

RESOLUTION NO. 24417

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO AUTHORIZE A PAYMENT IN AN AMOUNT UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) TO THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION (TDEC) IN ACCORDANCE WITH THE COMMISSIONER'S ORDER AND ASSESSMENT DATED APRIL 12, 2005.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Administrator of the Department of Public Works be and is hereby authorized to authorize a payment in an amount up to \$100,000.00 to the Tennessee Department of Environment and Conservation (TDEC) in accordance with the Commissioner's Order and Assessment dated April 12, 2005.

ADOPTED: May 3, 2005

/add

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	DIVISION OF WATER POLLUTION
)	CONTROL
)	
CITY OF CHATTANOOGA)	
)	
)	
RESPONDENT)	CASE NO. 05-0171

COMMISSIONER'S ORDER AND ASSESSMENT

NOW COMES Betsy L. Child, Commissioner of the Tennessee Department of Environment and Conservation, and states:

PARTIES

I.

Betsy L. Child is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "Department").

II.

The City of Chattanooga, (hereinafter the "Respondent") is a municipality in Hamilton County, Tennessee. The Respondent owns and operates a Municipal Separate Storm Sewer System (hereinafter "MS4"). Service of process may be made on The Honorable Robert Corker, Mayor, City of Chattanooga, Suite 100, City Hall, Chattanooga, Tennessee 37402.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) Section 69-3-101 *et seq.*, the Water Quality Control Act (hereinafter the "Act") has occurred, or is about to occur, the Commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the Commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. The Water Quality Control Board has promulgated rules governing general water quality criteria, and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 ("Rule").

IV.

The Respondent is a "person" as defined by T.C.A. §69-3-103(20). As hereinafter stated, the Respondent has violated the Act.

V.

T.C.A. §69-3-108 requires that a person obtain a permit from the Department prior to discharges into waters of the state. Rule 1200-4-5-.08 states in part that a set of effluent limitations will be required in each permit that will indicate adequate operation or performance of treatment units used and that appropriately limit those harmful parameters present in the

wastewater. Furthermore, it is unlawful for any person to increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit.

FACTS

VI.

On September 30, 1996, the Division of Water Pollution Control (hereinafter the "Division") issued a National Pollutant Discharge Elimination System (NPDES) Permit, TNS068063 (hereinafter the "permit") to the Respondent. The permit became effective on October 1, 1996, and expired on September 30, 2001. The Respondent reapplied for a new permit in a timely manner and the expired permit remains in effect until such time as the new permit is issued. The permit authorizes the Respondent to discharge storm water runoff in accordance with the storm water quality management program(s), effluent limitations, monitoring requirements and other conditions established in the permit to "Waters of the State," as defined by T.C.A. § 69-3-103(33).

VII.

Pursuant to T.C.A. §69-3-105(a)(1), all Waters of the State have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, all Waters of the State are classified, at a minimum, for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

VIII.

On December 11 through December 13, 2002, Division personnel and personnel from the U.S. Environmental Protection Agency (EPA) conducted a joint Compliance Evaluation Inspection (CEI) of the Respondent's MS4 program. The purpose of the CEI was to evaluate the Respondent's compliance status with the terms and conditions of the permit.

IX.

Division personnel found the Respondent's records and reports unsatisfactory. The Respondent did not collect all the data required in Part V of the permit. The Respondent did not implement the system-wide public education effort, as required. The Respondent did not meet the required compliance dates contained in Part III A of the permit for the following items:

1. Conduct an inventory of the storm water drainage system and maintain the inventory in a Geographical Information System (GIS) format.
2. Develop, implement and enforce maintenance requirements for private storm water structures.
3. Evaluate effectiveness of erosion prevention and sediment control (EPSC) to insure Best Management Practices (BMPs) are achieved.
4. Define a master planning effort for storm water.
5. Identify and prioritize all areas where significant levels of construction development are expected to occur.
6. Define the highest priority area for storm water control and develop a pilot master plan to manage the storm water.
7. Develop a storm water master plan for the entire jurisdiction.
8. Evaluate existing flood controls.
9. Develop procedures for incorporating water quality features.

10. Develop a BMP Guidance Document for solid waste management facilities, including City Yards.
11. Implement a monitoring program, including sampling storm water runoff once per year from City Yards and the 36th Street landfill.
12. Issue a Memorandum of Understanding (MOU) between the Respondent's Storm Water Management Division (SWMD) and other City operations affecting water quality.
13. Establish a public education program on the proper use and disposal of household hazardous waste.
14. Develop a guidance document or brochure for alternative landscaping practices that utilize BMPs.
15. Develop a guidance document or brochure for alternatives to the use of pesticides, herbicides and fertilizer (PHF).
16. Develop a PHF monitoring program.
17. Continue the field-screening program with a minimum of four inspectors, two vans and one supervisor.
18. Develop procedures to prevent, contain and respond to spills.
19. Develop a public notification program regarding spills.
20. Develop a public education program promoting recycling and proper disposal of used oil.
21. Develop industrial guidance materials.
22. Sample four to eight industrial sites per year.
23. Develop procedures for reviewing construction site plans.

Furthermore, Division personnel determined the Respondent's self-monitoring program was unsatisfactory. The Respondent did not define the major outfalls within its jurisdiction, sample the homogeneous land use areas and wet weather watersheds, and did not perform hydrologic monitoring on priority watersheds.

X.

On January 31, 2003, the division sent a Notice of Violation (NOV) to the Respondent stating the violations of the permit discovered during the December 2002, CEI. In the NOV, the division recommended the Respondent to take the following actions:

1. Hire additional personnel.
2. Review the existing ordinance and modify as necessary to fulfill the requirements of the permit.
3. Find viable alternatives for enforcement that will encourage compliance with the MS4 program.
4. Increase the frequency of self-inspection reports required from permittees under the MS4 program.
5. Require a certified erosion control specialist be in charge of all EPSC measures at land disturbance sites.

XI.

On March 28, 2003, the Respondent replied to the January 31, 2003, NOV issued by the Division. The Respondent proposed a long-term plan that would be submitted to the Division by September 30, 2003.

XII.

On September 30, 2003, the Respondent submitted the long-term plan to the Division. Division personnel reviewed the long-term plan and determined it lacked the necessary level of detail regarding compliance with the specific requirements of the permit. The division concluded the long-term plan submitted by the Respondent failed to properly address the permit failures previously identified by the Division.

XIII.

On May 20 and May 21, 2004, the Division and EPA conducted a second joint CEI of the Respondent's MS4 program. The Division determined the Respondent had not met the accomplished the tasks required in the compliance schedule, as described in Section III.A. of the permit for the following items:

1. Conduct an inventory of the storm water drainage system and maintain the inventory in a GIS format.
2. Fully develop and implement routine maintenance practices.
3. Define the master planning effort.
4. Identify and prioritize all areas where significant levels of development are expected to occur.
5. Develop a pilot master plan for the area with the highest priority.
6. Develop a MOU between SWMD and other City program departments related to storm water.
7. Complete PHF guidance manual and develop a PHF monitoring program.
8. Compile field screening results in a computer database.
9. Conduct field screening for all outfalls.
10. Provide an up to date and complete system map to emergency officials.
11. Produce an industrial facilities water quality inspection manual and produce a construction site water quality inspection manual.
12. Define all major industrial and non-industrial outfalls.
13. Provide estimates of seasonal loadings for all major outfalls.
14. Collect watershed hydrologic data for three years, which the permit required to be completed by September 30, 2001.
15. Perform modeling for three years, which the permit required to be complete by September 30, 2001.

16. Submit the hydrologic data and modeling results to the Division, which the permit required to be completed by September 30, 2001.

XIV.

On June 16, 2004, the Division issued a second NOV to the Respondent for violations discovered during the May 2004 CEI. The Division instructed the Respondent to submit a quarterly progress report summarizing actions taken to achieve compliance with the permit.

VIOLATIONS

XV.

By failing to comply with the terms and conditions in the permit (TNS068063), the Respondent has violated T.C.A. §69-3-115(a)(1), which states:

- (a) (1) Any person who des any of the following acts or omissions is subject to a civil penalty of up to ten thousand dollars (\$10,000) per day for each day during which the act or omission continues or occurs:
 - (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;
 - (G) After reasonable notice and opportunity to restore a ditch constructed pursuant to § 69-3-130, the owner of the property fails to restore the ditch to permit specifications; or
 - (H) Violates any other provision of this part or any rule or regulation promulgated by the board.

By failing to comply with the terms and conditions in the permit (TNS068063), the Respondent has violated T.C.A. §69-3-114(b), which states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

ORDER AND ASSESSMENT

XVI.

WHEREFORE, pursuant to the authority vested by T.C.A. §69-3-107, §69-3-109, §69-3-115 and §69-3-116, I, Betsy L. Child, hereby issue the following ORDER AND ASSESSMENT to the Respondent:

99-05-1
The Respondent shall, within 150 days of receipt of this ORDER, define all major industrial storm water outfalls and all major non-industrial storm water outfalls, as described in Section V.A.3.d. of the permit.

The Respondent shall submit the list of major storm water outfalls to the Division at the Chat-EFO. The Respondent shall submit a copy of the list of major storm water outfalls to the E&C Section.

2. The Respondent shall, within 365 days of receipt of this ORDER, implement a PHF monitoring program to identify sources of pesticides, herbicides and fertilizers, and to detect improper use of PHF, as described in Section II.C.6.e. of the permit. The PHF program must include, but is not limited to, a complete municipal guidance manual for proper PHF usage, as described in Section II.C.6.d. of the permit.

The Respondent shall submit an outline of the PHF monitoring program to the Chat-EFO, for review and approval. The Respondent shall submit a copy of the outline of the PHF

monitoring program to the E&C Section.

The Respondent shall revise the outline of the PHF monitoring program within 30 days of receiving written comments from the Division and resubmit the report to the division at the Chat-EFO, for review and approval. The Respondent shall submit a copy of all revisions to the outline of the PHF monitoring program to the E&C Section.

3. The Respondent shall, by December 31, 2005, provide storm water system and receiving water mapping to Emergency Preparedness officials, as described in Section II.C.7.e.iii. of the permit. The Respondent shall notify the division in writing when this task is accomplished. The Respondent shall notify the Chat-EFO and copy the E&C Section.
4. The Respondent shall, by December 31, 2005, locate inlets, outfalls, and other drainage structures and maintain the data in a Geographic Information System (GIS), as described in Section II.C.1.a.i. through Section II.C.1.b.v. of the permit. The Respondent shall notify the division in writing when this task is accomplished. The Respondent shall notify the Chat-EFO and copy the E&C Section.
5. The Respondent shall, by April 30, 2008, develop procedures and define criteria to establish water quality and hydrologic characteristics of the watersheds and collect all relevant data, as described in Section V.C. of the permit.

The Respondent shall notify the Division in writing when this task is accomplished. The Respondent shall notify the Chat-EFO and copy the E&C Section.

6. The Respondent shall, by May 30, 2008, perform hydrologic modeling, as described in Section V.C. of the permit.

The Respondent shall notify the Division in writing when this task is accomplished. The Respondent shall notify the Chat-EFO and copy the E&C Section.

7. The Respondent shall, by June 30, 2008, submit a watershed characteristic report to the division, as described in Section V.C. of the permit. The Respondent shall submit the watershed characteristic report to the Chat-EFO, for review and approval. The Respondent shall submit a copy of the watershed characteristic report to the E&C Section.

The Respondent shall revise the watershed characteristic report within 30 days of receiving written comments from the Division and resubmit the report to the division at the Chat-EFO, for review and approval. The Respondent shall submit a copy of all revisions to the watershed characteristic report to the E&C Section.

8. The Respondent shall, by September 30, 2008, implement the Storm Water Management Program (SWMP) elements, as described in Section II.C. of the permit. The

implementation shall include, but is not limited to, an inventory of the storm water drainage system encompassing the following:

- (a) Location of all inlets, outfalls, manholes, junction-boxes, culverts, bridges and concrete channels;
- (b) Physical description of the drainage structures including the material of construction and geometry; and
- (c) Observation and documentation of the structural integrity, obstruction to flow, and the presence of oil, grease or abnormal color or odor.

The Respondent shall submit the inventory of the storm water drainage system to the Chat-EFO, for review and approval. The Respondent shall submit a copy of the inventory of the storm water drainage system to the E&C Section.

The Respondent shall revise the inventory of the storm water drainage system within 30 days of receiving written comments from the division and resubmit the inventory of the storm water drainage system to the Division at the Chat-EFO, for review and approval. The Respondent shall submit a copy of all revisions to the inventory of the storm water drainage system to the E&C Section.

9. The Respondent shall, submit a quarterly progress report to the division by the 15th of the month following the close of the quarter. Quarters are based on the State of Tennessee's fiscal year as follows:

1st Quarter -- July 1 to September 30, with the first progress report due October 15, 2004.

2nd Quarter -- October 1 to December 31, with the progress report due January 15.

3rd Quarter -- January 1 to March 31, with the progress report due April 15.

4th Quarter -- April 1 to June 30, with the progress report due July 15.

The quarterly progress report must summarize actions taken by the Respondent to achieve compliance with the permit during the quarter. The progress report must include, but is not limited to, an account of each violation of the permit that existed in the quarter and the steps the Respondent is taking to achieve compliance, including a time line for achieving compliance with each violation. The quarterly progress reports are not a substitute of the annual report required by the permit. The Respondent must submit the quarterly progress reports until such time that full compliance with the permit is achieved. The Division will make the determination of full compliance and notify the Respondent in writing when the quarterly progress reports are no longer required.

The Respondent shall submit the quarterly progress reports to the Division at the Chat-

EFO. The Respondent shall submit a copy of the quarterly progress reports to the E&C Section.

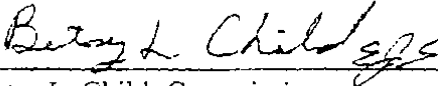
10. The Respondent shall achieve compliance with the terms and conditions of the permit on or before December 31, 2008. Upon written request by the Respondent, and for good cause shown, the Division may extend any deadline imposed by the terms and provisions of this Order
11. The Respondents shall pay a CIVIL PENALTY of SIX HUNDRED THIRTY FIVE THOUSAND FIVE HUNDRED DOLLARS (\$635,500.00) to the division, hereby ASSESSED to be paid as follows:
 - (a) The Respondent shall, within 30 days of receipt of this ORDER, pay a CIVIL PENALTY in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).
 - (b) If, and only if, the Respondent fails to comply with item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00), payable within 30 days of default.
 - (c) If, and only if, the Respondent fails to comply with item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00), payable within 30 days of default.
 - (d) If, and only if, the Respondent fails to comply with item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000.00), payable within 30 days of default.
 - (e) If, and only if, the Respondent fails to comply with item 4 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00), payable within 30 days of default.
 - (f) If, and only if, the Respondent fails to comply with item 5 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00), payable within 30 days of default.
 - (g) If, and only if, the Respondent fails to comply with item 6 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00), payable within 30 days of default.
 - (h) If, and only if, the Respondent fails to comply with item 7 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00), payable within 30 days of default.

- (i) If, and only if, the Respondent fails to comply with item 8 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of FIFTY THOUSAND DOLLARS (\$50,000.00), payable within 30 days of default.
- (j) If, and only if, the Respondent fails to comply with item 9 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), per quarterly progress report, not to exceed a total of ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$120,00.00), payable within 30 days of default.
- (k) If, and only if, the Respondent fails to comply with item 10 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO HUNDRED THIRTY THOUSAND FIVE HUNDRED DOLLARS (\$230,500.00), payable within 30 days of default.

12. The Respondent shall otherwise conduct its business in accordance with the Act and rules promulgated pursuant to the Act.

Further, the Respondent is advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Commissioner of the Tennessee Department of Environment and Conservation
on this 12th day of April, 2005.



Betsy L. Child, Commissioner
Tennessee Department of Environment and Conservation

Payment of the civil penalty shall be made to the "Treasurer, State of Tennessee" and should be sent to the "Division of Fiscal Services, Consolidated Fee Unit, Tennessee Department of Environment and Conservation, 7th Floor L&C Annex, 401 Church Street, Nashville, Tennessee 37243".

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109 and 69-3-115, allow the Respondent to secure review of this ORDER AND ASSESSMENT. To secure review of this ORDER AND ASSESSMENT, the Respondent must file with the commissioner at the address below a written petition setting forth each of Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this ORDER AND ASSESSMENT.

If the required written petition is not filed within thirty (30) days of receipt of this ORDER AND ASSESSMENT, it shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this ORDER AND ASSESSMENT by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceeding to the extent allowed by law.

Please direct all correspondence and other communications regarding this matter to: Sam Wallace, Office of General Counsel, Tennessee Department of Environment and Conservation, 20th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243-1548, Telephone (615) 532-0131.



Sam Wallace BPR#005207