

2.0 LEGAL AUTHORITY

2.1 INTRODUCTION

As indicated in Section 2.0 of the Part 1 NPDES Stormwater Permit application submitted by the City, through the City Charter and enabling authority provided by the State Code, the City possesses the power to establish by ordinance, the minimum legal authority to meet the requirements of the NPDES permitting regulations for stormwater discharges.

These regulations [CFR 122.26(d)(2)(i)] require "*A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance, or series of contacts which authorizes or enables the applicant at a minimum to:*

- (A) *control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by stormwater discharges associated with industrial activity and the quality of stormwater discharged from sites of industrial activity;*
- (B) *prohibit through ordinance, order or similar means, illicit discharge to the municipal separate storm sewer;*
- (C) *control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than stormwater;*
- (D) *control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;*
- (E) *require compliance with conditions in ordinances, permits, contracts or orders; and*
- (F) *carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer."*

This Section presents a summary of the existing State and City legal authority, a proposed stormwater ordinance to satisfy the criteria in the NPDES regulations, and a schedule to implement the new ordinance.

2.2 STATE ENABLING AUTHORITY

2.2.1 GENERAL POWERS OF MUNICIPALITIES

The State has provided municipalities with general grants of authority to regulate land development and storm drains within the Corporate limits. This general grant of power to the municipality is located in Sections 6-2-201 (General Powers under Mayor - Aldermanic Charter) of the Tennessee Code Annotated:

- Power to regulate the collection and disposal of drainage, sewage or other waste and to regulate the use of storm drains and sanitary sewers
- Power to regulate land development and require any alteration or changes to ensure that buildings, structures, and lands are healthful, clean, and safe
- Power to define, prohibit, abate, suppress, prevent and regulate all acts, practices, conduct, business, use of property and all other things whatsoever detrimental, or liable to be detrimental, to the health, morals, comfort, safety, convenience or welfare of the inhabitants of the municipality, and exercise general police powers;

In addition, specific authority to regulate land development is presented in Title 13 of the Tennessee Code, Annotated (e.g., authority for regulations covering the subdivision of land is included in Sections 13-3-101 through 13-3-304 and Sections 13-3-401 through 13-3-411).

2.2.2 TENNESSEE WATER QUALITY CONTROL ACT OF 1977

Sections 69-3-101 through 69-3-129 of the Tennessee Code Annotated constitute the Tennessee Water Quality Control Act of 1977, including the 1987 amendments, which is the State's enabling legislation that provides the legal authority to identify and assess penalties to violators of state issued permits and violators of state water quality standards. This legal authority provides the basis for the State's Compliance assurance and Enforcement Program.

In summary, the State has the authority to assess a civil penalty of \$10,000 per day to any person who does any of the following acts or omissions:

- (A) Violates an effluent standard or limitation or a water quality standard established under this part;
- (B) Violates the terms or conditions of a permit;
- (C) Fails to complete a filing requirement;
- (D) Fails to allow or perform an entry, inspection, monitoring or reporting requirement;
- (E) Violates a final determination or order of the board, panel, or commissioner;
- (F) In the case of an industrial user of a publicly owned treatment works, fails to pay user or cost recovery charges or violates pretreatment standards or toxic effluent limitations established as a condition in the permit of the treatment works; or
- (G) Violates any other provision of this part or any rule or regulation promulgated by the board.

A copy of Sections 69-3-101 through 69-3-129 of the Tennessee Code, Annotated can be found in Appendix A of the Part 1 NPDES permit submittal.

2.2.3 SENATE BILL NO. 68, HOUSE BILL NO. 56

This bill authorizes municipalities having a population of not less than 100,000 to regulate stormwater discharges in order to facilitate compliance to EPA permit applications.

Municipalities will be allowed to establish a system of drainage and flood control facilities.

Municipalities will be able to construct, extend, enlarge or acquire stormwater facilities or flood control improvements inside its corporate boundaries. A municipality also has the power to widen, straighten, or relocate stream, surface waters, or water courses.

The bill authorizes the municipality to establish a user fee system and to enter into a contract with any public or private corporation or municipal utilities board for the collection of fees.

The municipalities may establish a system of civil penalties between \$50 and \$5,000 per day per violation and assess damages caused by violations

2.3 CITY CHARTER AND ORDINANCES

The City possesses the general authority through the City Charter and City Ordinances to regulate water quality flowing through the municipal storm sewer systems as well as the waters located within the boundaries of the City. The following is a summary of the relevant sections of both the charter and relevant city ordinances.

2.3.1 CITY CHARTER

The Knoxville City Charter incorporates the general powers which are not expressly prohibited by the constitution or other laws granted by the State. Under the Charter, the City has broad powers to enact ordinances that will promote the general welfare of the City and will secure the general health, welfare, safety, and morals of its inhabitants.

The City Charter also conveys the general powers to prevent, abate and remove nuisances, including the power to declare by ordinance what constitutes a nuisance and provide for the abatement thereof.

To carry out the full intent and meaning of the City Charter, the City is granted the power to enact all ordinances necessary for the health convenience, safety and general welfare of its inhabitants, including the provision for fines, forfeitures and penalties for the violation of any such ordinances.

2.3.2 ENGINEERING ORDINANCES

The primary engineering ordinances affecting stormwater management are the Stormwater Detention Ordinance and the Alteration of Natural Drainage Ordinance. These ordinances focus on establishing standards for stormwater system design and maintenance.

Stormwater Detention Ordinance (City Code, Article VII, Sections 6-171 through 6-183)

The purpose of the stormwater detention ordinance is: (1) to minimize increases in peak flows from urban development and (2) to establish procedures to ensure that appropriate measures are implemented which adequately control increases in peak flows due to development. The ordinance applies to the following:

- road construction of 1 acre or more,
- commercial development of 1 acre or more,
- industrial development of 1 acre or more,
- educational development of 1 acre or more,
- institutional development of 1 acre or more,
- recreational development of 1 acre or more,
- multi-family residential development of 2 acres or more, and
- single family residential development of 5 acres and/or 5 lots or more.

Under the ordinance, stormwater detention requirements may be waived if the developer supplies hydrologic and hydraulic computations to support exclusion. In addition, stormwater detention is not required in areas that discharge directly to the Tennessee River.

All hydrologic and hydraulic computations must be prepared by a registered engineer proficient in these areas and licensed in the State of Tennessee. Computations, which must be submitted with the design information, are required to be in accordance with those outlined in the United States Department of Agriculture, Soil Conservation Service Technical Release No. 55 (TR55), unless an alternate method is approved by the Director of Engineering. The performance standard for detention ponds states that the post-development peak flow cannot be greater than the pre-development peak flow for the 10-year 24-hour storm event. Maintenance of detention facilities is the responsibility of the property owner. A copy of the appropriate sections of the City Code defining this ordinance were submitted in Appendix B of the Part 1 stormwater permit application.

Alteration Of Natural Drainage Ordinance (City Code Section 19-162)

This ordinance mandates that a detailed drainage plan be submitted to the Director of Engineering before any person may "excavate, grade, dump, move, or fill dirt or any other material so as to divert, construct, increase, or change in any manner the natural or existing flow of any stream, or the natural or existing drainage of any area. Under this ordinance, the City may halt construction if deemed necessary. The drainage plan must show proposed drainage for the area, including erosion control during and after site disturbance. The ordinance also empowers the Director of Engineering to require a performance bond equal to the amount to be performed in compliance with the drainage plan. A copy of the appropriate sections of the City Code defining this ordinance also can be found in Appendix B of the Part 1 permit application.

2.3.3 PLANNING ORDINANCES

The primary planning regulation and ordinances affecting stormwater management are the Flood Damage Protection Ordinance, the Knoxville-Knox County Minimum Subdivision Regulations, and the Zoning Ordinance for Knoxville. These ordinances set standards for development and establish some general requirements that must be satisfied by developers.

Flood Damage Protection Ordinance (City Code Chapter 12)

The City was required by the Federal Emergency Management Agency (FEMA) to adopt the Flood Damage Protection Ordinance in order to participate in the National Flood Insurance Program. The ordinance applies to all areas of special flood hazard in Knoxville as defined by the 1981 FEMA study. Like the Flood Fringe Area requirement, this ordinance requires the bottom floor elevation to be certified and to be at least 1 ft above the 500-year flood elevation. Where areas of special flood hazard have not been defined, it is up to the City to define them. Very little definition of floodplains outside of those defined by FEMA has been accomplished to date. Like the Floodway requirement in the Zoning Ordinance, this ordinance disallows any encroachment, fill, construction, etc. that will increase the 500-year flood elevation or increase the floodway width. A copy of the appropriate sections of the City Code defining this ordinance were submitted in Appendix B of the Part 1 permit application.

Knoxville-Knox County Minimum Subdivision Regulations (Appendix A of the City Code)

Similar to the Zoning Ordinance, the Knoxville-Knox County Minimum Subdivision Regulations contain elements that can have an impact on stormwater management, such as setback requirements, minimum rights-of-way, etc. The regulations for storm drainage in the Design Standards (Section 65) and Required Improvements (Section 75) sections are of the greatest importance to stormwater management. The regulations in these two sections state that the developer must provide a drainage system adequate to carry flow from the developed

area to an established City/County drain or natural watercourse. The cost of the drainage system is borne by the developer. A stormwater drainage plan must be provided by the developer showing the existing and proposed system. The regulations also give specifications and procedures for the submission of plats. However, there is no requirement that the developer ensure that increased runoff from his property does not result in increases in downstream flooding. Appendix B of the Part 1 permit application includes a copy of the appropriate sections of the City Code defining this ordinance.

Zoning Ordinance of the City of Knoxville, Tennessee (Appendix B of the City Code)

The Zoning Ordinance of the City of Knoxville, Tennessee (Zoning Ordinance) empowers the City Council to regulate the use of land by dividing the municipality into a number of zones and imposing restrictions within those zones such as limiting the size of buildings and the percentage of the lot that may be occupied. The Zoning Ordinance also establishes an appeals process, an enforcement mechanism, and a penalty for violators of the provisions.

Many aspects of the Zoning Ordinance have an implicit impact on stormwater management. Most notable are the portions that establish such items as intensity of use, minimum buffer zones and maximum lot coverage, because these items have an impact on imperviousness of the development. Imperviousness generally governs the amount of runoff that can be expected from an area. While these items impact the level of imperviousness, they do not impose an upper limit on imperviousness.

The two sections of the ordinance dealing directly with stormwater are the F-1 Floodway District section and the Flood Fringe Area section. The floodway is established to protect the channels and floodplains from encroachment so that flood levels and flood damages will not be increased for the 500-year return period storm. Any construction or disturbance of land in the floodway must be permitted by the Department of Engineering. Before a permit can be issued, proof that the construction will not increase 500-year flooding must be supplied. Standards are established to prevent encroachment into the floodway which endangers life and property.

The flood fringe is the area lying outside the floodway and below the 500-year flood elevation as defined by the 1984 Flood Insurance Study (FIS). Buildings constructed in the flood fringe are required to be at least 1 ft above the 500-year flood elevation, and fill in the flood fringe must extend at least 25 ft beyond any structure. Any structure outside the floodway but within 100 ft of a main channel or sinkhole must be approved by the Department of Engineering. No structure may be within 10 ft of the top of bank of any stream. The Zoning Ordinance does not specifically require that the locations of floodways, floodplains, or streambanks be shown on development plans. A copy of the appropriate sections of the City Code defining this ordinance were submitted in Appendix B of the Part 1 stormwater permit application.

2.4 PROPOSED STORMWATER ORDINANCE

Although existing ordinances and codes do cover some of the minimum criteria presented in the regulations, it will be appropriate to develop a new city ordinance to specifically address the issues and criteria related to the NPDES stormwater permitting program.

A model ordinance has been prepared for this permit application. The Storm Sewer Discharge Ordinance is structured to address the criteria of the regulations and to be consistent with the proposed stormwater management program. The model ordinance acts to enforce the program requirements developed to meet the NPDES stormwater regulations. The overall objective is to adopt an ordinance as part of the City's stormwater management program in order to prevent certain non-stormwater discharges to, and improper disposal of substances in, the storm sewer system so as to reduce, to the maximum extent practicable, pollutants that may be present in discharges from the storm sewer systems. The model ordinance is included in Appendix A.

2.5 IMPLEMENTATION SCHEDULE FOR STORMWATER ORDINANCE

The State Legislature approved the Stormwater Bill in April 1993. This will facilitate the passage of a Stormwater Ordinance by the City of Knoxville. A model ordinance is located in Appendix A. It is projected that the City will create a stormwater ordinance or modify the model ordinance within the first six months of the permit term. The Ordinance could be enacted soon thereafter.