

## CHAPTER 3

### STORM WATER MANAGEMENT AND POLLUTION CONTROL

#### SECTION

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**14-301. General provisions.** The intended purpose of this ordinance is to safeguard property and public welfare by regulating storm water drainage and requiring temporary and permanent provisions for its control. If any requirement specified herein conflicts with requirements in other Town ordinances, regulations or policies, the more stringent requirement for the safeguard of human life, property or water quality shall apply. Design, planning and engineering companies should use this ordinance to facilitate their designs for control of storm water in new and redevelopment. The objectives of this chapter are to:

(1) Protect, maintain and enhance the environment of the Town of Arlington (referred herein as the Town) and the public health, safety and general welfare of the citizens of the Town by controlling discharges of pollutants to the Town's storm water system and to maintain and improve the quality of the receiving waters into which the storm water outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands and groundwater of the Town;

(2) Enable the Town to comply with the National Pollution Discharge Elimination System (NPDES) General Permit for Discharges from Small Municipal Separate Storm Sewer Systems (MS4) and applicable regulations, 40 CFR 122.26 for storm water discharges;

(3) Allow the Town to exercise the powers granted in Tennessee Code Annotated (TCA) §68-221-1105, which provides that, among other powers, municipalities have with respect to storm water facilities, is the power of ordinance or resolution to:

(a) Exercise general regulation over the planning, location, construction, and operation and maintenance of storm water facilities in the Town, whether or not owned and operated by the Town;

(b) Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, including the adoption of a system of fees for services and permits;

(c) Establish standards to regulate storm water discharges and to regulate storm water contaminants as may be necessary to protect water quality;

(d) Review and approve plans and plats for storm water management in proposed subdivisions or commercial developments;

(e) Issue permits for storm water discharges or for the construction, alteration, extension, or repair of storm water facilities;

(f) Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution, or condition of the permit;

(g) Regulate and prohibit discharges into storm water facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and

(h) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of storm water contamination, whether public or private.

(4) Eliminate any non-allowable discharges to the MS4 that adversely impact water quality;

(5) Provide for the sound use and development of all flood-prone areas in such a manner as to maximize beneficial use without increasing flood hazard potential or diminishing the quality of the natural storm water resources;

(6) Increase the awareness of the public, property owners and potential homebuyers regarding storm water impacts (i.e. flooding, erosion);

(7) Minimize prolonged business interruptions;

(8) Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone, storm and sanitary sewer lines; and streets and bridges;

(9) Promote a functional public and private storm water management system that will not result in excessive maintenance costs;

(10) Encourage the use of natural and aesthetically pleasing design that maximizes preservation of natural areas;

(11) Promote the use of comprehensive watershed management plans;

(12) Encourage preservation of floodplains, floodways and open spaces; and

(13) Encourage community stewardship of the Town's water resources.

**14-302. Jurisdiction.** The provisions of this chapter apply to the area within the jurisdictional boundaries of the Town of Arlington, Tennessee.

**14-303. Administering entity.** The Mayor or his designee shall administer the provisions of this ordinance.

**14-304. Definitions.** For the purpose of this chapter, unless specifically defined below, words or phrases shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its' most effective application. Words in the singular shall include the plural, and words in the plural shall include the singular. Words used in the present tense shall include the future tense. The word "shall" connotes mandatory and not discretionary; the word "may" is permissive.

(1) "Accidental discharges" means a discharge prohibited by this chapter into the Town of Arlington MS4 that occurs by chance and without planning or consideration prior to occurrence.

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

(3) "As-built plans" means drawings depicting conditions as they were actually constructed.

(4) "Best management practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollution of storm water runoff. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

(5) "Borrow Pit" is an excavation from which erodible material (typically soil) is removed to be fill for another site. There is no processing or separation of erodible material conducted at the site. Given the nature of activity and pollutants present at such excavation, a borrow pit is considered a construction activity for the purpose of this ordinance.

(6) "Brownfield" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant.

(7) "Buffer zone, water quality buffer or waterway buffer" means a setback from the top of the water body's bank of undisturbed perennial native vegetation, including trees, shrubs, herbaceous vegetation, enhanced or restored vegetation, or the re-establishment of native vegetation bordering streams, ponds, wetlands, springs, reservoirs or lakes separating the water body from buildings, structures, parking lots, drives and other land uses that alter habitat, geomorphology, water quality, and hydrology. Waterway buffers may also act as floodplain storage and a passive drainage way.

(8) "Channel" means a natural or artificial watercourse with a definite bed and banks that conducts flowing water continuously or periodically.

(9) "Clean Water Act" or "The Act" means the Federal Water Pollution Control Act, as amended, codified at 33 U.S.C. 1251, et seq.

(10) "Clearing" in the definition of discharges associated with construction activity, typically refers to removal of vegetation and disturbance of soil prior to grading or excavation in anticipation of construction activities. Clearing may also refer to wide area land disturbance in anticipation of non-construction activities; for instance, clearing forested land in order to convert forestland to pasture for wildlife management purposes. Clearing, grading and excavation do not refer to clearing of vegetation along existing or new roadways, highways, dams or power lines for sight distance or other maintenance and/or safety concerns, or cold planing, milling, and/or removal of concrete and/or bituminous asphalt roadway pavement surfaces. The clearing of land for agricultural purposes is exempt from federal stormwater NPDES permitting in accordance with Section 401(1)(1) of the 1987 Water Quality Act and state stormwater NPDES permitting in accordance with the Tennessee Water Quality Control Act of 1977 (T.C.A. 69-3-101 et seq.).

(11) "Chronic violator" means a violator that commits two or more of any violation within a six (6) month period.

(12) "Commercial" means property devoted in whole or part to commerce, that is, the exchange, buying, and selling of commodities or services. The term shall include, by way of example, but not be limited to the following businesses: amusement establishments, animal clinics or hospitals, automobile service stations, automobile dealerships for new or used vehicles, automobile car washes, automobile and vehicular repair shops, banking establishments, beauty and barber shops, bowling alleys, bus terminals, and repair shops, camera shops, dental offices or clinics, day care centers, department stores, drug stores, funeral homes, furniture stores, gift shops, grocery stores, hardware stores, hotels, jewelry stores, laboratories, laundries, and dry cleaning establishments, liquor stores, medical offices and clinics, motels, movie theaters, office buildings, paint stores or shops, parking lots, produce markets, professional offices, radio stations, repair establishments, retail stores, television stations and production facilities, theaters, truck or construction

equipment service stations, truck or construction equipment dealerships for new or used vehicles, truck or construction equipment washing facilities and truck or construction equipment repair shops.

(13) "Commencement of construction" The initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

(14) "Common plan of development or sale" broadly means any announcement or documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. A common plan of development or sale identifies a situation in which multiple areas of disturbance are occurring on contiguous areas.

(15) "Compliance inspection" means an inspection of a construction activity for the purpose of determining the adherence to and effectiveness of approved BMPs.

(16) "Construction activity" shall mean any clearing, grading, excavating, or equipment usage that will result in the disturbance of the land surface and is subject to storm water permit requirements under the State of Tennessee general permit for storm water discharges associated with construction activity. The term shall not include:

(a) Such minor construction activities as home gardens and individual home landscaping, home repairs, home maintenance work and other related activities that result in minor soil erosion;

(b) Individual service and sewer connections for single or two family residences;

(c) Agricultural practices involving the establishment, cultivation or harvesting of products of the field or orchard, preparing and planting of pasture land, forestry land management practices including harvesting, farm ponds, dairy operations, and livestock and poultry management practices and the construction of farm buildings;

(d) Any project carried out under the technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture;

(e) Installation, maintenance, and repair of any underground public utility lines when such activity occurs in an existing hard surface road, street or sidewalk, provided the activity is confined to the area of the road, street or sidewalk which is hard surfaced and a street, curb, gutter or sidewalk permit has been obtained, and if such area is less than one acre of disturbance;

(17) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(18) "Design storm event" means a hypothetical storm event of a given frequency interval and duration, used in the analysis and design of a storm water facility. The estimated design rainfall amounts, for any return period interval (i.e., 2-yr, 5-yr, 25-yr, etc.) in terms of either 24-hour depths or intensities for any duration, can be found by accessing the NOAA National Weather Service Atlas 14 data for Tennessee.

(19) "Development" means any activity subject to the State of Tennessee General NPDES Permit for Discharge of Stormwater Associated with Construction Activities (TNCGP).

(20) "Discharge" means 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.

(21) "Discharge of a pollutant, discharge of pollutants" and "discharge", when used without qualification, each refer to the addition of pollutants to waters from a source.

This definition includes additions of pollutants into waters of the state from: surface runoff, which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person, which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into the municipal separate storm sewer system.

(22) "Easement" means an acquired privilege or right of use or enjoyment that a person, party, firm, corporation, municipality or other legal entity has in the land of another.

(23) "Erosion" means the removal of soil particles by the action of water, wind, ice or other geological agents, whether naturally occurring or acting in conjunction with or promoted by human activities or effects.

(24) "Erosion Prevention and sediment control plan (EPSC Plan)" means a written plan (including drawings or other graphic representations) that is designed to minimize the erosion and sediment runoff at a site during construction activities.

(25) "Hotspot" means an area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater. The following land uses and activities are deemed stormwater hot spots, but that term is not limited to only these land uses:

- (a) vehicle salvage yards and recycling facilities
- (b) vehicle service and maintenance facilities
- (c) vehicle and equipment cleaning facilities
- (d) fleet storage areas (bus, truck, etc.)
- (e) industrial sites (included on Standard Industrial Classification code list)
- (f) public works storage areas
- (g) facilities that generate or store hazardous waste materials
- (h) commercial container nursery
- (i) restaurants and food service facilities
- (j) other land uses and activities as designated by an appropriate review authority

(26) "Illicit connection" means illegal and/or unauthorized connections to the MS4 whether or not such connections result in discharges into the system.

(27) "Illicit discharge" means any discharge to the MS4 that is not entirely composed of storm water, except discharges authorized under a NPDES permit (other than the NPDES permit for discharges from the MS4), discharges resulting from firefighting activities (40 CFR §122.26(b)(2)) and allowable discharges listed in §14-306.

(28) "Impervious" means not allowing the passage of water through the surface of the ground or ground covering or a substantial reduction in the capacity for water to pass through the surface of the ground or ground covering.

(29) "Land disturbing activity" means 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.

(30) "Maintenance" means any activity that is necessary, including but not limited to reconstruction and property maintenance, to keep a storm water facility in good working order so as to function as designed.

(31) "Maintenance agreement" means a document recorded in the Shelby County Register's office that acts as a property deed restriction, and which provides for long-term maintenance of storm water management facilities.

(32) "Manager" means the Mayor's designee who is designated to supervise the operation of the storm water management program and who is charged with certain duties and responsibilities by this chapter, or his/her duly authorized representative.

(33) "Memphis & Shelby County Drainage Design Manual (MSCDDM)" means the guidance document adopted for use by Shelby County to provide the technical standards and information necessary for proper design and construction of storm water management facilities and the management of storm water management infrastructure.

(34) "Municipal inspector" means an employee of the Town that has successfully completed the Tennessee Erosion Prevention and Sediment Control Level 1 Course or Recertification Course and whose duties include the inspection of construction activities.

(35) "Municipal Separate Storm Sewer System" or "MS4" means a conveyance or system of conveyances (including roads and streets with their drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- (a) Owned and operated by the Town;
- (b) Designed or used for collecting or conveying storm water;
- (c) Which is not a combined sewer; and
- (d) Which is not part of a publicly owned treatment works as defined at

40 CFR §122.2.

(36) "National Pollutant Discharge Elimination System" or "NPDES permit" means a permit issued pursuant to 33 U.S.C. chapter 26 Water Pollution Prevention and Control, subchapter IV Permits and Licenses, § 1342.

(37) "Notice of Coverage or NOC" means a written approval from TDEC authorizing site operators to discharge storm water associated with construction activities in accordance with the effective TNCGP.

(38) "Notice of Intent or NOI" means a written request to TDEC by site operators for authorization to discharge storm water associated with construction activities in accordance with the effective TNCGP.

(39) "Notice of Termination or NOT" means a written notice issued by TDEC that coverage under the construction general permit is terminated due to completion of the project, cessation of land disturbing activities, and final stabilization of all disturbed areas.

(40) "Off-site storm water facility" means a structural BMP located outside the subject property boundary described in the permit application for land development activity.

(41) "On-site storm water facility" means a structural BMP located within the subject property boundary described in the permit application for land development.

(42) "Operator" for the purpose of this ordinance and in the context of stormwater associated with construction activity, means any person associated with a construction project that meets either of the following two criteria:

(a) This person has operational or design control over construction plans and specifications, including the ability to make modifications to those plans and specifications. This person is typically the owner or developer of the project or a portion of the project, and is considered the primary permittee; or

(b) This person has day-to-day operational control of those activities at a project, which are necessary to ensure compliance with a SWPPP for the site or other permit conditions. This person is typically a contractor or a commercial builder who is hired by the primary permittee, and is considered a secondary permittee.

It is anticipated that at different phases of a construction project, different types of parties may satisfy the definition of "operator."

(43) "Peak flow" means the maximum instantaneous rate of flow of water at a particular point resulting from a storm event.

(44) "Person" means any individual, partnership, co-partnership, firm, company, trust estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by context.

(45) "Pollution" means any human-made or human-induced change in the chemical, physical or biological and radiological integrity of water.

(46) "Regional facility" means a storm water management facility designed to serve more than two (2) properties.

(47) "Redevelopment" means any development subject to the Tennessee General Permit for Construction Activities.

(48) "Routine inspection" means the normal visits of municipal inspectors to construction activities for the purpose of monitoring the construction process.

(49) "Runoff" means that portion of the precipitation on a drainage area that is discharged from the area into the MS4.

(50) "Sediment" means solid material, both inorganic and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice as a product of erosion.

(51) "Sedimentation" means the action or process of forming or depositing sediment.

(52) "Significant spills" releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (at 40 CFR 110.10 and CFR 117.21) or section 102 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), (at CFR 302.4).

(53) "Stabilization" means providing adequate measures, vegetative and/or structural, that will prevent erosion from occurring.

(54) "Storm water" refers to water induced or created from precipitation whether rain, snow or ice and either stored, collected, detained, absorbed, or discharged.

(55) "Stormwater entity or entities" means the entity or entities designated by the Town to administer the stormwater management ordinance, and other stormwater rules and regulations adopted by the Town.

(56) "Storm water management facility" means a storm water management control device, structure, or system of such physical components designed to treat, detain, store, convey, absorb, conserve, protect, or otherwise control storm water.

(57) "Storm water management" means the collection, conveyance, storage, treatment and disposal of storm water in a manner to meet the objectives of this chapter and its terms, including, but not be limited to measures that control the increase volume and rate of storm water runoff and water quality impacts caused or induced by man made changes to the land.

(58) "Storm water management plan" or "SWMP" means the set of drawings and other documents that comprise all of the information and specifications for the programs, drainage systems, structures, BMPs, concepts, and techniques for the Town of Arlington and as part of this chapter.

(59) "Storm water pollution prevention plan" or "SWPPP" means a written site specific plan to eliminate or reduce and control the pollution of storm water through designed facilities, natural or constructed, and best management practices (BMP's).

(60) "Storm water runoff" means storm water flow on the surface of the ground.

(61) "Storm sewer system" means the network of conveyances and storage facilities that collect, detain, absorb, treat, channel, discharge, or otherwise control the quantity and/or quality of storm water.

(62) "Stream" means any river, creek, slough or natural water course in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted. The fact that some parts of the bed have been dredged or improved does not prevent the water course from being a stream. For the purposes of this ordinance, a stream is not a "wet weather conveyance" as also defined herein. Typically, as a guideline, perennial streams are identified on USGS maps by solid blue lines and intermittent streams are depicted by dashed blue lines.

(63) "Structural BMPs" means facilities that are constructed to provide control of storm water runoff.

(64) "Surface water" means waters on the surface of the earth in bounds created naturally or artificially including, by way of example and not limited to, streams, other water courses, lakes and reservoirs.

(65) "Variance" means the modification of the minimum storm water management requirements contained in this chapter and the storm water management plan for specific circumstances where strict adherence of the requirement would result in unnecessary hardship and not fulfill the intent of this chapter.

(66) "Water quality buffer". See "Buffer zone".

(67) "Watercourse" means a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

(68) "Water quality" means characteristics that are related to the physical, chemical, biological, and/or radiological integrity of storm water.

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

(70) "Watershed" means all the land area that contributes runoff to a particular point along a waterway.

(71) "Waterway buffer" See buffer zone"

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

(73) "Wet weather conveyance" is defined in Rule 0400-40-03 of the Rules of the Tennessee Department of Environment and Conservation. Wet weather conveyances are man-made or natural water courses, including natural water courses that have been modified by channelization, that flow only in direct response to precipitation runoff in their immediate locality, the channels of which are above the groundwater table and which do not support fish or aquatic life and are not suitable for drinking water supplies. Rule 0400-40-03-.02(6) requires that waters designated as wet weather conveyances shall be protective of wildlife and humans that may come in contact with them and maintain standards applicable to all downstream waters. No other use classification or water quality criteria apply to these waters.

#### **14-305. Abbreviations.**

(1) BMP – Best Management Practice

(2) ARAP – Aquatic Resource Alteration Permit



- (3) CERCLA – means the Comprehensive Environmental Response, Compensation and Liability Act in its original form or as amended.
- (4) CFR – Code of Federal Regulations
- (5) CWA – Clean Water Act
- (6) FEMA – Federal Emergency Management Agency
- (7) MS4 – Municipal Separate Storm Sewer System means the Town of Arlington separate storm water system both natural and manmade as may be subject to the NPDES Storm Water Permit for the Town of Arlington.
- (8) NOC – Notice of Coverage
- (9) NOI – Notice of Intent
- (10) NOT – Notice of Termination
- (11) MSCDDM – Memphis & Shelby County Drainage Design Manual
- (12) SWMP – Storm Water Management Plan
- (13) SWPPP – Storm Water Pollution Prevention Plan
- (14) TCA – Tennessee Code Annotated (latest version)
- (15) TNCGP – Tennessee Construction General Permit (latest version), which is incorporated by reference in this ordinance as if fully set herein.
- (16) TMSP – Tennessee Multi-Sector Permit (TMSP) for Storm Water Discharges Associated with Industrial Activity (See section 30-135), which is incorporated by reference in this ordinance as if fully set herein.
- (17) USACOE – means United States Army Corps of Engineers
- (18) U.S.C – means United States Code (Ord. #2004-16, Jan. 2005)

**14-306. Illicit discharges.** This section shall apply to all water generated on developed or undeveloped land entering the MS4.

(1) Unauthorized discharge a public nuisance. Discharge of storm water in any manner in violation of this chapter; or any violation of any condition of a permit issued pursuant to this chapter; or any violation of any condition of a storm water discharge permit issued by the State of Tennessee Department of Environment and Conservation is hereby declared a public nuisance and shall be corrected or abated.

(2) Prohibition of illicit connections. The construction, use, maintenance or continued existence of illicit connections to the municipal separate storm sewer system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(3) Improper disposal and illicit discharges.

(a) It shall be unlawful for any person to improperly dispose any contaminant into the Town of Arlington MS4. Contaminants include, but are not limited to the following:

- (i) Trash or debris;
- (ii) Construction materials;
- (iii) Petroleum products including but not limited to oil, gasoline, grease, fuel oil, or hydraulic fluids;
- (iv) Antifreeze and other automotive products;
- (v) Metals in either particulate or dissolved form;
- (vi) Flammable or explosive materials;
- (vii) Radioactive material;
- (viii) Batteries, including but not limited to, lead acid automobile batteries, alkaline batteries, lithium batteries, or mercury batteries;
- (ix) Acids, alkalis, or bases;

- (x) Paints, stains, resins, lacquers, or varnishes;
- (xi) Degreasers and/or solvents;
- (xii) Drain cleaners;
- (xiii) Pesticides, herbicides, or fertilizers;
- (xiv) Steam cleaning wastes;
- (xv) Soaps, detergents, or ammonia;
- (xvi) Swimming pool backwash including chlorinated swimming pool discharge;
- (xvii) Chlorine, bromine, and other disinfectants;
- (xviii) Heated water;
- (xix) Animal waste from commercial animal or feeder lot;
- (xx) Any industrial and sanitary wastewater, including leaking sewers or connections;
- (xxi) Recreational vehicle waste;
- (xxii) Animal carcasses;
- (xxiii) Food wastes;
- (xxiv) Medical wastes;
- (xxv) Collected lawn clippings, leaves, branches, bark, and other fibrous materials;
- (xxvi) Collected silt, sediment, or gravel;
- (xxvii) Dyes, except as stated in subsection (B);
- (xxviii) Chemicals, not normally found in uncontaminated water;
- (xxix) Any hazardous material or waste, not listed above;
- (xxx) Washing of fresh concrete for cleaning and/or finishing purposes or to expose aggregates;
- (xxxi) Junk motor vehicles, as defined in subsection (c);
- (xxxii) Liquid from solid waste disposal containers.
- (xxxiii) Domestic animal waste

Penalties for minor discharges that have no significant adverse impact on safety, health, the welfare of the environment, or the functionality of the town's storm water collection system may be waived at the discretion of the Manager.

(b) Dye testing. Dye testing is allowed but requires verbal notification to the Manager a minimum of twenty-four (24) hours prior to the date of the test. The Town of Arlington governmental agencies are exempt from this requirement.

(c) Junk motor vehicles, definition thereof. "Junk motor vehicle" means any vehicle, which shall include by way of example but not be limited to the following vehicle types: automobiles, construction equipment, motorcycles, and trucks, which meets all of the following requirements:

- (i) Is three years old or older;
- (ii) Is extensively damaged, such damage including, but not limited to any of the following: A broken window or windshield or missing wheels, engine or transmission;
- (iii) Is apparently inoperable;
- (iv) Is without a valid current registration;
- (v) Has a fair market value equivalent only to the value of the scrap in it.

(4) Exceptions, allowable discharges. The following types of discharges shall not be considered prohibited discharges for the purpose of this chapter unless the Manager determined that the type or quantity of discharge, whether singly or in combination with others, is causing significant contamination of the Town of Arlington MS4.

- (a) Uncontaminated discharges from the following sources:
  - (i) Water line flushing or other potable water sources;
  - (ii) Landscape irrigation or lawn watering with potable water;
  - (iii) Diverted stream flows;
  - (iv) Rising ground water;
  - (v) Groundwater infiltration to storm drains;
  - (vi) Pumped groundwater;
  - (vii) Foundation or footing drains;
  - (viii) Crawl space pumps;
  - (ix) Air conditioning condensation;
  - (x) Springs;
  - (xi) Non-commercial washing of vehicles;
  - (xii) Natural riparian habitat or wetland flows;
  - (xiii) Swimming pools (if dechlorinated - typically less than one PPM chlorine);
  - (xiv) Firefighting activities;
  - (xv) Any other uncontaminated water source.
- (b) Discharges specified in writing by the Town as being necessary to protect public health and safety.
- (c) Dye testing as permitted in Section 3(b) above.
- (d) Discharges authorized by the Construction General Permit (CGP):
  - (i) dewatering of work areas of collected storm water and ground water (filtering or chemical treatment may be necessary prior to discharge);
  - (ii) waters used to wash vehicles (of dust and soil, not process materials such as oils, asphalt or concrete) where detergents are not used and detention and/or filtering is provided before the water leaves site;
  - (iii) water used to control dust in accordance with the CGP;
  - (iv) potable water sources including waterline flushings from which chlorine has been removed to the maximum extent practicable;
  - (v) routine external building washdown that does not use detergents or other chemicals;
  - (vi) uncontaminated groundwater or spring water; and foundation or footing drains where flows are not contaminated with pollutants (process materials such as solvents, heavy metals, etc.).
- (5) Illicit connection, defined. Any connection, existing or future, identified by the Manager, as that which could convey anything not composed entirely of storm water directly to the Town of Arlington MS4 is considered an illicit connection and is prohibited with the following exceptions:
  - (a) Connections conveying allowable discharges as defined in § 14-306(4);
  - (b) Connections conveying discharges pursuant to an NPDES permit (other than an NPDES storm water permit).
- (6) Monitoring and inspection.
  - (a) Monitoring. The Manager shall periodically monitor compliance of the storm water NPDES permit holder.
  - (b) Detection of illicit connections and improper disposal. The Manager shall take appropriate steps to detect and eliminate illicit connections to the Town of Arlington MS4, including the adoption of programs to identify illicit discharges and their source or sources and provide for public education, public information and other appropriate activities to facilitate the proper management and disposal of used oil, toxic materials and household hazardous waste.

(c) Inspections.

(i) The Manager or his designee, bearing proper credentials and identification, may enter and inspect properties for inspections, investigations, monitoring, observation, measurement, enforcement, sampling and testing, to effectuate the provisions of this chapter, the storm water management plan, and/or the NPDES storm water permit. The Manager or his designee shall duly notify the owner of said property or the representative on site and the inspection shall be conducted at reasonable times.

(ii) Upon refusal by any property owner to permit an inspector to enter or continue an inspection, the inspector shall terminate the inspection or confine the inspection to areas wherein no objection is raised. The inspector shall immediately report the refusal and the circumstances to the Manager. The Manager may seek appropriate action.

(iii) In the event the Manager or his designee reasonably believes that discharges into the Town of Arlington MS4 may cause an imminent and substantial threat to human health or the environment, the inspection may take place at any time and without notice to the owner of the property or a representative on site. The inspector shall present proper credentials upon request by the owner or representative.

(iv) At any time during the conduct of an inspection or at such other times as the Manager or his designee may request information from an owner or representative, the owner or representative may identify areas of the facility or establishment, material or processes which contains or may contain a trade secret. If the Manager or his designee has no clear and convincing reason to question such identification, the inspection report shall note that trade secret information has been omitted. To the extent practicable, the Manager shall protect all information that is designated as a trade secret by the owner or their representative. (Ord. #2004-16, Jan. 2005)

(7) Reduction of storm water pollutants by use of BMPs. Any person responsible for a property or premises which is or may be the source of an illicit discharge, may be required to implement, at that person's expense, the BMPs necessary to prevent further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water from an industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section.

(8) Notification of spills. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting in, or may result in, illicit discharges or pollutants discharging into the MS4, the person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, the person shall immediately notify emergency response agencies of the occurrence via 911. In the event of a release of non-hazardous materials, the person shall notify the Manager in person or by telephone, fax, or email, no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the Manager within three (3) business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an onsite written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least five (5) years.

(9) Illegal dumping. No person shall dump or otherwise deposit outside an authorized landfill, convenience center or other authorized garbage or trash collection point, any trash or garbage of any kind or description on any private or public property, occupied or unoccupied, inside the Town.

**14-307. Construction and Permanent Storm Water Management Design and Construction.**

(1) MS4 Storm Water design and BMP manuals. The Town adopts as its MS4 design and BMP manuals for construction and permanent storm water management the following publications, which are incorporated by reference in this ordinance as if fully set herein. The manuals include a list of acceptable BMPs including specific design performance criteria and operation and maintenance requirements for each storm water practice. The manuals may be updated and expanded from time to time at the discretion of the Board of Mayor and Aldermen, upon the recommendation of the Manager based on improvements in engineering, science, monitoring, local maintenance experience, or changes in Federal or State laws or regulation. Designers and engineers are encouraged to use new and innovative techniques that perform to at least the minimum standards contained in the manuals. The specific application of BMP practices is subject to approval of the Manager. Stormwater facilities that are designed, constructed and maintained in accordance with these BMP criteria will be presumed to meet the minimum water quality performance standards.

- (a) TDEC Erosion Prevention and Sediment Control Handbook.
- (b) Shelby County Watershed Management Practices Manual.
- (c) City of Memphis/Shelby County Storm Water Management Manual.
- (d) Town of Arlington Watershed Management Practices Manual.
- (e) Town of Arlington Public Works Standard Specifications and

Drawings.

(2) Land development. All land development in the Town including, by example but not limited to, site plan applications, subdivision applications, land disturbance applications and grading applications for new development or redevelopment construction activities shall be subject to the provisions of this chapter, the Town's floodplain portion of the zoning ordinance, and the subdivision regulations. Other projects may be required to obtain authorization under this ordinance if:

- (a) The Manager has determined that storm water discharge from a site is causing, contributing to, or is likely to contribute to a violation of state water quality standards;
- (b) The Manager has determined that the storm water discharge is, or is likely to be, a significant contributor of pollutants to waters of the state; or
- (c) Changes in state or federal rules require sites of less than one (1) acre that are not part of a larger common plan of development or sale to obtain a storm water permit.
- (d) Any new development or redevelopment, regardless of size, that is defined by the Town to be a hotspot land use.

(3) NOI. The operators of non-exempt construction activities shall apply to TDEC for coverage under the TNCGP as part of the Town's plan review and approval process. Application procedures and required information for submittal of the NOI is contained in the TNCGP. An individual permit may be required as specified in section 7 of the TNCGP as well as an Aquatic Resource Alteration Permit (ARAP) as specified in section 10 of the TNCGP.

(4) SWPPP. The operators of non-exempt construction activities shall provide a copy of the construction activity SWPPP for review as part of the Town's plan review and approval process. The TNCGP specifies what information is required to be included in the SWPPP. Changes to the SWPPP after plan review and approval shall be submitted to the Manager for approval. Operators of non-exempt construction activities involving the building of family residential units shall submit a copy of the SWPPP to the Public Works Department.

(5) NOC and NOT. The operators of non-exempt construction activities shall provide a copy of the Notice of Coverage (NOC) issued by TDEC prior to the commencement of any construction activity on the site. Upon completion of the project and acceptance by TDEC, a Notice of Termination (NOT) is issued. The operator shall submit a signed copy of the NOT to the Town.

(6) Erosion Control Phasing Plan. An erosion control phasing plan describing the vegetative stabilization and management techniques to be used at a site during and after construction is completed shall be submitted with the final design as part of the Town's plan review and approval process. This plan shall explain not only how the site will be stabilized after construction, but also who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved. Changes to the erosion control phasing plan after plan review and approval shall be submitted to the Manager for approval.

(7) General design performance criteria for permanent storm water management. The storm water discharges from new development and redevelopment sites are to be managed such that post-development peak discharge does not exceed the predevelopment peak discharge at the site unless approved by the Manager.

(a) All new development is required to discharge post development flows at the 2, 10, and 25 year storm events at a peak level of pre-existing conditions. The Manager may require post development flows at other intervals. Discharge for water quality is encouraged to be designed into the project to include green infrastructure or other flow inhibiting designs.

(8) Detention requirements. All developments will be designed to incorporate detention with a storage volume sized for the 25 year storm and over-topping of a 100 year storm. Peak rate outflow control structure will meet the pre-development 2, 10, and 25 year storms.

(9) Permanent Storm Water Management Plan (SWMP) requirements. The operators of non-exempt construction activities shall submit a SWMP for post construction permanent BMPs as part of the Town's plan review and approval process. The SWMP shall include sufficient information to allow the Manager to evaluate the environmental characteristics of the project site, the potential impacts of all proposed development on the site (both present and future) on the water resources, and the effectiveness and acceptability of the measures proposed for managing storm water generated at the project site. The operator may use the SWPPP as the SWMP provided the following information is included:

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

(i) Existing surface water drainage including streams, ponds, culverts, ditches, sink holes, wet lands and the type, size elevation etc., of the nearest upstream and downstream drainage structures and/or storm water management facilities;

(ii) Current land use including all existing structures, locations of utilities, roads and easements;

- (iii) All other existing significant natural and artificial features;
- (iv) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses; drainage patterns; locations of utilities, roads and easements; and the limits of clearing and grading.
- (b) Proposed structural and non-structural BMPs;
- (c) A written description of the site plan and justification of proposed changes in natural conditions may also be required;
- (d) Hydrologic and hydraulic calculations for the pre-development and post-development conditions for a 2, 10, 25, and 100 year design storm. These calculations must show that the proposed storm water management measures are capable of controlling runoff from the site in compliance with this ordinance. Such calculations shall include:
  - (i) A description of the design storm frequency, duration, and intensity where applicable;
  - (ii) Time of concentration;
  - (iii) Soil curve numbers or runoff coefficients including assumed soil moisture conditions;
  - (iv) Peak runoff rates and total runoff volumes for each watershed area;
  - (v) Infiltration rates, where applicable;
  - (vi) Culvert, storm water sewer, ditch and/or other storm water conveyance capacities;
  - (vii) Flow velocities;
  - (viii) Data on the increase in rate and volume of runoff for a design storm; and
  - (ix) Documentation of sources for all computations methods and field test results.
- (e) A soils report if a storm water management control measure depends on the hydrologic properties of soils (e.g. infiltration basins). The soils report shall be based on on-site boring logs or soil pit profiles and soil survey reports. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soil types present at the location of the control measure.
- (f) Detailed maintenance and repair procedures for permanent storm water management facilities.

Changes to post-construction permanent BMPs after plan review and approval shall be submitted to the Manager for approval.

(10) Maintenance and repair plan. The design and planning of all permanent storm water management facilities shall include detailed maintenance and repair procedures to ensure their continued performance. These plans shall identify the parts or components of a storm water management facility that need to be maintained and the equipment and skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan. Approved maintenance and repair plans shall be recorded in the Shelby County Register's office and shall act as a property deed restriction to ensure maintenance and repair responsibilities are carried out in perpetuity.

(11) Construction plans. Proposed plans for construction shall be stamped by a professional engineer licensed in the State of Tennessee and submitted as part of the Town's plan review and approval process. The plans shall include all proposed

improvements or modifications to the existing or new storm water infrastructure, erosion prevention and sediment control practices and other related improvements or modifications.

(a) The Town encourages regional watershed management practices and facilities. These practices will be encouraged in order to replace or reduce the implementation of on-site storm water management facilities.

(b) Each individual project shall be evaluated for consistency with the adopted watershed master plan, when available, for the major watershed or watersheds within which the project site is located. The individual project evaluation will determine if proposed storm water management practices can adequately serve the property and limit impacts to downstream public and private properties. The presence of a regional facility(s) will be considered in determining the extent to which peak discharge and/or quality controls will be necessary.

(c) In the absence of such a storm water master plan, a system of uniform requirements shall be applied to each individual project site. In general, these uniform requirements may be based on the criteria that storm water discharges from new development and redevelopment sites are to be managed such that post-development peak discharge does not exceed the pre-development peak discharge at the site.

(d) Minimum development may be permitted in the floodplain; however, the developer may be required by the Manager to demonstrate “no adverse impact” on upstream or downstream facilities, uses, residences, or related structures. If substantial fill alteration is required, the Manager may require a “no rise” certification.

(e) Under no circumstances shall a site be graded or drained in such a way as to increase surface runoff to sinkholes, dry wells, or drainage wells.

(f) Development of properties containing existing on-site storm water management facilities may be permitted, at the discretion of the Manager, provided the property and downstream public and private properties, infrastructure or waters of the state are adequately protected from adverse storm water impacts.

(g) Soil bioengineering, green and other soft slope and stream bank stabilization methods are encouraged. The use of greenway right-of-way for appropriate properties is encouraged along all waters of the state.

(h) The Town shall require the set aside of land along all waters of the state as land development occurs. A permanent waterway buffer shall be applied as specified in Appendix A.

(12) Construction activities. It shall be unlawful for any person to permit any discharge of storm water from a construction activity as defined in §14-304 without a TNCGP or an individual NPDES permit. Erosion or sedimentation, or transport of other pollutants or forms of pollution, due to various land development activities must be controlled. All construction activities shall be in compliance with applicable permit requirements, federal, state and/or local, and all applicable requirements under this chapter. Additionally:

(a) No earth disturbing activities shall be performed at a construction activity until:

(i) A NOC has been received from TDEC. A copy of the NOC shall be provided to the Manager;

(ii) All appropriate permits have been obtained;

(iii) Construction plans have been approved by the Town;



(iv) Appropriate erosion prevention and sediment control BMPs, consistent with those described in the BMP manuals referenced in §14-307(1) and identified in the site's approved SWPPP, are in place; and

(v) A pre-construction meeting has been conducted.

(b) Operators shall control wastes such as but not limited to discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site to avoid adverse impacts on water quality;

(c) The Manager may stop or cause to have stopped construction or administer other enforcement actions as defined in this chapter on properties that do not have adequate erosion prevention and sedimentation control measures in place or properly maintained.

(d) In activities that have been released from the development phase to the building phase, any changes in the development phase grading of more than two (2) feet (cut or fill) shall require a lot specific grading and drainage plan to show how the owner plans to accommodate drainage to or from adjacent lots. The Manager is empowered to stop or cause to be stopped any work on the lot until such time as a grading and drainage plan is submitted and approved by the Manager.

(e) After construction activities are complete, operators obtaining coverage under the TNCGP or an individual NPDES permit shall submit a Notice of Termination (NOT) to TDEC as specified in section 8 of the TNCGP. The Manager is hereby empowered to retain or cause to be retained bonds, letters of credits, withholding of use and occupancy permits or other sureties as the Manager deems appropriate until NOT acceptance by TDEC. Operators shall provide a copy of the approved NOT to the Manager.

**14-308. Operation, maintenance and inspection of permanent storm water management facilities.**

(1) As-built plans. All operators shall submit as-built plans for all permanent storm water management structures after final construction is completed to the Town Engineer. The plans must show the final flow line elevations, slopes, locations and/or design specifications for all storm water management facilities, as applicable for the facility, and must bear the seal of a registered professional engineer licensed to practice in the State of Tennessee. The registered professional shall certify that the facilities have been constructed in substantial and essential conformance to the design plan. The Manager is hereby empowered to retain or cause to be retained bonds, letters of credits, withholding of use and occupancy permits or other sureties as the Manager deems appropriate until proper as-built plans have been delivered.

(2) Erosion control phasing plan and stabilization requirements. Any area of land from which the natural vegetative cover has been either partially or wholly cleared by a construction activity shall be stabilized. Stabilization measures shall be initiated as soon as possible in portions of the site where construction activities have temporarily or permanently ceased.

(a) Temporary or permanent soil stabilization at the construction site (or a phase of the project) must be completed not later than 15 days after the construction activity in that portion of the site has temporarily or permanently ceased. Natural or created slopes three to one (3 to 1) or steeper shall be temporarily stabilized not later than seven (7) days after construction activity on the slope has temporarily or permanently ceased. In the following situations, temporary stabilization measures are not required:

(i) where the initiation of stabilization measures is precluded by snow cover or frozen ground conditions or adverse soggy ground conditions, stabilization measures shall be initiated as soon as practicable; or

(ii) where construction activity on a portion of the site is temporarily ceased, and earth disturbing activities will be resumed within 15 days or seven (7) days for slopes three to one (3 to 1) or steeper.

(b) Permanent stabilization with perennial vegetation (using native herbaceous and woody plants where practicable) or other permanently stable, non-eroding surface shall replace any temporary measures as soon as practicable. Unpacked gravel containing fines (silt and clay sized particles) or crusher runs will not be considered a non-eroding surface. Slopes three to one (3 to 1) or steeper shall be solid sodded.

(c) The following criteria shall apply to re-vegetation efforts:

(i) Reseeding must be done with an annual or perennial cover crop accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until such time as the cover crop is established over ninety percent (90%) of the seeded area.

(ii) Replanting with native woody and herbaceous vegetation must be accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until the plantings are established and are capable of controlling erosion.

(iii) Any area of re-vegetation must exhibit survival of a minimum of seventy-five percent (75%) of the cover crop throughout the year immediately following re-vegetation. Re-vegetation must be repeated in successive years until the minimum seventy-five percent (75%) survival for one (1) year is achieved.

(iv) In addition to the above requirements, a landscaping plan must be submitted with the final design describing the vegetative stabilization and management techniques to be used at a site after construction is completed. This plan will explain not only how the site will be stabilized after construction, but also who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved.

(3) Right of access. The owner(s) shall maintain a perpetual right of access for inspection and emergency access by the Town. The Town has the right, but not the duty, to enter premises for inspection and emergency repairs.

(4) Inspection of storm water management facilities. Periodic inspections of facilities shall be performed, documented, and reported in accordance with this chapter, as detailed in §14-308.

(5) Records of installation and maintenance activities. Parties responsible for the operation and maintenance of a storm water management facility shall make records of the installation of the storm water facility, and of all maintenance and repairs to the facility, and shall retain the records for at least five (5) years. These records shall be made available to the Town during inspection of the facility and at other reasonable times upon request.

(6) Infrastructure maintenance. It shall be the responsibility of the property owner of record for the maintenance of storm water infrastructure. Maintenance of storm water infrastructure consists of a minimum but is not limited to the following items as they apply to the specific storm water facility: outlet cleaning, mowing, herbicide spraying, litter control, removal of sediment from basin and outlet structures, repair of drainage structures, and other items that may be included in the facilities maintenance and repair

plan. All such activities will be conducted in an environmentally sound manner and consistent with applicable codes, rules, and/or standards. No modifications shall be made to open ditches or other wet weather conveyances without coordination with the Manager. All storm water management control facilities proposed by the owners and approved by the Manager for dedication as a public facility shall be maintained by the owner until such time as the Manager accepts the facilities. Upon acceptance, the facilities shall be publicly owned and /or maintained.

(7) Maintenance documents. Maintenance requirements for new privately owned permanent storm water management facilities may also be prescribed by a site specific document between the owner or operator and the Town. This document shall be based on an approved site design, a SWPPP, an inspection program, a long-term maintenance plan, an emergency repair plan, easements, and proof or surety of financial responsibility. Approved maintenance documents shall be recorded in the Shelby County Register's office and shall act as a property deed restriction to ensure maintenance and repair responsibilities are carried out in perpetuity.

(8) Failure to meet or maintain design or maintenance standards. If a responsible party fails or refuses to meet the design or maintenance standards required for storm water facilities under this chapter, the Town, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition. In the event that the storm water management facility becomes a danger to public safety or public health, the Town shall notify in writing the party responsible for maintenance of the storm water management facility. Upon receipt of that notice, the responsible person shall have thirty (30) days to effect maintenance and repair of the facility in an approved manner. In the event that corrective action is not undertaken within that time, the Town may take necessary corrective action. The cost of any action by the Town under this section shall be charged to the responsible party. Additionally, the Manager may assess penalties as detailed in §14-311. Such an assessment will be used for cost recovery, to abate damages, and to restore impacted areas.

#### **14-309. Maintenance agreement for storm water management facilities.**

(1) On-site storm water management facilities maintenance document. For new construction where the storm water facility is located on property that is subject subdivision or site plan review, and the plans provide for a permanent storm water maintenance document that runs with the land, the owners of property must execute a document that shall operate as a deed restriction binding on the current property owners and all subsequent property owners and their lessees and assigns, including but not limited to, homeowner associations or other groups or entities. The document shall:

(a) Assign responsibility for the maintenance and repair of the storm water facility to the owners of the property upon which the facility is located and be recorded as such on the plat for the property by appropriate notation.

(b) Provide for a periodic inspection by the property owners in accordance with the requirements of subsection (c) below for the purpose of documenting maintenance and repair needs and to ensure compliance with the requirements of this ordinance. The property owners will arrange for this inspection to be conducted by a registered professional engineer licensed to practice in the State of Tennessee, who will submit a signed written report of the inspection to the Town. It shall also grant permission to the Town to enter the property at reasonable times and to inspect the stormwater facility to ensure that it is being properly maintained.

(c) Provide that the minimum maintenance and repair needs include, but are not limited to: the removal of silt, litter and other debris, the cutting of grass, cutting and vegetation removal, and the replacement of landscape vegetation, in detention and retention basins, and inlets and drainage pipes and any other storm water facilities. It shall also provide that the property owners shall be responsible for additional maintenance and repair needs consistent with the needs and standards outlined in the MS4 BMP manuals and the approved maintenance and repair plan as appropriate.

(d) Provide that maintenance needs must be addressed in a timely manner, on a schedule to be determined by the Manager.

(e) Provide that if the property is not maintained or repaired within the prescribed schedule, the Town shall perform the maintenance and repair at its expense, and bill the same to the development owner. The maintenance document shall also provide that the Town's cost of performing the maintenance shall be a lien against each lot in the development.

(2) Existing locations with no maintenance document. The Town may, to the extent authorized by state and federal law, enter and inspect private property for the purpose of determining if there are illicit non-storm water discharges, and to establish inspection programs to verify that all storm water management facilities are functioning within design limits.

(a) Inspection programs may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of the Town's NPDES storm water permit; and joint inspections with other agencies inspecting under environmental or safety laws.

(b) Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other BMPs.

(c) The Manager shall, in writing, notify the owners of existing locations and developments of specific drainage, erosion or sediment problems affecting or caused by such locations and developments, and the specific actions required to correct those problems. The notice shall also specify a reasonable time for compliance. Discharges from existing BMPs that have not been maintained and/or inspected in accordance with this ordinance shall be regarded as illicit.

(3) Requirements for all existing locations and ongoing developments. The following requirements shall apply to all locations and development at which land disturbing activities have occurred previous to the enactment of this ordinance:

(a) Denuded areas must be vegetated or covered in a manner and on a schedule acceptable to the Manager.

(b) Cuts and slopes must be properly covered with appropriate vegetation and/or retaining walls constructed.

(c) Drainage ways shall be properly covered in vegetation or secured with rip-rap, channel lining, etc., to prevent erosion.

(d) Trash, junk, rubbish, etc. shall be cleared from drainage ways.

(e) Storm water runoff shall be controlled to the maximum extent practicable to prevent its pollution. Such control measures may include, but are not limited to, the following:

- (i) Ponds such as detention ponds, extended detention ponds, retention ponds and other alternate storage methods.
- (ii) Constructed wetlands.
- (iii) Infiltration systems such as infiltration/percolation trenches, infiltration basins, drainage (recharge) wells, and porous pavements.
- (iv) Filtering systems such as catch basin inserts/media filters, sand filters, filter/absorption beds, and filter and buffer strips.
- (v) Open channel such as swales and bio-swales.

(4) Owner/Operator Inspections - The owners and/or the operators of stormwater management practices shall:

(a) Perform routine inspections to ensure that the BMP's are properly functioning. These inspections shall be conducted on an annual basis, at a minimum. These inspections shall be conducted by a person familiar with control measures implemented at a site. Owners or operators shall maintain documentation of these inspections. The Town may require submittal of this documentation.

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

- (i) Facility type,
- (ii) Inspection date,
- (iii) Latitude and longitude and nearest street address,
- (iv) BMP owner information (e.g. name, address, phone number, fax, and email),
- (v) A description of BMP condition including: vegetation and soils; inlet and outlet channels and structures; embankments, slopes, and safety benches; spillways, weirs, and other control structures; and any sediment and debris accumulation,
- (vi) Photographic documentation of BMP's, and
- (vii) Specific maintenance items or violations that need to be corrected by the BMP owner along with deadlines and reinspection dates.

(c) Owners or operators shall maintain documentation of these inspections. The Town may require submittal of this documentation.

(5) Corrections of problems subject to appeal. Corrective measures imposed by the Manager under this section are subject to appeal under §14-312 of this chapter.

#### **14-310. Stormwater discharges from regulated industrial sources.**

(1) Purpose. It is the purpose of this chapter to control storm water runoff from industrial sources in order to minimize, to the maximum extent practicable, pollutants discharged from industrial sources into the Town of Arlington MS4. This reduction may be achieved by a combination of management practices, control techniques, system design, engineering methods and plan review.

(2) Industry defined. An industrial facility is one defined as industry by EPA rule, or subject to the Tennessee Multi-Sector Permit (TMSP) for storm water discharges associated with industrial activity.

(3) Right of inspection, defined. Right of inspection is defined in §14-306(6) of this chapter.

(4) Information required. The State of Tennessee utilizes a "notice of intent" for dischargers to obtain coverage under the general permit program for discharges associated with industrial activities. These documents are subject to change and amendment and therefore the user should obtain the latest versions directly from the State of Tennessee Department of Environment and Conservation, Division of Water Pollution Control. These may be obtained at the State's web site. All industries subject to the TMSPP and discharging into the Town of Arlington storm sewer system shall maintain a copy of the Storm Water Pollution Prevention Plan (SWPPP) on the industrial site, available for inspection and copying at reasonable times by the Manager.

(5) Storm water pollution prevention plan (SWPPP) requirements. The Storm Water Pollution Prevention Plan (SWPPP) must follow, at a minimum, the outline of the plan listed in the Tennessee Multi-Sector Permit language or a facility's NPDES Storm Water Permit language, whichever is applicable.

(6) Sampling at industrial facilities.

(a) Samples of storm water collected for compliance monitoring shall be representative of the discharge. Sampling locations will be those defined in the Tennessee Multi-Sector Permit or an NPDES Permit. Sampling and analyses shall be in accordance with 40 CFR Part 122.21 and 40 CFR Part 136 and/or applicable permit language.

(b) Samples that may be taken by the Manager and/or his designated representatives for the purpose of determining compliance with the requirements of this chapter or rules adopted hereunder may be split with the discharger if requested before the time of sampling.

(c) The Manager may require a storm water discharger to install and maintain at the discharger's expense a suitable manhole or sampling facility at the discharger's facility or suitable monitoring access to allow observation, sampling, and measurement of all storm water runoff being discharged into the county storm sewer system. Sampling manhole or access shall be constructed in accordance with plans approved by the Manager and shall be designed so that flow measurement and sampling equipment can be installed. Access to the manhole or monitoring access shall be available to the Manager and/or his designated representatives at all times.

(7) Reporting.

(a) Any facility required to sample under either the TMSPP or an NPDES Storm Water Permit shall provide a copy of the monitoring report to the Manager.

(b) The Manager may require reporting by dischargers of storm water runoff to the storm water system, where an NPDES storm water permit is not required, to provide information. This information may include any data necessary to characterize the storm water discharge.

(8) Accidental discharges.

(a) In the event of a "significant spill" as defined in "definitions" or any other discharge which could constitute a threat to human health or the environment, the owner or operator of the facility shall give notice to the Manager and the local field office of the Tennessee Department of Environment and Conservation as required by state and federal law following the accidental discharge.

(b) If an emergency response by governmental agencies is needed, the owner or operator should also call the Memphis and Shelby County Emergency Management Agency, immediately to report the discharge. A written report must be provided to the Manager within five (5) days of the time the discharger becomes

aware of the circumstances, unless this requirement is waived by the Manager for good cause shown on a case-by-case basis, containing the following particulars:

- (i) A description of the discharge, including an estimate of volume.
- (ii) The exact dates, times and duration of the discharge.
- (iii) Steps being taken to eliminate and prevent recurrence of the discharge, including any planned modification to contingency, SWPPP or maintenance plans.
- (iv) A site drawing should be rendered that shows the location of the spill on the impacted property, the direction of flow of the spill in regards to the topographical grade of the property, the impacted watercourse(s), and the property or properties adjacent to the spill site.

(c) The discharger shall take all reasonable steps to minimize any adverse impact to the Town of Arlington MS4, including such accelerated or additional monitoring as necessary to determine the nature and impact of the discharge. The interruption of business operations of the discharger shall not be a defense in an enforcement action necessary to maintain water quality and minimize any adverse impact that the discharge may cause.

(d) It shall be unlawful for any entity, whether an individual, residential, commercial or industrial entity to fail to comply with the provisions of this section.

(9) Fraud and false statements. Any reports required by this chapter or rules adopted hereunder and any other documents required by the town to be submitted or maintained by the discharger shall be signed by a responsible corporate official and certified as accurate to the best of their personal knowledge after appropriate investigation. It shall be subject to the enforcement provisions of this chapter and any other applicable local and state laws and regulations pertaining to fraud and false statements. Additionally, the discharger shall be subject to the provisions of 18 U.S. Code Section 309 of the Clean Water Act, as amended, governing false statements and responsible corporate officials.

**14-311. Enforcement and abatement.** Whenever the Manager finds any permittee or person discharging storm water, or other pollutants into the MS4 or otherwise has violated or is violating this chapter, conditions of a storm water permit, or order issued hereunder, the Manager may use enforcement response and abatement actions specified herein to achieve compliance. Although enforcement and abatement actions should be progressively applied until compliance is achieved, enforcement actions may be administered in any sequence as the Manager deems appropriate for the violation. If the Manager deems it necessary, a complaint may be filed with the Commissioner of TDEC pursuant to TCA §69-3-118.

(1) Enforcement authority. The Town shall have the authority to issue notices of violation and citations, and to impose the civil penalties provided in this section. Measures authorized include:

- (a) Verbal Warnings – At minimum, verbal warnings must specify the nature of the violation and required corrective action.
- (b) Written Notices – Written notices must stipulate the nature of the violation and the required corrective action, with deadlines for taking such action.
- (c) Citations with Administrative Penalties – The MS4 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 MS4’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 MS4 may also use other escalated measures provided under local legal authorities. The MS4 may perform work necessary to improve erosion control measures and collect the 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.

(2) Administrative remedies. The enforcement remedies enumerated herein shall be applicable to all sections of this chapter.

(a) Verbal Warnings. Municipal inspectors are hereby empowered to administer verbal warnings, of which shall be considered as being the same as issued by the Manager. A verbal warning may be given at the discretion of the inspector when it appears the condition can be corrected by the violator within a reasonable time, which time shall be approved by the inspector. A verbal warning may be issued upon the first instance of a violation. Violations encountered during routine inspections of construction activities are normally handled verbally. When a verbal warning is utilized, the warning shall specify the nature of the violation and the required corrective action, with deadlines for taking such actions. A verbal warning in no way relieves the discharger of liability for any violations occurring before or after receipt of the warning.

(b) Written Notices. Written notices shall stipulate the nature of the violation and the required corrective action, with deadlines for taking such actions. Written notices shall normally be used starting with the least severe and progressively working to the most severe. Written notices shall be in the following forms, listed from least severe to most severe:

(i) Notice of alleged violation. Prior to the issuance of a Notice of Violation (N.O.V.), the Manager may order any person who causes or contributes, or may be a cause or contributor, to a violation of a storm water permit or order issued hereunder to show cause why a proposed enforcement action not be taken. A Notice of Alleged Violation (N.A.V.) shall be served on the person, specifying the time and place for the meeting, the proposed enforcement action and the reasons for such action, and a request that the person show cause why this proposed enforcement should not be taken. The N.A.V. and notice of the meeting shall be served personally or by registered or certified mail, with return receipt, and postmarked at least ten (10) business days prior to the hearing. Such notice may be served on any person, principal executive, general partner, corporate officer, or other person with apparent authority to receive such notice.

(ii) Notification of violation. Whenever the Manager finds any permittee or person discharging storm water, or other pollutants into the Town of Arlington MS4, or otherwise has violated or is violating this chapter, conditions of a storm water permit, or order issued hereunder, the Manager or his agent may serve upon said user written N.O.V. This notice shall be by personal service, or registered or certified mail with return receipt. Within ten (10) days of the receipt date of this notice, the recipient of this N.O.V. shall provide the Manager with a written explanation of the violation. The response shall also include a plan for satisfactory correction and prevention thereof, to include specified required actions and milestones for their completion. 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. The Manager will render a response within twenty (20) days. If the Town of Arlington deems it necessary a complaint may be filed with the Commissioner of the Tennessee Department of Environment and Conservation pursuant to Tennessee Code Annotated, § 69-3-118.

(iii) Consent agreement. The Manager is hereby empowered to enter into consent agreements, assurances of voluntary compliance, or other similar documents establishing an agreement with the person or persons responsible for the non-compliance. Such agreements will include specific action to be taken by the permittee or person discharging storm water to correct the non-compliance within a time period specified by the agreements. Consent agreements shall have the same force and effect as compliance orders issued pursuant to subsection (f) below.

(iv) Compliance order. When the Manager finds that any person has violated or continues to violate this chapter or any order issued hereunder, he may issue an order to the violator directing that, following a specified time period, adequate structures and/or devices be installed or procedures implemented and properly operated or followed. Orders may also contain such other requirements as might be reasonable necessary and appropriate to address the non-compliance, including the construction of appropriate structures, installation of devices, self-monitoring and related management practices.

(v) Cease and desist orders. When the Manager finds that any person has violated or continues to violate this chapter or any permit or order issued hereunder and such action or inaction has or may have the potential for immediate and significant adverse impact on the MS4 or the storm water discharges to it, the Manager may issue an order to cease and desist all such violations immediately and direct those persons in non-compliance to:

- (1) Comply forthwith; or
- (2) Take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.
- (3) Anyone receiving a cease and desist order that includes instruction to halt operations shall receive an expedited review and appeal of such order within two (2) business days.

(vi) Show-Cause Notice. A show-cause notice is a follow-up to a stop work order. It is initiated when corrective actions have not been accomplished by the deadline provided in the stop work order, and is normally the last written notice before administrative and/or civil penalties are assessed. Additionally, the Manager may order any person who causes or contributes, or may be a cause or contributor, to a violation of a storm water permit or order issued hereunder to show cause why a proposed enforcement action should not be taken. The show-cause notice shall be served on the person, specifying the time and place of the meeting, the proposed enforcement action and the reason for such action, and a request that the person show cause why this proposed enforcement action not be taken. This notice shall be by personal service or registered or certified mail with return receipt and postmarked at least ten (10) days prior to the meeting. A show-cause notice in no way relieves the discharger of liability for any violations occurring before or after receipt of the notice.

(c) Withholding of approvals or other authorizations. The Manager is hereby empowered to withhold or cause to be withheld any permits, plat recordings, bond releases or any other instrument that would normally be issued to the violator until such time as the violations cease. Withholding may be performed in conjunction with other enforcement actions as deemed appropriate by the Manager.

(d) 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.

(2) Civil penalty. Any person who performs any of the following acts or omissions shall be subject to a civil penalty as set out in part II, chapter 1, §§1-4, Code of Shelby County per day for each day, or part thereof, during which the act or omission continues or occurs.

(a) Violates an effluent standard or limitation of water quality standard established under this chapter or established by TCA Title 69, Chapter 3, Part 1 (State of Tennessee Water Quality Control Act)

(b) Fails to obtain any required permit;

(c) Violates the terms and conditions of such required permit in subsection (d) above;

(d) Fails to allow or perform an entry, inspection, monitoring or reporting requirement

(e) Violates a final determination or order of the Manager; or

(f) Violates any provision of this chapter.

Attachment 1 provides initial assessments for violations of this ordinance that may be assessed by the Manager. Chronic violators may be assessed up to the maximum amount permitted by TCA §68-221-1106. The Manager, with consent of the Mayor, may also initiate civil proceedings in any court of competent jurisdiction seeking monetary damages for any damages caused to the Town of Arlington MS4 by any person, and to seek injunctive or other equitable relief to enforce compliance, with any lawful orders of the Manager.

(3) Unlawful acts, misdemeanor. It shall be unlawful for any person to knowingly:

(a) Violate a provision of this chapter;

(b) Violate the provisions of any permit issued pursuant to this chapter;

(c) Fail or refuse to comply with any lawful notice to abate issued by the Manager, which has not been timely appealed to the governing body within the time specified by such notice; or

(d) Violate any lawful order of the Manager within the time allowed by such order.

Such person shall be guilty of a misdemeanor; and each day of such violation or failure or refusal to comply shall be deemed a separate offense and punishable accordingly. Any person found to be in violation of the provisions of this chapter shall be punished by a fine as set out in part II, chapter 1, §§ 1-4, Code of Shelby County. Upon learning of such act or omission, the Manager may issue a town ordinance citation charging the person, firm, or entity with violating one (1) or more provisions of this ordinance (section) or permit issued thereunder, criminal violation of this chapter (section) may also be the basis for injunctive

relief, with such actions being brought and enforced through the Shelby County General Sessions Environmental Court.

(4) Processing a violation.

(a) The Manager may issue an assessment against any person or permittee responsible for the violation.

(b) Any person against whom an assessment or order has been issued may secure a review of such assessment or order by filing with the Manager a written petition setting forth the specific legal and technical grounds and reasons for his objections and asking for a hearing in the matter involved before the Manager and if a petition for review of the assessment or order is not filed within thirty (30) days after the date the assessment or order is served, the violator shall be deemed to have consented to the assessment and it shall become final;

(c) Whenever any assessment has become final because of a person's failure to appeal the Manager's assessment, the Manager may apply to the appropriate court for a judgment and seek execution of such judgment and the court, in such proceedings, shall treat a failure to appeal such assessment as a confession of judgment in the amount of the assessment;

(d) The Manager may consider the following factors when reviewing a petition:

(i) Whether the civil penalty imposed will be an appropriate economic deterrent to the illegal activity by the violator or others in the regulated community;

(ii) Damages to the town, including compensation for the damage or destruction of the Town of Arlington MS4, and also including any penalties, costs (direct or indirect) and attorneys' fees incurred by the town as a result of the illegal activity, as well as the expenses involved in enforcing this chapter and the costs involved in rectifying any damages;

(iii) Cause of the discharge or violation;

(iv) The severity of the discharge and its effect on the Town of Arlington MS4;

(v) Effectiveness of action taken by the violator to cease the violation;

(vi) The technical and economic reasonableness of reducing or eliminating the discharge;

(vii) The economic benefit gained by the violator;

(viii) The harm done to the public health or environment;

(ix) The amount of effort put forth by the violator to remedy the violation and/or the effectiveness of those remedies;

(x) Any unusual or extraordinary enforcement costs incurred by the Town;

(xi) The amount of penalty established by ordinance or resolution for specific categories of violations;

(xii) Any equities of the situation, which outweigh the benefit of imposing any penalty or damage assessment.

(e) Any civil penalty assessed to a violator pursuant to this section may be in addition to any civil penalty assessed by the Commissioner of the Tennessee Department of Environment and Conservation for violations of Tennessee Code Annotated, § 69-3-115; however, the sum of penalties imposed by this section and by Tennessee Code Annotated, § 69-3-115 shall not exceed ten thousand dollars (\$10,000) per day during which the act or omission continues or occurs.

(f) Referral to TDEC. Where the Town has used progressive enforcement to achieve compliance with this ordinance, 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:

- (i) Construction project or industrial facility location;
- (ii) Name of owner or operator;
- (iii) Estimated construction project or size or type of industrial activity (including SIC code, if known);
- (iv) 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.

(g) Other remedies. The Town may bring legal action to enjoin the continuing violation of this chapter, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.

(h) 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.

(i) Any appeal of this final determination shall be made to a court of competent jurisdiction. Such appeal must be filed within fifteen (15) days of the decision by the Manager.

(5) Appeals judicial proceedings and relief. The Manager may initiate proceedings in any court of competent jurisdiction against any person who has or is about to:

- (a) Violate the provisions of this chapter.
- (b) Violate the provisions of any permit issued pursuant to this chapter.
- (c) Fail or refuse to comply with any lawful order issued by the Manager that has not been timely appealed within the time allowed by this chapter.
- (d) Violates any lawful order of the Manager within the time allowed by such order.

Any person who shall commit any act declared unlawful under this chapter shall be guilty of a misdemeanor, and each day of such violation or failure shall be deemed a separate offense and punishable accordingly.

(6) Records retention. All dischargers subject to this chapter shall maintain and preserve for no fewer than five (5) years, all records, books, documents, memoranda, reports, correspondence and any and all summaries thereof, relating to monitoring, sampling, and chemical analyses made by or in behalf of the discharger in connection with its discharge. All records, which pertain to matters, which are the subject of any enforcement or litigation activities brought by the town pursuant hereto, shall be retained and preserved by the discharger until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired.

(7) Facilities Maintenance Agreement. The “Inspection and Maintenance Agreement for Private Stormwater Management Facilities” is included in Appendix B as a minimum guideline for agreements between the Town of Arlington and owners/operators of storm water infrastructure not owned by the town.

**14-312. Appeals.** Pursuant to Tennessee Code Annotated § 68-221-1106(d), any person aggrieved by the imposition of a civil penalty or damage assessment as provided by this chapter may appeal said penalty or damage assessment to the Town's governing body.

(1) 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.

(2) Public hearing. Upon receipt of an appeal, the Town's governing body, or other appeals board established by the Town's 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.

(3) 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.