILLE, TENNESSEE:**

Section 1. The revised storm water regulations attached hereto governing storm water discharge, storm water management, flood control, erosion prevention, and water quality protection are hereby adopted.

Section 2. This ordinance shall take effect from its passage on second and final reading, the public welfare demanding it.

Approved by the Board of Mayor and Aldermen

\_\_\_\_\_  
Jimmy Alexander, Mayor

Attest: \_\_\_\_\_  
Kali Mogul, Town Recorder

Approved by: \_\_\_\_\_  
Robert J. Notestine, III, Town Attorney

Passed 1st Reading: \_\_\_\_\_

Passed 2nd Reading: \_\_\_\_\_

**Town of Nolensville, Tennessee  
Storm Water Management Regulations**

**December 2, 2004  
First Draft November 2015 Revision**

# Town of Nolensville, Tennessee Storm Water Management Regulations

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## Section 1: General

### 1.1 Title

These Regulations shall be known, cited and referred to as the “Storm Water Regulations of the Town of Nolensville, Tennessee”

### 1.2 Preamble

The Town of Nolensville Board of Mayor and Alderman finds and declares that it is in the best interest of the citizens of the Town of Nolensville to regulate the discharge of storm water, alleviate the effects of flooding and facilitate compliance with the Water Quality Act of 1977, the Water Quality Act of 1987 and the Clean Water Act of 1977. In furtherance of same, the Town of Nolensville Board of Mayor and Alderman hereby adopts these Regulations governing storm water discharges, storm water management, flood control, erosion prevention, and water quality protection.

### 1.3 Purpose and Authority

- A. Protect, maintain, and enhance the environment of the Town of Nolensville and the public health, safety and ~~the~~ general welfare of the citizens of the Town, by controlling discharges of pollutants to the storm water system and ~~to~~ maintain and improve the quality of ~~the~~ receiving waters into which ~~the water from the~~ storm water outfalls ~~flow~~ discharge to including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the Town.
- B. Enable the Town of Nolensville to comply with the appropriate National Pollution Discharge Elimination System permit (NPDES) and applicable regulations, 40 CFR 122.26 for storm water discharges.
- C. Allow the Town of Nolensville to exercise the powers granted in Tennessee Code Annotated 68-221-1105 or as amended by the State of Tennessee.
- D. The Town of Nolensville shall have authority to implement and supplement these Regulations by reference to appropriate guidance or other related materials. Guidance or other related materials may be modified to meet the objectives and policies of this regulation, so long as such modifications to guidance or other related materials are not contrary or beyond the intent of these Regulations. The guidance or other related materials shall not in any way endorse specific commercially available products. However, they may refer to performance specifications, class of devices, construction, or management practice.
- E. The Town of Nolensville shall have right-of-entry upon the property subject to this regulation and any permit/document issued hereunder. The Town of Nolensville shall be provided ready access to all parts of the premises for the purposes of inspection, monitoring, sampling, inventory, records examination and copying, and the performance of any other duties necessary to determine compliance with this regulation.
- F. Where a property, site or facility has security measures in place that require proper identification and clearance before entry into its premises, the owner/operator shall make necessary arrangements with its security personnel so that, upon presentation of suitable identification, the Town of Nolensville will be permitted to enter without delay for the purposes of performing specific responsibilities.

- G. The Town of Nolensville shall have the right to utilize on the owner/operator property such devices as are necessary to conduct sampling and/or metering of the person's storm water operations or discharges.
- H. Any temporary or permanent obstruction to safe and easy access to the areas to be inspected and/or monitored shall be removed promptly by the owner/operator at the written or verbal request of the Town of Nolensville. The costs of clearing such access shall be borne by the owner/operator. The Town reserves the right to determine and impose inspection schedules necessary to enforce the provisions of these Regulations.

#### **1.4 Applicability and Jurisdiction**

The Storm Water Regulations shall govern all properties within the ~~unincorporated~~ incorporated? limits of Nolensville, Tennessee.

#### **1.5 Exemptions**

The following activities are exempt from the requirements of these Regulations:

1. Any emergency activity that is immediately necessary for the protection of life, property, or natural resources;
2. Agricultural land management activities; and
3. Any silviculture activity that is consistent with an approved timber management plan prepared or approved by the State of Tennessee.

#### **1.6 Duty to mitigate**

The owner/operator shall take all reasonable steps to minimize or prevent any discharge in violation of these Regulations.

#### **1.7 Duty to provide information**

The owner/operator shall furnish to the Town of Nolensville any information that is requested to determine compliance with these Regulations or other information.

#### **1.8 Other information**

When the owner/operator becomes aware that the owner/operator failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Town of Nolensville, the owner/operator shall promptly submit such facts or information.

#### **1.9 Savings Provision**

These regulations shall not be construed as altering, modifying, vacating or nullifying any action now impending or any rights of obligations obtained by any person, firm or corporation through approval of a preliminary plat by the Town of Nolensville Planning Commission or through the approval of any grading/land disturbance permit or any other lawful action of the Town prior to the adoption of these Regulations.

## Section 2: Standards

### 2.1 Storm Water Quality Control Measures (MS4 Permit Section 4.2.5)

- A. There shall be no distinctly visible floating scum, oil or other matter contained in the storm water discharge to the Town storm water system.
- B. The storm water discharge to the Town storm water system must not cause an objectionable color contrast in the receiving stream.
- C. Development and significant redevelopment will be required to minimize the impact to storm water quality by applying structural and/or nonstructural management practices selected to address site-specific conditions.
- D. Increased pollutant concentrations and loads impact the ability of the waters of the state to meet designated use goals. To minimize these storm water quality impacts, onsite storm water quality control measures are mandatory for all developments subject to review by the Town Engineer. The extent and type of storm water management practices must be proportionate to the land use, potential pollutant discharges, TMDL allocations, and proximity to regional storm water quality management practices. The Town encourages implementation of a series of storm water control measures that optimize the use of required green and open spaces, low impact development practices, especially along buildings and within or along parking lots. Storm water control measures shall at a minimum infiltrate, evapo-transpire, harvest and/or use, at a minimum, the first inch of every rainfall event preceded by 72 hours of no measurable precipitation. The first inch of rainfall must be managed on site without any storm water runoff being discharged to surface waters; if appropriate for the site and there is not a potential for introducing pollutants into the groundwater, unless pretreatment is provided; pre-existing soil contamination in areas subject to contact with infiltrated runoff; and sinkholes or other karst features are not present. Permanent storm water control measure design must take into account infiltrative capacity of soils at the site.
- E. For projects and sites that cannot meet 100 percent of the first inch infiltration requirements, the remaining portion of the first one inch of rainfall must be treated with structural or non-structural storm water control measures reasonably expected to remove 80 percent of the total suspended solids (TSS). The structural control measures must be designed, installed, and maintained to continue to meet this performance standard.
- F. Storm water discharges from Hot Spots (priority areas) may require the application of specific structural storm water quality management practices and pollution prevention practices.
- G. No land disturbance activities, whether by private or public action, shall be performed in a manner that will negatively impact storm water quality whether by flow restrictions, increased runoff, or by diminishing channel or floodplain storage capacity. Erosion or sedimentation, or transport of other pollutants or forms of pollution, due to various land development activities must be controlled.
- H. Supportive data must be submitted to justify the type of storm water quality control measures selected. If the facility is designed to infiltrate the first inch of rainfall, then appropriate soils analyses shall be submitted to the Town Engineer. This submittal shall also discuss the impacts the storm water quality control measures will have on

local karst topography as found through a geological investigation of the site.

## 2.1 Storm Water Quantity Control Measures

- A. New development shall meet a storm water quantity level of service defined by:
  - 1. Designing road catch basins and connecting culverts to convey the 10-year, 24-hour design storm runoff.
  - 2. Designing bridges, channels and cross-drains to pass the 25-year, 24-hour design storm runoff. Calculations shall also be provided for the 100-year, 24-hour design storm.
- B. Storm water infrastructure shall be designed in a way that:
  - 1. Critical service roads are not inundated by more than three inches of water over one-half the roadway width under a 100-year, 24-hour design storm event.
  - 2. Other new roads shall be designed to have no more than 6-inches of road overtopping at the 25-year, 24-hour design storm event.
- C. Re-development activities will be required to follow storm water quantity requirements.
- D. No land disturbance activities, whether by private or public action, shall be performed in a manner that will negatively impact storm water quantity whether by flow restrictions, increased runoff, or by diminishing channel or floodplain storage capacity. Erosion or sedimentation, or transport of other pollutants or forms of pollution, due to various land development activities must be controlled.

## 2.2 Allowable Discharges

- ~~A.~~ Pursuant to the National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) program administered by the Tennessee Department of Environment and Conservation (TDEC) illicit discharges to the MS4 are being defined as illegal. ~~This is being accomplished through the identification of allowable non-storm water discharges into the MS4 in the best interest of Nolensville, Tennessee.~~
- B. Non-storm water discharge ~~means~~ is any discharge to the Municipal Separate Storm Sewer System except as permitted by Section D.
- C. Except as hereinafter provided, all non-storm water discharges into the Municipal Separate Storm Sewer System are prohibited and declared to be unlawful.
- D. Unless the Town of Nolensville has identified them as a source of pollutants to the “Waters of the State of Tennessee”, the following non-storm water discharges into the Municipal Separate Storm Sewer System are lawful:
  - 1. Discharges from emergency firefighting activities
  - 2. Rising ground waters
  - 3. Uncontaminated groundwater infiltration to separate storm sewer systems (as defined by 40 CFR 35.2005 (20))
  - 4. Uncontaminated pumped ground water
  - 5. Discharges from potable water sources as required for system maintenance
  - 6. Water line flushing

7. Foundation, footing, and crawl space drains and pumps
8. Air conditioning condensate
9. Landscape and lawn irrigation
10. Uncontaminated springs
11. Individual residential vehicle washing
12. Flows from riparian habitats and wetlands
13. Dechlorinated swimming pool discharges
14. Street wash waters resulting from normal street cleaning operations
15. Controlled flushing storm water conveyances (controlled by appropriate BMPs)
16. Discharges within the constraints of a National Pollutant Discharge Elimination System (NPDES) permit from the Tennessee Department of Environment and Conservation (TDEC)
17. Other special discharges as approved by The Town of Nolensville
18. Dye testing is an allowable discharge if approved by the Town Engineer

### **2.3 Storm Water Management Report**

Appendix C of the Town Zoning Ordinance requires a drainage plan and calculations if recommended by the Town Engineer. Due to the complexity of the Town's MS4 permit and water quantity concerns, a Storm Water Management Report shall be prepared for all developments unless waived by the Town Engineer. The Storm Water Management Report shall contain:

- A. Map showing existing and proposed drainage areas;
- B. Map showing all outfalls from the site for existing and proposed conditions;
- C. Map showing locations where existing and proposed hydrographs were generated;
- D. Narrative including methodology, technical approach, and results demonstrating the Town storm water quantity and quality requirements are being met; and
- E. Other applicable calculations and narrative demonstrating the applicable storm water requirements contained in the Subdivision Regulations and Zoning Ordinance are being met.

A sufficiency review will be conducted of the Storm Water Management Report. A detailed review will not be performed unless the requirements of Section 2.3 are met.

### **Section 3: Storm Water Runoff Controls**

- A. Land disturbance activities may not aggravate upstream or downstream flooding.
- B. Detention and retention facilities or other flow attenuation methods shall be sized such that the post-development peak discharge rate is less than or equal to the pre-development peak discharge rate for the first flush, 2 year, 5 year, 10 year, 25 year, 50 year, and 100 year, 24 hour design storms. The facilities shall be designed such that the cumulative post-development discharge volume is less than or equal to the cumulative pre-development discharge volume during the critical time for the first flush, 2 year, 5 year, 10 year, 25 year, 50 year, and 100 year, 24 hour design storms. The critical time shall be between the hours of 11 and 18 of the 24 hour design storm unless otherwise specified by a Town accepted watershed plan.
- C. Water quality measures such as forebays or other BMPs shall be incorporated into detention facilities for added quality benefit and ease of maintenance.
- D. Consideration shall be given to the use of regional facilities.
- E. Fee in lieu of detention shall be evaluated on a site-by-site basis. The fee shall include cost of construction and fair market value of the land required for detention facility construction. The use of the fee in lieu of detention does not exempt the requirement of water quality BMPs.
- F. Detention and retention facilities shall not be located in the right-of-way nor in a Waterway Natural Area.
- G. Detention and retention facilities shall only be located on commonly owned areas or parcels, and shall not be located on parcels or lot intended for single family residential uses.

## Section 4: Waterway Natural Areas

### 4.1 General Waterway Natural Area Requirements

- A. Waterway Natural Areas (WNA) shall be implemented in Major Subdivisions as Open Space. In any development other than a Major Subdivision where open space is not provided, the ~~Waterway Natural Areas~~ WNA shall be on private lots.
- B. ~~Waterway Natural Areas~~ WNA width shall be at least 100 feet perpendicular from the top of bank on each side of the waterway where tributary area is greater than or equal to five (5) square miles ~~at the location of the subdivision or development~~.
- C. ~~Waterway Natural Areas~~ WNA width shall be at least 75 feet perpendicular from the top of bank on each side of the waterway where the tributary area is greater than or equal to one (1) square mile and less than five (5) square miles ~~at the location of the subdivision or development~~.
- D. ~~Waterway Natural Areas~~ WNA width shall be at least 50 feet perpendicular from the top of bank on each side of the waterway where the tributary area is less than one (1) square mile ~~at the location of the subdivision or development~~.
- E. ~~Waterway Natural Areas~~ WNAs shall be applied along all intermittent and perennial stream waterways as determined by the Town, ~~State TDEC~~, Tennessee Qualified Hydrologic Professional or USGS topographic information. This determination shall be ~~conducted~~ presented at the pre-application conference phase, however the Town reserves the right to identify a waterbody until ~~the~~ preliminary plat approval.
- F. Waterway Natural Areas shall be recorded on the plat for parcels subject to plat revision.
- G. On parcels not subject to plat revisions, the ~~Waterway Natural Area~~ WNAs shall be applied as a setback from the top of bank.
- H. WNA designations shall not reduce Base Site Area and may be included as part of the required open space.
- I. All site development plans and plats prepared for recording shall:
  1. Define the boundaries of any ~~Waterway Natural Area~~ WNA on the subject property and ~~be labeled~~ as "Waterway Natural Area".
  2. Provide a note to reference any ~~Waterway Natural Area~~ WNA stating: "There shall be no clearing, grading, construction or disturbance of vegetation except as permitted by the Town of Nolensville Engineering Department."
  3. Provide a note to reference any protective covenants governing all ~~Waterway Natural Area~~ WNAs stating: "Any Waterway Natural Area shown hereon is subject to protective covenants which may be found in the land records and which restrict disturbance and use of these areas."
- J. All ~~Waterway Natural Area~~ WNAs must be protected during development activities. Construction layout survey must include staking and labeling the ~~Waterway Natural Area~~ WNAs. Use a combination of stakes and flagging to ensure adequate visibility.
- K. Minor landscaping is allowed within the ~~Waterway Natural Area~~ WNA to repair erosion, damaged vegetation, or other problems identified. Landscaping or stabilization activities must have prior approval by the Engineering Department.

**4.2 Permitted Waterway Natural Area Uses:**

- A. If the adjacent land use involves subsurface discharges or surface application from a wastewater treatment system that serves more than one household or a non-residential use, effluent will not be allowed to discharge in the WNA except as provided herein. Where ~~the~~ TDEC has granted an NPDES wastewater permit, the permittee is allowed to convey the effluent through the WNA to the waterway designated in the NPDES permit.
- B. Septic tanks must be outside of Waterway Natural Area. Septic field lines may be allowed within the WNA to within 25<sup>±</sup> feet from stream top of bank or as determined by the Williamson County Department of Sewage Disposal Management, whichever provides the greatest distance from top of stream bank.
- C. No buildings shall be allowed in the ~~Waterway Natural Area~~ WNA with the exception of passive recreation areas.

## **Section 5: Storm Water System Long-Term Operation and Maintenance**

- A. The maintenance requirements for permanent storm water runoff control facilities shall be the responsibility of the owner/operator.
- B. Residential developments that form a homeowners association, trust indenture, or other management entity, that entity shall be responsible for long term operation and maintenance of storm water infrastructure located in drainage easements or open space.
- C. An engineer shall provide a storm water infrastructure long-term operation and maintenance plan with an opinion of probable costs and schedule, subject to approval by the Town of Nolensville. The long term operation and maintenance plan shall be in writing, shall be in recordable form, and shall, in addition to any other terms deemed necessary by the Town of Nolensville, contain a provision permitting inspection at any reasonable time by the Town of Nolensville of the facilities deemed critical to the public welfare.
- D. The Town of Nolensville will have the authority to maintain facilities not properly maintained and to recover costs associated with the maintenance from the owner/operator.
- E. Operation and maintenance plans for residential development shall be submitted and recorded with the final plat.
- F. Operation and maintenance plans for non-residential development shall be submitted and recorded prior to the issuance of a land disturbance permit.
- G. Upon approval of the storm water management facilities by the Town of Nolensville, the facility owner/operator (s) shall demonstrate the ability to garner and apply the financial resources necessary for long-term maintenance requirements. The funding mechanism shall be in a form approved by the Town of Nolensville. The Town will only approve funding mechanism(s) for long-term maintenance responsibilities that can be demonstrated to be permanent or transferable to another entity with equivalent longevity.
- H. Long term operation and maintenance provisions or the storm water infrastructure shall be documented in the restrictive covenants.
- I. Inspections of storm water management facilities shall be conducted semi-annually by the owner/operator for serviceability and shall be documented. The owner/operator shall submit to Nolensville a report no later than the first day of July upon completion of construction, and the bi-annually during the life of the facility. The report shall include the facility's condition relative to the intent of the design and shall demonstrate that the owner/operator has fulfilled the funding mechanism requirement. Storm water management facilities shall be inspected every five years from the time of construction by an engineer. The inspection include a certification by the engineer that the facility is functioning as intended or shall provide a schedule of repairs and maintenance activities necessary to meet the intended use of the facility.

## Section 6: Land Disturbance Permits

### 6.1 Applicability

- A. Every owner/operator will be required to obtain a land disturbance permit from the Town of Nolensville in the following cases:
  - 1. Activities resulting in greater than 5,000 square feet of land disturbance;
  - 2. Whenever excavation, fill, or any combination thereof will exceed five hundred (500) cubic yards of material.
  - 3. Where land disturbance activities pose a threat to water, public health or safety;
- B. No building permit shall be issued until the applicant has obtained a land disturbance permit where the same is required by these Regulations.

### 6.2 Land Disturbance Permit Application

- A. Application for a Land Disturbance Permit for subdivisions and non-residential sites that require a “Tennessee General Permit for Storm Water Discharges from Construction Activities” shall require the following be submitted to the Town of Nolensville for review and approval:
  - 1. The ~~Notice of Intent (NOI)~~ **Notice of Coverage (NOC) submitted to received from** TDEC for coverage under the “Tennessee General Permit for Storm Water Discharges from Construction Activities.”
  - 2. The Storm Water Pollution Prevention Plan prepared for coverage under the “Tennessee General Permit for Storm Water Discharges from Construction Activities.”
  - 3. Separate sheets, stamped by an engineer at a scale not to exceed one (1) inch equal to fifty (50) feet, for pre-construction, construction, and post construction storm water BMPs.
- B. Application for a Land Disturbance Permit for single lot residential sites that require a “Tennessee General Permit for Storm Water Discharges from Construction Activities” shall require the following be submitted to the Town of Nolensville for review and approval:
  - 1. The Notice of ~~Intent (NOI)~~ **Coverage (NOC) submitted to received from** TDEC for coverage under the “Tennessee General Permit for Storm Water Discharges from Construction Activities.”
  - 2. The Storm Water Pollution Prevention Plan prepared for coverage under the “Tennessee General Permit for Storm Water Discharges from Construction Activities.”
  - 3. Separate sheets, at a scale not to exceed one (1) inch equal to fifty (50) feet, for pre-construction, construction, and post construction storm water BMPs.

Application for a Land Disturbance Permit on sites with land disturbance activities greater than 5,000 square feet but less than one (1) acre and does not require a “Tennessee General Permit for Storm Water Discharges from Construction Activities” shall ~~require the~~ **submitted** to the Town ~~of Nolensville~~ a Nolensville Erosion and Sediment Control Checklist signed by the applicant.

- C. Land disturbance activities shall meet the requirements and standards of the latest Tennessee

Construction General Permit and shall include:

1. For common drainage locations that serve an area with 10 Or more acres disturbed at one time, a temporary (or permanent) sediment basin that provides storage for a calculated volume of storm water runoff from a 2-year, 24-hour storm from each acre drained, until final stabilization of the site; and
2. Storm water management practices and controls to prevent waste, including discarded building material materials, concrete truck wash out, asphaltic concrete mix chemicals, litter and sanitary waste from entering the storm water drainage system and waters of the state.

**6.3 Fee Schedule**

- A. Single Lot – A storm water review and inspection fee of \$150 per lot is payable at **the time of the** building permit application for residential lots which are part of a platted subdivision, or exceed one (1) acre of disturbed area.
- B. Subdivision – A storm water review and inspection fee of \$300 is required for all subdivisions payable at issuance of a Land Disturbance Permit.

Non-Residential Site Plans – A storm water review and inspection fee of \$300 is required for all non-residential site plans

## Section 7: Inspections

Inspections shall be performed to ensure that vegetation, erosion and sediment control measures and other protective measures identified in the Stormwater ~~¶~~Pollution Prevention Plan (SWPPP) are kept in good and effective operating condition ~~in accordance with the SWPPP~~.

### 7.1 Owner/Operator Inspections

Inspections ~~are~~ required for all development requiring a land disturbance permit.

- A. Inspections already required. (TDEC, etc...)
- B. ~~Nolensville Town~~ may request submission of inspection documentation.
- C. Final storm water management ~~BMPs control measures (SCMs)~~ must be inspected and certified that the ~~BMPs SCMs~~ are in accordance with the approved plans prior to certificate of occupancy.

Additional inspections for Major and Minor Subdivisions, site plans or other major developments:

- D. Pre-Construction ~~storm water management BMPs SCMs~~ must be inspected and certified that the ~~BMPs SCMs~~ are in accordance with the approved plans by an engineer, licensed in the State of Tennessee on sites greater than one acre or part of a larger development.
- E. Construction storm water management ~~BMPs SCMs~~ must be inspected and certified that the ~~BMPs SCMs~~ are in accordance with the approved plans by an engineer, licensed in the State of Tennessee, prior to granting building permit on sites with land disturbance activities greater than one (1) acre.
- F. Post Construction ~~BMPs SCMs~~ must be inspected and certified that the ~~BMPs SCMs~~ are in accordance with the approved plans by an engineer, licensed in the State of Tennessee, prior to release of surety.
- G. Hard copy and digital as-built plans will be required in the State of Tennessee ~~Plans~~ ~~State Plane Coordinate~~ system with the North American Datum 1983 (NAD83) and North American Vertical Datum (NAVD) of 1988.

### 7.2 Town Inspections

- A. Town inspections may include, but are not limited to, the following:
  - 1. An initial inspection prior to storm water pollution prevention plan approval;
  - 2. A bury inspection prior to burial of any underground drainage structure;
  - 3. Erosion prevention and sediment control inspections as necessary to ensure effective control of erosion and sedimentation; and
  - 4. A final inspection when all work, including installation of storm management facilities, has been completed.
  - 5. Periodic inspections to ensure storm water facilities are being maintained.

## Section 8: Enforcement

A. Enforcement authority. The Town of Nolensville shall have the authority to issue Notices of Violation, **stop work orders**, and citations, to impose the civil penalties provided in this section, and to institute appropriate actions or proceedings at law or equity for the enforcement of these Regulations.

B. Notification of Violation.

1. Written Notice. Whenever the Town Engineer, the Director of Codes Compliance or his designee finds that any owner/operator or any other person discharging storm water has violated or is violating these Regulations or a permit or order issued hereunder, he may serve upon such person written Notice of the Violation (NOV). In addition to the NOV, whenever the Town Engineer, the Director of Codes Compliance or his designee finds that any permittee, person, company or facility owning, occupying or operating on any premises has violated or is violating these Regulations or a permit or order issued hereunder, he may revoke any permit issued by the Town. Any permit mistakenly issued in violation of any applicable federal, state or local law or regulation may be revoked. Notice of such revocation shall be in accordance with the same notification requirements for NOV's.

Within a time limit established by 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 Town of Nolensville. 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.

2. Consent Orders. The Town Engineer or Director of Codes Compliance or his designee 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 B.3 and B.5 below.
3. Compliance Order. When the Town Engineer or Director of Codes Compliance or his designee finds that any person has violated or continues to violate these Regulations or a permit or order issued thereunder, he may issue an order to the violator directing that, following a specific time period, adequate structures, devices, be installed 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.
4. Cease and Desist Orders. When the Town Engineer or Director of Codes Compliance or his designee finds that any person has violated or continues to violate these Regulations or any permit or order issued hereunder, he may issue an order to cease and desist all such violations and direct those persons in noncompliance to:
  - a. Comply forthwith; or

- b. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.
- c. Conflicting standards. Whenever there is a conflict between any standard contained in these Regulations and in the BMP manual adopted by the Town of Nolensville pursuant to these Regulations, the strictest standard shall prevail.
5. Show Cause Hearing. The Town Engineer or Director of Codes Compliance or his designee may order any person who violates these Regulations 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 show cause hearing, 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.

**C. Chronic Violators (MS4 Permit Section 4.5)**

For chronic violators of the Town's Storm Water Regulations and applicable storm water requirements, the Town shall pursue progressive enforcement in accordance with the Enforcement Response Plan (ERP) contained in Appendix A. Each violation will be tracked, incentives and/or disincentives will be applied, and the inspection frequency will increase. If corrected actions are not taken by the violator, the Town will perform the necessary corrective action and assess the owner costs incurred for the corrective action. If the storm water facility is located on public property or within public-rights-of-way, the Town will document with photographs, maintenance logs, contractor invoices, and in the tracking system, that appropriate maintenance and/or repairs have been completed.

## Section 9: Penalties

Any person who shall commit any act declared unlawful under these Regulations, who violates any provision of these Regulations, who violates the provisions of any permit issued pursuant to these Regulations, or who fails or refuses to comply with any lawful communication or notice to abate or take corrective action by the Town Engineer or Director of Codes Compliance or his designee, shall be guilty of a civil offense.

### 9.1 Penalties

Under the authority provided in Tennessee Code Annotated Section 68-221-1106, the Town of Nolensville declares that any person violating the provisions of these Regulations may be assessed a civil penalty by the Town Engineer or Director of Codes Compliance or his designee 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. The penalties may be assessed beyond schedules applied in a NOV or other schedules issued to the property owner or other person responsible for unauthorized activity defined in these Regulations.

### 9.2 Measuring civil penalties

In assessing a civil penalty, the Town Engineer or Director of Codes Compliance or his designee 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 municipality;
- 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.

### 9.3 Recovery of damages and costs

The Town of Nolensville may recover damages and costs in addition to civil penalties.

- A. The Town ~~of Nolensville~~ may recover all damages proximately caused by the violator ~~to Nolensville~~, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, these Regulations, or any other actual damages caused by the violation.
- B. The Town ~~of Nolensville~~ may recover the costs ~~to Nolensville~~ for maintenance of storm water facilities when the user of such facilities fails to maintain them as required by these Regulations.
- C. In the event that there are penalties assessed by the State against the Town of Nolensville caused by or as a result of the act or omission of any person, company or facility, said person, company or facility shall be assessed the equivalent amount of

such penalty. This shall include, but is not limited to, penalties for improper disposal or illegal dumping, or illicit connection into the municipal separate storm sewer system.

- D. If corrective action, including maintenance delinquency, is not taken in the time specified, or within a reasonable time if no time is specified, the Town of Nolensville may undertake ~~the~~ corrective action, and the cost of such corrective action shall be the responsibility of the person, company, facility, owner and/or developer. The cost of abatement and restoration shall be borne by the owner of the property, with such costs invoiced to the owner of the property. If said invoice is not paid within ninety (90) days of receipt of such invoice, the Town of Nolensville shall have the authority to place a lien upon and against the property. If the lien is not removed within ninety (90) days, the Town of Nolensville is authorized to take all legal action necessary to enforce the lien as a judgment, including without limitation, enforcing the lien in an action brought in a court of competent jurisdiction.

#### **9.4 Other remedies**

The Town of Nolensville may bring legal action to enjoin the continuing violation of these Regulations, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.

#### **9.5 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.

#### **9.6 Emergency Orders and Abatement**

The Town Engineer or Director of Codes Compliance or his designee may order the abatement of any discharge from any source to the storm water conveyance system when, in the opinion of the Town Engineer or Director of Codes Compliance or his designee, the discharge causes or threatens to cause a condition which presents an imminent danger to the public health, safety or welfare, or the environment, or a violation of the NPDES permit. In emergency situations where the property owner or other responsible party is unavailable and time constraints are such that service of a notice and order to abate cannot be effected without presenting an immediate danger to the public health, safety or welfare, or the environment or a violation of the NPDES permit, the Town may perform or cause to be performed such work as shall be necessary to abate said threat or danger. The costs of any such abatement shall be borne by the property owner and shall be collected in accordance with the provisions herein.

## Section 10: Authority of Storm Water Appeals Board

- A. Pursuant to Tennessee Code Annotated Section 68-221-1106, The Town of Nolensville hereby creates a board to hear and decide appeals or these Storm Water Regulations.
1. Said board shall be called the “Storm Water Appeals Board”.
  2. The Storm Water Appeals Board shall consist of five members, appointed by the Town Mayor, subject to confirmation by the Board of Mayor and Alderman. Each member must be a resident of the Town of Nolensville. There shall be one member that is representative of the following groups if available:
    - a. Member of the Board of Mayor and Alderman
    - b. Current Home Owner
    - c. Member of the Profession of Engineering
    - d. Member of the Profession of Agriculture
    - e. Member of the Residential/Commercial Development Community
  3. Each member shall be appointed to a term of three years, with the first term of members a-c lasting two years, and the first term of member d-e lasting three years. Thereafter the term of each member shall be three years, except the Member of the Board of Mayor and Alderman, whose term shall run concomitant with his/her elected term of office.
  4. The Storm Water Appeals Board shall meet as needed.
  5. Each meeting of the Storm Water Appeals Board shall be memorialized in a set of minutes that will be kept in a well-bound book by the Town Engineer.
  6. The Storm Water Appeals Board is hereby authorized to hear and decide appeals of any order, decision or ruling of the Town Engineer or Codes Official or his designee issued pursuant to these Regulations. Following the hearing on an application for appeal, the Storm Water Appeals Board may affirm, reverse, modify or remand for more information, the order, decision or ruling of the Town Engineer or Codes Official or his designee. In no event shall the Storm Water Appeals Board issue a decision that in any way conflicts or contradicts these Regulations or any other federal, state or local laws or regulations relating to Storm Water, Wastewater, **Codes, or** Zoning or Planning.
- B. Any person aggrieved by the imposition of a civil penalty, damage assessment, or decision by the Town Engineer, Town Code Official or his/her designee as provided by these Regulations may appeal said penalty, damage assessment, or decision to the Storm Water Appeals Board, created pursuant to these Regulations.
- C. The appeal shall be in writing and filed along with a non-refundable application fee of \$100.00 with the Town Engineer within fifteen (15) days after the civil penalty and/or damage assessment is served in any manner authorized by law.
- D. Upon receipt of an appeal, the Storm Water Appeals Board shall hold a public hearing within thirty (30) days. Ten (10) days prior notice of the time, date, and location of said hearing shall be published in a newspaper of general circulation. Ten (10) days notice by registered mail shall also be provided to the appellant, such notice to be sent to the address provided by the appellant on the notice of appeal. The decision of the Storm Water Appeals Board shall be final.

- E. Appealing decisions of the Storm Water Appeals Board. Any alleged violator may appeal a decision of the Storm Water Appeals Board pursuant to the provisions of Tennessee Code Annotated, title 27, chapter 8.

## **Section 11: Administration and Miscellaneous**

- A. In order that storm water quality and quantity may be managed in accordance with these purposes and policies, these Regulations are hereby adopted.
- B. Should any article, section, subsection, clause or provision of this Storm Water Management Regulation be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the regulation as a whole or any part thereof other than the part declared to be unconstitutional or invalid, each article, section clause and provision being declared severable.
- C. In their interpretation and application, the provisions of these Regulations shall be held to be the minimum requirements for promotion of the public health, safety and general welfare.
- D. It is established that these regulations are not intended to interfere with, abrogate or annul any regulations, statutes, or laws. In any case where these Regulations impose restrictions different from those imposed by any other provision of these regulations, or any other regulation, law or statutes, whichever provisions are more restrictive or impose higher standards shall control.
- E. For the purpose of these Regulations, certain numbers, abbreviations, terms, and words used herein shall be used, interpreted, and defined as set forth in Section 12.

Where words within these regulations have not been defined, the standard dictionary definition shall prevail.

- F. Unless the context clearly indicates to the contrary, words used in the present tense include the future tense; words in the plural include the singular; words used in the masculine include the feminine.

## Section 12: Definitions

**Agricultural Land Management Activities**— the practice of cultivating the soil, producing crops, and raising livestock for the preparation and marketing of the resulting products.

**As-Built Plans**— means drawings depicting conditions as they were actually constructed.

**Base Flood**— The flood having a one percent chance of being equaled or exceeded in any given year. While this statistical event may occur more frequently, it ~~may~~ ~~is~~ also ~~be~~ known as the “100-year ~~or regulatory~~ flood event”.

**Base Site Area**- The area of a site, as determined by an actual on-site survey, within a single zoning district (if more than one district is present they should be treated as separate parcels) less:

- A. Any land within the ultimate right-of-way of existing roads; ~~and~~
- B. Existing utility rights-of-way for pipelines or high tension lines; ~~and~~
- C. Any land which has been cut-off from the main parcel by a highway, rail-line, or stream so that common access and use is impossible, and where separate use is not feasible; ~~and~~
- D. Any land which is subject to any covenants, easements, or restrictions against building except for areas included solely in either stream, drainageway, flood plain, or wetland preservation and/or restoration easements that are held in perpetuity by a non-profit organization or agency with IRS 501 C 3 status devoted to such matters; and,
- E. Any required bufferyards; ~~and~~

**Best Management Practice (BMP)**— This may refer collectively or specifically to a structural or non-structural practice intended to address water quantity or quality ~~as best available to meet the requirements of the Storm Water Management Regulations~~.

**BMP Treatment Train**— A technique for progressively selecting various storm water management practices to address water quality, by which groups of practices may be used to achieve a treatment goal while optimizing effectiveness, maintenance needs and space.

**Bridge**— A man made conveyance ~~of~~ ~~to allow passage of~~ storm water flows.

**Building**— A structure built, maintained, or intended for use for the shelter or enclosure of persons, animals, or property of any kind. The term is inclusive of any part thereof. Where independent units with separate entrances are divided by party walls, each unit is a building.

**Channel**— A natural or artificial watercourse of perceptible extent, with definite bed and banks to ~~confine and conduct~~ ~~convey~~ continuously or periodically flowing water. Channel flow is that water ~~which is~~ flowing within the limits of the defined channel.

**Clearing**— To remove vegetation, trees, debris, or structures.

**Culvert**— A man made conveyance ~~of~~ ~~for~~ storm water flows. This may include a pipe or other constructed conveyance.

**Cross-drain**— A culvert used to convey flow under a road or other obstruction between channels or surface flow.

**Critical area**— A site subject to erosion or sedimentation as a result of cutting, filling, grading, or other disturbance of the soil; a site difficult to stabilize due to exposed subsoil, steep slope, extent of exposure, and other conditions.

**Critical service roads**— Designated County evacuation routes, or other access to police, fire, emergency medical services, hospitals, or shelters.

**Cut**— Portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to the excavated surface.

**Design storm event**— A hypothetical storm event, of a given frequency interval and duration, used in the analysis and design of storm water management facilities.

**Detention**— The temporary delay of storm runoff prior to discharge into receiving waters with the use of a pond and outlet structure. ~~This includes facilities with a normal pool elevation.~~

**Developer**— Any individual, firm, corporation, association, partnership, or trust involved in commencing proceedings to effect development of land for himself or others. This includes any legal or engineering representative of the “developer”.

**Development**— Any man-made change to improved or unimproved real property, including but not limited to, buildings, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials (as defined as materials of like nature stored in whole or in part for more than six months).

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

**Drainage Basin**— A part of the surface of the earth that is occupied by and provides surface water runoff into a storm water management system (MS4 or Waters of the State), which consists of a surface stream or a body of impounded surface water together with all tributary surface streams and bodies of impounded surface water.

**Engineer**— An engineer duly registered, licensed or otherwise authorized by the State of Tennessee to practice in the field of civil engineering.

**Erosion Prevention and Sediment Control (EP&SC)**— See “erosion prevention” and “sediment control”

**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 anthropogenic (changes in nature caused by people) activities or effects.

**Erosion prevention**— practices implemented to prevent, through shielding, binding or other mechanism(s), the suspension of soil particles, often associated with erosion prevention and sedimentation control.

**Excavation**— See cut.

**Existing Grade**— The slope or elevation of existing ground surface prior to cutting or filling.

**Existing Construction**— Any structure for which the "start of construction" commenced before the effective date of these Regulations.

**Fill**— Portion of land surface or area to which soil, rock, or other materials have been or will be added; height above original ground surface after the material has been or will be added.

**Finished Grade**— The final slope or elevation of the ground surface, after cutting or filling.

**First Flush**— The runoff that occurs at the beginning of a rain event.

**Flood or Flooding** – Water from a river, stream, watercourse, lake, or other body of standing water that temporarily overflows and inundates adjacent lands and which may affect other lands and activities through increased surface water levels, and/or increased groundwater levels, and high water velocities.

**Flood Insurance Rate Map (FIRM)** – An official map of the Town of Nolensville, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to Nolensville.

**Flood Insurance Study** – The official report provided by the Federal Emergency Management Agency. The report contains elevations of the base flood, floodway widths, flood velocities, and flood profiles.

**Floodplain** – The relatively flat or lowland area adjoining a river, stream, watercourse, lake, or other body of standing water which has been or may be covered temporarily by floodwater. For purposes of ~~this manual~~ these regulations, the floodplain is defined as the 100-year floodplain having a one percent chance of being equaled or exceeded in any given year.

**Floodproofing** – A combination of structural or non-structural provisions, changes, or adjustments to properties and structures subject to flooding primarily for the reduction or elimination of flood damages to properties, water and sanitary facilities, structures, and contents of buildings in a flood hazard area.

**Floodway** – That portion of the stream channel and adjacent floodplain required for the passage or conveyance of a 100-year flood discharge. The floodway boundaries are placed to limit encroachment in the flood plain so that a 100-year flood discharge can be conveyed through the floodplain without materially increasing (less than one foot) the water surface elevation at any point and without producing hazardous velocities or conditions. This is the area of significant depths and velocities and due consideration should be given to effects of fill, loss of cross sectional flow area and storage, and resulting increased water surface elevations.

**Floodway Fringe** – That portion of the floodplain lying outside the floodway.

**Floor** - The top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

**Flow Attenuation**- To lessen the volume, stage, discharge rate, or velocity of the storm water runoff.

**Grading** – Any operation or occurrence by which the existing site elevations are changed; or where any ground cover, natural or man - made, is removed; or any watercourse or body of water, either natural or man- made, is relocated on any site, thereby creating an unprotected area. This includes stripping, cutting, filling, stockpiling, or any combination thereof, and shall apply to the land in its cut or filled condition. Grading activities may only be performed with a Land Disturbance Permit from the Town and TDEC for disturbed areas greater than one acre.

**Green Infrastructure (GI)** – Green infrastructure utilizes vegetation, soils, and natural processes to manage storm water runoff and create healthier urban environments.

**Historic Structure Designation** – Any structure that is: listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historical district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or listed individually on a state or local inventory of historic

places which have been approved by the Secretary of the Interior.

**Hot Spot** – An area where land use or activities generate highly contaminated storm water runoff, with concentrations of pollutants in excess of those typically found in storm water.

**Illicit Connection** – Any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

**Illicit Discharge** – Defined at 40 CFR 122.26(b)(2) and refers to any discharge to a municipal separate storm sewer that is not entirely composed of storm water, except discharges authorized under an NPDES permit (other than the NPDES permit for discharges from the MS4) and discharges resulting from firefighting activities.

**Impervious Cover** – A term applied to any ground or ~~structural~~ surface that water cannot ~~penetrate~~ infiltrate or through which water ~~penetrates~~ infiltrates with great difficulty.

**Intermittent Stream ~~Waterways~~** – Natural or man-made watercourses (streams) which cease to flow for sustained periods during a normal rainfall year (typically during the later summer through the fall months). ~~The groundwater table elevation is typically less than the invert of the stream.~~

**Land Disturbing 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.

**Low Impact Development (LID)** – An approach to land development (or re-development) that works with nature to manage storm water runoff as close to its source as possible. LID employs principals such as preserving natural landscape features, minimizing impervious area, and creating functional and appealing site drainage that treats storm water runoff as a resource.

**Maintenance** – Any activity necessary to keep a storm water management facility in good working order so it will function as designed. Maintenance shall include complete reconstruction of a storm water management facility if reconstruction is required in order to restore the facility to its original operational design parameters. Maintenance shall also include the correction of any problem on the site, where the storm water management facility is located, that directly impair the functions of the storm water management facility.

**Municipal Separate Storm Sewer System (MS4)** – defined ~~as~~ in 40 CFR 122.26(b)(8) and means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- i. Owned or operated by a 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, storm water, 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 Clean Water Act (CWA) that discharges to waters of the state;
- ii. Designed or used for collecting or conveying storm water;
- iii. Which is not a combined sewer; and
- iv. Which is not part of a Publicly Owned Treatment Works (POTW) as defined ~~as~~ 40 CFR 122.2.

**New Construction** – Structures for which the "start of construction" commenced on or after the effective date of these Regulations ~~or revisions to these regulations~~. The term also includes any subsequent improvements to such structures.

**Nonpoint Source**— Any source of pollutant(s) that is not a point (**concentrated**) source. Examples are sheet flow from pastures and runoff from paved areas **or any area with the potential to contribute pollutants to the receiving streams or water bodies.**

**NPDES Permit**— National Pollution Discharge Elimination System permit issued pursuant to 33 U.S.C. 1342.

**NRCS** – National Resources Conservation Service (**formally Soil Conservation Service**).

**One Hundred (100) -Year Flood**— A flood that has an average frequency of occurrence of once in one hundred (100) years, determined from an analysis of floods on a particular watercourse and other watercourses in the same general region. Statistically, it has a one percent chance of occurring in any given year. See “Base Flood”.

**Owner/Operator**— Any and all persons, natural or artificial, including any individual, firm or association and any municipal or private corporation organized or existing under the laws of this or any other state or country that holds property or performs land disturbance activities.

**Passive Recreational Activities**— Including, but not limited to, parks, areas for hiking, arboretums, nature areas, wildlife sanctuaries, picnic areas, garden plots, cemeteries and beaches.

**Perennial Streams ~~Waterways~~**— Watercourses (streams) that generally flow year-round **but ~~However, they~~** may go dry in droughty years.

**Permittee** - Any person, firm, or any other legal entity to whom a site disturbance, grading, building or other related permit is issued in accordance with the Town of Nolensville regulations.

**Point Source**— Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

**Redevelopment**— development improvements that have a value less than 50% of the current assessed value and/or increases the floor area by less than 25%. Demolition and reconstruction is considered development and not redevelopment. **Note: this is different from significant redevelopment.**

**Regional Storm Water Management Facility**— A device or management practice, typically but not always a detention or retention pond, with a tributary area with more than one development site. This may be multiple homogenous land use areas or an area of various land uses.

**Retention** – The prevention of storm runoff from direct discharge into receiving waters. Examples include systems which discharge through percolation, **in**filtration, filtered bleed-down and evaporation processes.

**SCS**— Soil Conservation Service

**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, or gravity as a product of erosion.

**Sediment Control**— practices implemented to manage through filtering, settling or other mechanism(s) to remove suspended particles (soil, organic or mineral) from water, often associated with erosion prevention and sedimentation control.

**Significant Redevelopment**— development improvements that have a value greater than 50% of the current assessed value, increases the floor area ~~than~~ 25% or more, any change in the impervious surface area, redirects the flow of storm water in any way, modifies the storm sewer system, or changes ~~the~~ storm water characteristics. Demolition and reconstruction is considered development and

not redevelopment. Note: this is different from redevelopment.

**Site**– All contiguous land and bodies of water in one ownership, graded or proposed for grading or development as a unit, although not necessarily at one time.

**Slope** – Degree of deviation of a surface from the horizontal, usually expressed in percent or ratio.

**Small Municipal Separate Storm Sewer System**– defined ~~as~~ in 40 CFR 122.26(b)(16) and refers to all separate storm sewers that are owned or operated by the United States, a 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, storm water, 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 Clean Water Act (CWA) that discharges to waters of the state, but is not defined as “large” or “medium” municipal separate storm sewer system. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

**Storm Water**– is defined ~~as~~ in 40 CFR 122.26(b)(13) and means storm water runoff, snow melt runoff, and surface runoff and drainage.

**Stripping** – Any activity that removes or significantly disturbs the vegetative surface cover, including clearing and grubbing operations.

**Structure** – See Building.

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

**Waters of the State**– All water, public or private, on or beneath the surface of the ground, except those bodies of water retained within single ownership which do not join with natural surface or underground waters.

**Waterway Natural Area**– A strip of undisturbed native vegetation, either original or re-established, that borders streams and rivers, ponds and lakes, wetlands, and springs.

**Wetland**– Those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typical to life in saturated soil conditions. Wetlands generally include, but are not limited to, swamps, marshes, bogs and similar areas.

**Wet Weather Conveyance**– Man-made or natural watercourses that flow only in direct response to precipitation runoff in their immediate locality, and whose channels are above the groundwater table, and which do not support fish and aquatic life.

## **Appendix A**

# **Town of Nolensville Phase II MS4 Permit TNS077801 Enforcement Response Plan**

Section 4.5 of the Town of Nolensville's (Town) MS4 permit requires the development and implementation of an enforcement response plan (ERP). The plan must set out the Town's potential responses to violations and address repeat violations through progressive enforcement as needed to achieve compliance.

The Town shall have the authority to issue notices of violation and citations, and to impose civil penalties as provided in the Enforcement Response Plan. Measures authorized include:

- (a) Verbal Warnings – As 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 required corrective action, with deadlines for taking such action.
- (c) Citations with Administrative Penalties – The Town has 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 Town'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 Town may also use other escalated measures provided under the Town's legal authorities. The Town may perform work necessary to improve erosion control measures and collect funds from the responsible party in an appropriate manner, such as collecting against the project's bond or directly billing the responsible party to pay for work and materials.

For violations of the Town's MS4 permit requirements and other applicable ordinances and regulations, the Town will assess the situation and make a determination of the appropriate action to remedy the violation. Depending on the nature of the violation the Town may require that qualified environmental personnel clean up a spill or perform the necessary work to remedy the violation. If so required, the Town will require work necessary to improve erosion or water quality control measures and collect the cost of such work from the responsible party. If the responsible party does not perform work in a timely manner, the Town will specify a timeline for when the work shall be

accomplished based on the existing circumstances and whether there is an immediate impact to waters of the state.

As stated in Section 9.3.D. of the Storm Water Ordinance; if the storm water management facility or storm water control measure is not in compliance with the permitting procedures and corrective action is not taken in time, the Town may take corrective measures to ensure compliance with the effective MS4 permit.

For chronic violators, the Town will pursue progressive enforcement, and, if necessary perform the necessary work to correct the violation and assess the owner the cost incurred for repairs.

The Town's ERP for enforcement of its storm water ordinance and other applicable regulations will be rational, fair and consistent in determining penalty amounts for storm water violations. The following information will be used as a basis for implementing the Town's Enforcement Response Plan.

Multi-day assessments are appropriate if the violation(s) continue after Town notification or issuance of a notice of violation (NOV) or the violation(s) result in ongoing environmental impacts.

Factors that will be considered to increase or decrease the penalty amount include:

- History of noncompliance
- Economic benefit of noncompliance (did it financially benefit the violator)
- Ability to pay
- Merits of case
- Resource consideration (waters of state/303d/high quality stream, etc.)

There may be instances when the Town may include but not limit enforcement discretion to conclude the violation is not worthy of a penalty. Some factors that may be considered include minor nature of the violation or a positive change in ownership (contractor).

The extent of the violation will be classified as major, moderate or minor. Major violations may include but not limited to appropriate permit(s) not obtained; numerous permit conditions are not being met; substantial damage to environmental resource (or potential for damage); illicit discharges; or potential for discharges to waters of the state.

Moderate violations may include but not limited to appropriate permit(s) not obtained but most permit requirements and permit conditions are being met; environmental resource is impacted moderately (or has the potential to be moderately impacted); SWPPP is less than 50% complete and/or not up to date; required visual monitoring or annual comprehensive site evaluation are not conducted properly; and construction activity disturbs an area greater than five acres for total plan of development.

Minor violations would include permit requirements and conditions are mostly in compliance (no discharge of sediment from site); appropriate permit(s) not obtained but permit requirements and conditions are being met; environmental resource is minimally impacted (or potential to be minimally impacted); SWPPP is less than 50% complete and/or not up to date; and construction activity that disturbs an area greater than an acre for total plan of development. An example penalty matrix is shown below.

### Example Penalty Assessment Matrix

Potential for Harm To Environmental Resource	Extent of Violations		
	Major	Moderate	Minor
Major	\$3,000 to \$5,000	\$1,000 to \$3,000	\$50 to \$1,000
Moderate	\$2,000 to \$3,000	\$1,000 to \$2,000	\$50 to \$1,000
Minor	\$1,000 to \$2,000	\$500 to \$2,000	\$50 to \$100

An alternative or supplement to the above matrix would be a protocol that prescribes penalties based on whether a violation is the first, second, third, etc. The following are examples of this protocol.

#### Land Disturbing Activity Without Obtaining Necessary Permit(s)

- **First Offense:** stop work order; NOV; civil penalty equal to cost of permit (in addition to any other fees).
- **Second Offense:** stop work order; NOV; civil penalty of \$500 plus damages consisting of cost of the time spent enforcing and remediating the violation at an employee's hourly weighted rate.
- **Third or Subsequent Offense:** stop work order; NOV; civil penalty of \$1000 plus damages consisting of cost of the time spent enforcing and remediating the violation at an employee's hourly weighted rate.

#### Failure to Install, Maintain or Use Proper Construction Entrance (Tracking Mud on Street)

- **First Offense:** written warning with copies to general contractor and owner

- **Second Offense:** NOV to permit holder
- **Third or Subsequent Offense:** civil penalty of \$500 plus damages consisting of cost of the time spent enforcing and remediating the violation at an employee's hourly weighted rate.

*Failure of the permit holder to aggressively remove any mud, debris or construction material that is deposited on a public road after receiving a written warning or a NOV will result in an additional civil penalty of \$250 per incident plus Town expenses if the Town uses their personnel to remove the mud, debris or construction material to protect the safety of the public.*

#### **Failure to Install, Maintain or Use Proper Structural Erosion or Sediment Controls (Resulting in Sediment Discharge)**

- **First Offense:** written warning with copies to general contractor and owner; civil penalty for cost of damages if the Town is required to clean up the sediment discharged onto Town streets, ROW or storm water structures
- **Second Offense:** NOV; stop work order until necessary erosion and sediment controls are installed or maintenance completed; compliance order to submit self-inspection forms to Town on monthly basis; civil penalty for cost of damages if the Town is required to clean up the sediment discharged onto Town streets, ROW or storm water structures
- **Third Offense:** NOV; stop work order until necessary erosion and sediment controls are installed or maintenance completed; civil penalty of \$500 per discharge point; civil penalty for cost of damages if the Town is required to clean up the sediment discharged onto Town streets, ROW or storm water structures
- **Fourth or Subsequent Offense:** NOV; stop work order until necessary erosion and sediment controls are installed or maintenance completed; civil penalty of \$1000 per discharge point; civil penalty for cost of damages if the Town is required to clean up the sediment discharged onto Town streets, ROW or storm water

#### **Failure to Properly Maintain Erosion Control Self Inspection Sheets and On-Site Erosion Control Plan**

NOV and civil penalty of \$100 per inspection during which self-inspection sheets or up to date erosion control plans cannot be provided when requested by inspector.

#### **Failure to Provide Final Stabilization**

NOV and civil penalty of \$250 per day issued to owner for each day past issuance date of final certificate of occupancy.

### **Illicit Discharges (Significant Spills and Accidental Discharges of Materials)**

The Town's MS4 permit requires that the Town develop a program for responding to; containing; and preventing spills and accidental discharges of materials that will adversely affect the MS4 system and receiving streams. *(Note: Section 4.2.3 of the permit states: "The MS4 shall foster interagency coordination of hazardous waste or material spills response and cleanup. The MS4 shall inform local spill-response agencies and/or TEMA of the potential negative impacts to surface water (and ground water) of spill clean-up activities, that is, the potential for response to cause pollutants to enter waters of the state.")*

Any incident involving a "significant" spill of materials posing a risk to the Town's MS4, waters of the state, or a threat to human health and the environment in which Town staff responds for site assessment, containment, remediation supervision and/or monitoring, will be regarded as an illicit discharge under Section 2.3 of the storm water ordinance. Town staff will have full control of the spill site and will direct clean up of the site and remediation of the spill and materials. Depending on the nature of the violation, the Town will require that qualified environmental personnel clean up a spill or perform the necessary work to remedy the violation.

For violations that impact waters of the state, the violator will be subject to a fine of up to \$5,000 and additional fines by TDEC depending on the nature of the violation such as whether the violation is minor, moderate, or major.

The Town will notify owners of adjacent properties or other impacted properties within 48 hours of first awareness of the spill or event excluding weekends.

The Town will issue a NOV for the spill or discharge of materials that adversely impacts the MS4 and receiving streams which will require the responsible party to submit a written report within thirty (30) days of the date the NOV is received by the responsible party. The written report from the responsible party must contain the following information:

1. Exact date(s) of the incident, spill, or discharge;
2. Description of the incident, spill, or discharge; and
3. Steps that were taken to correct the incident, spill, or discharge and steps that will be taken to prevent reoccurrence of the incident, spill, or discharge in the future.

**First Offense:** NOV issued to responsible party for non-storm water discharge; civil penalty for damages consisting of employee hourly weighted rates and other related costs of Town crew or contracted services to clean up illicit discharge by responsible party at Town's direction.

The Town may issue a fine up to \$2,500 for a first time occurrence depending on the nature of the offense.

**Second Offense:** NOV and civil penalty up to \$2,500 issued to responsible party; civil penalty for damages consisting of employee hourly weighted rates and other related costs of Town crew or contracted services to clean up illicit discharge by responsible party at Town's direction.

**Third or Subsequent Offense:** NOV and civil penalty up to \$5,000 issued to responsible party; civil penalty for damages consisting of employee hourly weighted rates and other related costs or contracted services to clean up illicit discharge by responsible party at Town's direction.

### **Illicit Discharges (Residential Wastewater Discharges)**

NOV and compliance order to stop illicit discharge within 10 days issued to responsible party.

*An illicit discharge properly reported as an accidental discharge will be reclassified as an accidental release and not subject to a civil penalty, unless discharge is to waters of the state, as an illicit discharge. Additional damages consisting of salaries and cost of all Town crews or contracted services to clean up accidental releases will be assessed to the responsible party at Town's direction.*

### **Illicit Discharges (Residential Other than Wastewater Discharges)**

Enforcement action is based on type of violation. More serious violations such as deliberate dumping of a pesticide, used motor oil or other hazardous or dangerous chemical into a storm water conveyance system would result in a civil penalty of \$1,000 plus actual cost of enforcement and/or damages to environmental resource. A less serious violation, such as raking leaves into the storm water conveyance system, may result in a written or verbal warning.

*An illicit discharge properly reported as an accidental discharge will be reclassified as an accidental release and not subject to a civil penalty as an illicit discharge unless discharge is to waters of the state. Additional damages consisting of salaries and cost of all Town crews or contracted services to clean up accidental releases will be assessed to the responsible party*

### **Right of Entry**

As stated in Section 1.3.E. of the storm water ordinance: "The Town of Nolensville shall have right-of-entry upon the property subject to this regulation and any permit/document issued hereunder. The Town of Nolensville shall be provided ready access to all parts of the premises for the purposes of inspection, monitoring, sampling, inventory, records of examination and copying, and the performance of any other duties necessary to determine compliance with this regulation."

## **Citations With Administrative Proceedings**

**Consent Orders:** The Town 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 a Show Cause Hearing or Compliance Order.

**Show Cause Hearing:** The Town may order any person who violates the storm water ordinance, MS4 permit, or other order 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, proposed enforcement action and 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.

**Compliance order:** When the Town finds that any person has violated or continues to violate the storm water ordinance, MS4 permit, or other order, the Town 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.

**Cease and Desist and Stop Work Orders:** When the Town finds that any person has violated or continues to violate the storm water ordinance, MS4 permit or other order the Town may issue a stop work order or an order to cease and desist all such violations and direct those persons in noncompliance to Comply forthwith; or 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.

**Suspension, Revocation or Modification of Permit:** The Town 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 Town. 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 Town may deem necessary to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations. All fines associated with the notice of violation must be paid before the permit will be reissued.

**Conflicting Standards:** Whenever there is a conflict between any standard contained in the storm water ordinance, BMP manual or other ordinances and regulations adopted by the Town, the strictest standard shall prevail.

**Referral to TDEC:** Where the Town has used progressive enforcement to achieve compliance with this Enforcement Response Plan and other applicable ordinances, and in the judgment of the Town has not been successful, the Town may refer the violation to TDEC. For the purposes of this provision, “progressive enforcement” shall mean two (2) follow-up inspections and two (2) warning letters. In addition, enforcement referrals to TDEC must include, at a minimum, the following information:

- (a) Construction project or industrial facility location;
- (b) Name of owner or operator;
- (c) Estimated construction project or size or type of industrial activity (including SIC code, if known);
- (d) Records of communications with the owner or operator regarding the violation, including at least two follow-up inspections, two warning letters or notices of violation, and any response from the owner or operator.

**Other Remedies:** The Town may bring legal action to enjoin the continuing violation of this Enforcement response plan, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.

**Remedies Cumulative:** The remedies set forth in this Enforcement Response Plan 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.

**Appeals:** Pursuant to Tennessee Code Annotated § 68-221-1106(d), any person aggrieved by imposition of a civil penalty or damage assessment as provided by an enforcement action may appeal said penalty or damage assessment to the Storm Water Appeal Board.

**Appeals to be in Writing:** The appeal shall be in writing and filed with the municipal recorder or clerk within fifteen (15) days after the civil penalty and/or damage assessment is served in any manner authorized by law.

**Public Hearing:** Upon receipt of an appeal, the governing body shall hold a public hearing within thirty (30) days. Ten (10) days prior notice of the time, date, and location of said hearing shall be published in a daily newspaper of general circulation. Ten (10) days' notice by registered mail shall also be provided to the aggrieved party, such notice

to be sent to the address provided by the aggrieved party at the time of appeal. The decision of the governing body of the Town shall be final.

**Appealing Decisions of the Town's Governing Body:** Any alleged violator may appeal a decision of the Town's governing body pursuant to the provisions of Tennessee Code Annotated, title 27, chapter 8.

DRAFT

# **Executive Summary**

## **Town of Nolensville Public Workshop Storm Water Financing Options**

**December 17, 2015**

### **Introduction**

The Town is a designated MS4 since the Mayor signed a Notice of Intent that the Town would comply with the MS4 permit requirements. Essentially, the Town has contracted with the State to implement their approved storm water program. The MS4 requirements are mandated by the Environmental Protection Agency (EPA) and Tennessee Department of Environment and Conservation (TDEC). Remaining in compliance with the Town's MS4 permit requires an expenditure of Town funds which is increasing each year due to more stringent MS4 permit requirements. Some of the main expenditures required to remain in compliance with the MS4 permit include permit fee (currently \$3,460), preparation of annual reports, inspection of developments under construction, and review of storm water management plans for proposed development to ensure they meet existing storm water quantity and quality regulatory requirements.

### **Funding the Town Storm Water Program**

There are ways to fund the Town's storm water program. One funding source is through development funding mechanisms (fees). This approach will bring revenue to the Town and is o.k. as long as the economy is beneficial for development. However, sooner or later, development will slow down and revenue generated through development fees will diminish.

A more reasonable, sustainable, and equitable approach to funding a storm water program is through a storm water user fee. Tennessee Code Annotated provides legal authority to establish a storm water fee for storm water management. Many communities in Tennessee such as Springfield, Franklin, LaVergne, and Murfreesboro use a storm water user fee to meet requirements of their MS4 permit and fund their storm water management program. Typically, the amount of directly connected impervious area on residential, commercial, and industrial properties are used to determine the user fee for each parcel. Impervious area is used since it is the main source of increased volume of storm water runoff and pollutants to the Town storm water sewer system.