

Chapter 8: Enforcement and Appeals

8.0 Legal Authority

The Montgomery County Storm Water Management and Control Regulations (Resolution 03-1-5), Section 26 (Penalties), Paragraphs 1 – 4 states:

(1) At the request of the Building Commissioner or the Building and Codes Committee the County Attorney may institute injunctive, mandamus, or other appropriate action or proceedings at law or equity for the enforcement of this Resolution or to correct violations of the Resolution thereof.

(2) The Montgomery County Building Commissioner, or any duly authorized representative may issue an order to stop work on land disturbing and land development activities that are determined to be in non-compliance with the provisions of this Resolution.

(3) As permitted by state law TCA 68-221-1106, any person who violates the provisions of this Resolution shall be subject to a civil penalty of not less than \$50.00 or more than \$5000.00 per day for each day in violation. Each day of violation shall constitute a separate violation.

(4) Non-compliance with an order to stop work issued pursuant to subsection (27.2) shall constitute a violation of this Resolution and shall be grounds for arrest.

8.1 Enforcement Measures

Following notification of storm water regulation violations, EPSC deficiencies or of a situation in which:

- No action has been taken in a reasonable amount of time (based on the best professional judgment of the Storm Water Coordinator)
- Insufficient action has been taken within a reasonable amount of time (based on the best professional judgment of the Storm Water Coordinator)
- Pollutive discharges are of immediate concern
- There is an immediate hazard to public health or safety

One of the following actions may be taken:

8.1.1 Verbal Warning: The Montgomery County Storm Water Coordinator or a County Storm Water Inspector may issue a verbal warning to on-site workers to remediate minor

violations of the Storm Water Management Program Regulations or permit or order issued thereunder. The issuance of a verbal order will be considered initial notice to a landowner or contractor of a violation of the Storm Water Management Program Regulations, and may be used as the initial date of violation for the calculation of civil penalties, damage assessments and administrative expenses. The time, date and person the verbal warning is issued to will be noted for future reference.

8.1.2 Notice of Violation: The Montgomery County Storm Water Coordinator or a County Storm Water Inspector may issue a Notice of Violation. The notice of violation will explain the violations of the Storm Water Management Program Regulations that have been alleged, what actions must be taken for the violator to be in compliance with the Storm Water Management Program Regulations, and a time frame for response and/or to complete the required actions. The Notice of Violation will also indicate any civil penalties, damage assessments and administrative expenses that will be incurred by the violator.

8.1.3 Stop Work Order: The Montgomery County Building Commissioner may issue a Notice of Violation that includes an order to stop work on land disturbing and land development activities that are determined to be in non-compliance with the provisions of the Storm Water Management Program Regulations or permit or order issued thereunder. Non-compliance with an order to stop work shall constitute a violation of the Storm Water Management Program Regulations and shall be grounds for arrest.

8.1.4 Civil Penalties: When the Storm Water Coordinator finds that any person has violated or continues to violate the Storm Water Management Program Regulations or any permit or order issued hereunder, daily civil penalties may be assessed against the violator. Under the authority provided in Tennessee Code Annotated §68-221-1106, the Montgomery County Building Commissioner declares that any person violating the provisions of the Storm Water Management Program Regulations may be assessed a civil penalty by the Montgomery County Storm Water Management Program 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.

8.2 Building/Grading Permit Suspension and Revocation

Building/Grading Permit may be suspended or revoked upon submission of a certified letter to the owner or authorized representative stating that one of the following violations has been committed:

- a. Violation(s) of the conditions of the grading, drainage and erosion control plan approval
- b. Errors and/or omissions in the grading, drainage and erosion control plan or associated calculations, analyses, or reports
- c. Construction not in accordance the approved plans

d. Non-compliance with correction notice(s) or stop work order(s) and the owner fails to correct the violation within the time limit specified on the notice of violation

If in the judgment of the Montgomery County Building Commissioner there exists an immediate danger to the public's life or property or to adjacent private property due to a permitted construction site, a Building/Grading Permit may be immediately suspended and may be revoked upon verbal notification, followed by submission of a certified letter of violation to the owner or authorized representative.

8.3 Civil Penalty Assessment (Routine Violations)

Civil penalties for routine violations of the Montgomery County Storm Water Management Regulations will be assessed on a "per occurrence" basis if the offense is corrected within a reasonable time frame as determined by the Montgomery County Storm Water Coordinator (usually 24 to 72 hours). If the offense is not corrected in the time frame determined by the Montgomery County Storm Water Coordinator, the "per occurrence" civil penalty amount will be assessed for each day that the offense continues, calculated from the date of the initial Notice of Violation.

The following civil penalties shall be imposed on non-development single residential lots for storm water regulation violations:

- Failure to install or maintain erosion controls - \$250.00 per occurrence
- Illicit Discharge - \$500.00 per occurrence
- Allowing sediment to leave a construction site - \$250.00 per occurrence
- Water Quality Buffer Incursion – \$250.00 per occurrence
- Unauthorized drainage course modifications - \$250.00 per occurrence

The following shall be imposed upon residential developments and lots associated with a development for storm water regulation violations:

- Failure to install or maintain erosion controls - \$500.00 per occurrence
- Illicit Discharge - \$1,000.00 per occurrence
- Failure to obtain a grading permit - \$5,000.00 per occurrence
- Allowing sediment to leave a construction site - \$250.00 per occurrence
- Water Quality Buffer Incursion – \$250.00 per occurrence

- Unauthorized drainage course modifications - \$500.00 per occurrence

The following shall be imposed upon commercial developments for storm water regulation violations:

- Failure to install or maintain erosion controls - \$500.00 per occurrence
- Illicit Discharge - \$1,000.00 per occurrence
- Failure to obtain a grading permit - \$5,000.00 per occurrence
- Allowing sediment to leave a construction site - \$250.00 per occurrence
- Water Quality Buffer Incursion – \$250.00
- Unauthorized drainage course modifications - \$500.00 per occurrence

The following shall be imposed on landowners for storm water regulation violations:

- Unauthorized drainage course modifications - \$250.00 per occurrence
- Water Quality Buffer Incursion – \$250.00 per occurrence
- Illicit Discharge - \$500.00 per occurrence
- Allowing sediment to leave a construction site - \$250.00 per occurrence
- Failure to maintain storm water structures - \$250.00 per occurrence

The Storm Water Coordinator shall have authority to recover administrative expenses incurred in investigating violations of, and enforcing compliance with, the storm water program regulations, or any other actual damages to the County caused by the violation.

Civil penalties shall be paid to the Montgomery County Building and Codes Department Clerk within ten (10) days of receipt of the written notice of imposition of the penalties. If the civil penalty is to be appealed to the Storm Water Appeals Board, the penalty shall be paid into escrow at the time of application for appeal, pending the results of that appeal.

8.4 Civil Penalty Calculations in Cases of Environmental Damage

In order to assess the amount of a civil penalty that is to be levied against individuals and organizations that violate storm water program regulations, it is necessary to evaluate the damages that have resulted from the specific violation. Specific assessment categories will be used to evaluate environmental damages are based on TCA 68-221-1106.

Each assessment category will be based on a scale of 1 to 10, with 1 representing the best case and 10 representing the worst case. The total score from each category will be added to create a final civil penalty score, which will determine the per day penalty to be assessed.

The Storm Water Coordinator will assign all civil penalty values based on Best Professional Judgment (BPJ). The civil penalty assessment policies and procedures may be altered or changed to better fit specific circumstances and situations. Any changes will be made based on the BPJ of the Montgomery County Building Commissioner and the Storm Water Coordinator. Values for each assessment category will be based on Table 1: Assessment Criteria.

The Storm Water Coordinator shall have authority to recover administrative expenses incurred in investigating violations of, and enforcing compliance with, the Storm Water Management Program Regulations, or any other actual damages caused by the violation.

Civil penalties, damages, and/or administrative expenses shall be paid to the Montgomery County Building and Codes Department Clerk within ten (10) days of receipt of the written notice of imposition of the penalties. If the civil penalty is to be appealed to the Storm Water Appeals Board, the penalty shall be paid into escrow at the time of application for appeal, pending the results of that appeal.

Methodology: In order to assess the amount of a civil penalty that is to be levied against individuals and organizations that violate Storm Water Program regulations, it is necessary to evaluate the damages that have resulted from the specific violation. The follow categories shall be used to make any necessary evaluations:

- a) Harm done to the Environment
- b) Harm to the Public Health (human harm)
- c) How long the damage will affect the environment and humans uses of that environment
- d) Quantity of Pollutants discharged OR the area affected by the pollution based on the size of the development or construction site
- e) The remediation efforts of those responsible for the violation and equities of the situation which outweigh the benefit of imposing any penalty or damage assessment, including:
 - (1) Notification of relevant agencies
 - (2) Cleanup efforts
- f) Previous violations of the responsible parties
- g) Economic benefit gained by the violator

Each assessment category will be based on a scale of 1 to 10, with 1 representing the best case and 10 representing the worst case. The total score from each category will be added to create a final civil penalty score, which will determine the per day penalty to be assessed.

Value Assignments: The Storm Water Coordinator will assign all values based on Best Professional Judgment (BPJ). The civil penalty assessment policies and procedures may be altered or changed to better fit specific circumstances and situations. Any changes will be made based on the BPJ of the Montgomery County Building Commissioner and Storm Water Coordinator. Values for each assessment category will be based on Table 1: Assessment Criteria.

The County Building Commissioner shall have authority to recover expenses incurred in investigating violations of, and enforcing compliance with, this ordinance, or any other actual damages caused by the violation.

Table 1: Assessment Criteria.

	1	2.5	5	7.5	10
Human Impact (HAZMAT Scale)	<u>Minimal</u> Essentially non-toxic	<u>Slight</u> Exposure may cause irritation but only minor residual injury, even without medical treatment	<u>Moderate</u> Intense or prolonged exposure could cause temporary effects or possible residual injury unless prompt medical treatment is given	<u>Serious</u> Short or moderate exposure could cause serious temporary or residual injury, even with prompt medical treatment	<u>Extreme</u> Very short exposure could cause death or major residual injury, even with prompt medical treatment
Environmental Impact	Little/No Harm	Aquatic life leaves area	Few invertebrates die	Several invertebrates die	Significant multi-species kill
Clean up Efforts	Remediation/clean-up efforts were timely and effective or, no measures were required	Clean-up/remediation efforts were timely but partially ineffective.	Clean-up/remediation efforts were mostly ineffective.	Clean-up/remediation efforts were completely ineffective.	No action taken to perform required clean-up or remediation

Notification of Agencies	Appropriate Agencies are notified or not applicable	Failed to notify one or more critical agencies inadvertently	Inadvertent failure to notify any agencies	Intentional failure to notify one or more agencies in a timely manner	Deliberate attempt to conceal or intentional failure to notify
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Table 1 Notes:

- a) For Environmental and Human Impacts:
 - (1) Reference materials such as MSDS sheets, textbooks, etc. may be used if necessary.
 - (2) Environment and Human values will be based on the BPJ of the Storm Water Coordinator, while taking into consideration the effects the material discharged has on the environment and humans respectively.

- b) For Quantity Values (See Chart 2):
 - (1) If the Human or Environmental Impact value in Section 1 is greater than 4, then the “total gallons” scale is to be used to quantify the spill or discharge.
 - (2) If the Human or Environmental Impact value in Section 1 is less than or equal to 4, then the “discharge rate” scale is to be used to quantify the spill or discharge.

- c) The Long Lasting Effects value will be based on the BPJ of the Storm Water Coordinator, taking into consideration the effect the discharged material has on the environment over time, and/or the magnitude of damage done to the environment and its ability to recover.

- d) The Notification of Agencies value will be based on the BPJ of the Storm Water Coordinator based the following:
 - (1) If it was required in a previous NOV issued to the site.
 - (2) The discharge was a “reportable quantity” as required by State or Federal guidelines.
 - (3) It posed either a threat to human health or significant impact to the environment.

- e) The Clean-up Efforts value will be based on the BPJ of the Storm Water Coordinator based on the effectiveness of required remediation and/or required housekeeping/clean-up efforts.

- f) Violations refer to violations that resulted in fines.

- g) Economic benefit gained by the violator shall be evaluated based on the BPJ of the Storm Water Coordinator, as part of the Previous Violations section.

Assessment Scoring: The per-day civil penalty to be assessed for a violation will be based on Chart 1: Civil Penalty based on Penalty Scores.

Chart 1: Penalty amount based on Calculation of Civil Penalties.

Penalty Score Range	Per-Day Fine	Penalty Score Range	Per-Day Fine
0-4	\$50	27-32	\$1,500
5-9	\$100	33-38	\$2,000
10-14	\$250	39-43	\$3,000
15-20	\$500	44-47	\$4,000
21-26	\$1,000	48-50	\$5,000

Chart 2: Quantity of Discharge or Area Effected Rating Scale

Section 2: Quantity of Discharge (a) or Area Effected (b or c)				
(a) Non-Construction Related		(b) Development	(c) Construction Site	
Discharge Rate (Gal/Min)	Total Gallons	Acreage	Acreage	Rating
0-10	0-1	1	1	1
11-20	1-5	2-3	2	2
21-30	6-10	4-6	3	3
31-40	11-20	7-10	4	4
41-50	21-30	11-15	5	5
51-60	31-50	16-20	6	6
60-70	51-100	21-30	7	7
71-80	101-1000	31-40	8	8
81-90	1001-5000	41-50	9	9
>90	>5000	>50	>10	10

8.5 Storm Water Board of Appeals

The Storm Water Board of Appeals has been established to hear appeals of decisions of the Storm Water Coordinator related to compliance with the Storm Water Management Resolution and Municipal Separate Storm Sewer System (MS4) management policies, procedures and regulations. This shall include appeal of actions used by the Storm Water Coordinator to enforce compliance with the provisions of the Storm Water Management Program Regulations,

violations of the provisions of any permit issued pursuant to the Storm Water Management Program Coordinator, or failures or refusals to comply with any lawful communication or notice to abate or take corrective action by the Montgomery County Storm Water Management Program Coordinator.

8.6 Appeal of Civil Penalties, Damages and Administrative Expenses

The Storm Water Board of Appeals will hear appeals concerning the assessment of civil penalties, damages and administrative expenses assessed pursuant to Tennessee Code Annotated §68-221-1106. Any person aggrieved by the imposition of a civil penalty or damage assessments as provided by the Montgomery County Storm Water Management and Control Resolution may appeal said civil penalty, damages, and/or administrative expenses to the Montgomery County Storm Water Board of Appeals.

The petition for appeal shall be in writing and filed with the Montgomery County Building and Codes Clerk within thirty (30) days of the date that the notice of the civil penalty, damages, and/or administrative expenses is served in any manner authorized by law. If a petition for review of such civil penalty, damages, and/or administrative expenses is not filed within thirty (30) days after the notice of civil penalty, damages, and/or administrative expenses is served in any manner authorized by law, the violator shall be deemed to have consented to the damage assessment or civil penalty and it shall become final. There is a \$120.00 Storm Water Appeals Board filing fee that must be paid at the time the appeal petition is filed with the Montgomery County Building and Codes Clerk. This fee is not refundable, regardless of the outcome of the appeal.

Upon receipt of an appeal, the Montgomery County Storm Water Board of Appeals 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 on the Montgomery County Stormwater website. 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 alleged violator at the time of appeal.

Appealing decisions of the Montgomery County Storm Water Board of Appeals: Any alleged violator may appeal a decision of the Storm Water Board of Appeals within sixty (60) days of the Board's findings pursuant to the provisions of Tennessee Code Annotated Title 27, Chapter 8 (Certiorari and Supersedeas). If an appeal of the damage assessment, civil penalty, and /or administrative expenses that was approved by the Storm Water Board of Appeals is not filed within sixty (60) days after determination of the Board, the violator shall be deemed to have consented to the civil penalty, damages, and/or administrative expenses and it shall become final.

8.7 Storm Water Fund

All funds generated by or on behalf of the Montgomery County Storm Water Management Program from the following sources shall be deposited in a storm water fund and used exclusively to offset operations and expenses of and for the storm water program:

- (a) Civil penalties and damage assessments imposed for or arising from the violation of the County's storm water management regulations.
- (b) Damages proximately caused to the municipality by the violation of the County's storm water management regulations
- (c) Other funds or income obtained from federal, state, local, and private grants, or revolving funds, and from the Local Government Public Obligations Act of 1986 (Tennessee Code Annotated, Title 9, Chapter 21).
- (d) Fees collected as the result of the creation of a storm water utility or storm water user fee.

8.8 TCA 68-221-1106

(a) A municipality may establish by ordinance or resolution that any person who violates the provisions of any ordinance or resolution regulating storm water discharges or facilities shall be subject to a civil penalty of not less than fifty dollars (\$50.00) or more than five thousand dollars (\$5,000) per day for each day of violations. Each day of violation may constitute a separate violation. A municipality shall give the violator reasonable notice of the assessment of any penalty. A municipality may also recover all damages proximately caused to the municipality by such violations.

b) In assessing a civil penalty, the following factors may be considered:

- (1)** The harm done to the public health or the environment;
- (2)** Whether the civil penalty imposed will be substantial economic deterrent to the illegal activity;
- (3)** The economic benefit gained by the violator;
- (4)** The amount of effort put forth by the violator to remedy this violation;
- (5)** Any unusual or extraordinary enforcement costs incurred by the municipality;
- (6)** The amount of penalty established by ordinance or resolution for specific categories of violations; and
- (7)** Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

(c) The municipality may also assess damages proximately caused by the violator to the municipality which may include any reasonable expenses incurred in investigating and enforcing violations of this part, or any other actual damages caused by the violation.

(d) The municipality shall establish a procedure for a review of the civil penalty or damage assessment by either the governing body of the municipality or by a board established to hear appeals by any person incurring a damage assessment or a civil penalty. If a petition for review of such damage assessment or civil penalty is not filed within thirty (30) days after the damage assessment or civil penalty is served in any manner authorized by law, the violator shall be deemed to have consented to the damage assessment or civil penalty and it shall become final. The alleged violator may appeal a decision of the governing body or board pursuant to the provisions of Tennessee Code Annotated Title 27, Chapter 8 (Certiorari and Supersedeas).

(e) Whenever any damage assessment or civil penalty has become final because of a person's failure to appeal the municipality's damage assessment or civil penalty, the municipality may apply to the appropriate chancery court for a judgment and seek execution of such judgment. The court, in such proceedings, shall treat the failure to appeal such damage assessment or civil penalty as a confession of judgment.

The Montgomery County, TN Enforcement and Appeals Policy and Procedure is approved for use by the Montgomery County, TN Storm Water Control and Management Program and supersedes all previous versions of this policy.

Changes to this document must be submitted to the Montgomery County, TN Building and Codes Committee for approval.

Effective Date: 04/09/2009