

CHAPTER 5

EROSION AND SEDIMENT CONTROL REGULATIONS

14-701. GENERAL PROVISIONS

14-702. GENERAL REQUIREMENTS

14-703. COMPLIANCE

14-704. FEES

14-705. WARRANTY OF IMPROVEMENTS REQUIRED

14-706. ADMINISTRATION

14-707. ENFORCEMENT

14-708. PENALTIES

14-709. APPEALS

14-710. EROSION AND SEDIMENT CONTROL POLICY

14-501. General Provisions.

(1) Purpose and scope. The purpose of these regulations is to protect, maintain and enhance the environment of the City of Cookeville and the public health, safety and general welfare of the citizens of the city, by minimizing the discharge of sediment and construction related waste into the municipal separate storm sewer system and waters of the state; and to maintain and improve the quality of the receiving waters into which stormwater runoff flows, including streams, rivers, lakes, ponds and wetlands; and to comply with the State of Tennessee National Pollutant Discharge Elimination System (NPDES) general permit for discharges from small municipal separate storm sewer systems.

(2) Compliance with other municipal codes and regulations. These regulations shall be used in compliance with and in conjunction with all other pertinent municipal codes, regulations and policies including the following:

- (a) Cookeville Municipal Code Title 14, Chapter 6, Control of Natural Drainage Systems; Chapter 7, Stormwater Management; Chapter 8 Riparian Buffer Zones.
- (b) Cookeville Zoning Code.
- (c) Cookeville Subdivision Regulations.
- (d) Cookeville Building Codes.
- (e) Cookeville Municipal Code Title 14, Chapter 5, Section 14-510

(3) Definitions. For the purpose of this chapter, the following definitions shall apply: Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

- (a) “*Best Management Practices (BMP’s)*” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to the municipal separate storm sewer system and waters of the state. This term also includes treatment requirements, operating procedures, and

practices to control plant site runoff, spillage, or leaks, sludge or waste disposal, or drainage from raw material storage.

- (b) “City” means the City of Cookeville, Tennessee.
- (c) “Clearing” (when used in the context of discharges associated with construction activity) means the 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 such as clearing of forested land for conversion to pasture. This term does not include the clearing of vegetation along roadways, highways, dams or power lines for sight distance or other maintenance or safety concerns, or cold planning, milling, or removal of concrete or bituminous asphalt roadway pavement surfaces.
- (d) “Commencement of Construction” or “Commencement of Land Disturbing Activities” means the initial disturbance of soils associated with clearing, grading or excavating activities or other construction activities.
- (e) “Construction” means any installation, building, placement or assembly of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.
- (f) “Construction Related Waste” means refuse or unused materials that result from construction activities. Construction related waste can include, but not be limited to, unused building and landscaping materials, chemicals, litter, sanitary waste, and concrete truck washout.
- (g) “Construction Support Activities” means activities which involve the use or operation of concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas or borrow areas provided all the following criteria are satisfied:
 - (1) the support activity is primarily related to a construction site that is subject to QLP Permit coverage or to a Grading Permit;
 - (2) the operator of the support activity is the same as the operator of the construction site;
 - (3) the support activity is not a commercial operation serving multiple unrelated construction projects by different operators;
 - (4) the support activity does not operate beyond the completion of the construction activity of the last construction project it supports; and
 - (5) the support activities, with appropriate erosion prevention and controls therefor, are identified and described in the stormwater pollution prevention plan.
- (h) “Development” means any manmade change to improved or unimproved property including, but not limited to, the construction of buildings or other structures, clearing, dredging, drilling operations, filling, grading, paving, excavation, or storage of equipment or materials.
- (i) “Erosion” means the removal of soil particles by the action of water, wind, ice or other agents, whether naturally occurring or acting in conjunction with or promoted by manmade activities or effects.
- (j) “Exceptional Tennessee Waters” means surface waters of the State of Tennessee that satisfy the characteristics of exception Tennessee waters as listed in Rule 0400-40-03-.06 of the official compilation - rules and regulations of the State of Tennessee.

- (k) “*Filling*” means any deposition or stockpiling of dirt, rock, stumps, or other natural or manmade solid waste material.
- (l) “*Grading*” means any excavation, filling (including fill placed in watercourses), or stockpiling of earth materials or any combination thereof, including the land in its excavated or filled condition.
- (m) “*Grading Permit*” means a permit issued by the city authorizing the commencement of land disturbing activities on a site smaller than one acre in size.
- (n) “*Land Disturbing Activity*” means any activity on a property that results in a change in the existing soil cover, whether vegetative or non-vegetative, 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.
- (o) “*Municipal Separate Storm Sewer System (MS4)*” means a conveyance or system of conveyances, including roads with drainage systems, streets, roads, catch basins, curbs, gutters, ditches, manmade channels, or storm drains, which are:
 - (1) Owned or operated by a state, county, city, town, district, association, or other public body created by or pursuant to state law having jurisdiction over the disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity or a designated and approved management agency under section 208 of the federal Clean Water Act that discharges to waters of the state;
 - (2) Designed or used for collecting or conveying stormwater;
 - (3) Which is not a combined sewer; and
 - (4) Which is not part of a publicly owned treatment works (POTW) as defined by 40 C.F.R. § 122.2, as amended from time to time.
- (p) “*Owner or Operator*” means any person or entity associated with a construction project that meets either of the following two criteria:
 - (1) The person or entity has operational or design control over construction plans and specifications, including the ability to make modifications to those plans and specifications, typically the owner or developer of the project or a portion of the project who is considered the primary permittee; or
 - (2) The person or entity has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit conditions, typically a contractor or a commercial builder who is hired by the primary permittee who is considered a secondary permittee.
- (q) “*Plan*” means a stormwater pollution prevention plan, or a small lot erosion and sediment control plan.
- (r) “*Priority Construction Activity*” means construction activities that discharge directly into or immediately upstream from waters the State recognizes as having unavailable parameters (for siltation or ~~habitat alteration~~) or Exceptional Tennessee Waters. A property is considered to have a direct discharge if stormwater runoff from the property does not cross any other property before entering the waters of the state.
- (s) “*Public Works Director*” means the Public Works Director of the city or his designee, who is responsible for the implementation of this article.

- (t) “*QLP Permit*” coverage means permit coverage under the State of Tennessee Construction General Permit issued by the city authorizing the commencement of land disturbing activities on a site larger than one acre in size. This permit coverage formerly would have been issued by the Tennessee Department of Environment and Conservation.
- (u) “*Section 404 Permit*” means a permit issued by the United States Army Corps of Engineers under Section 404 of the Federal Clean Water Act.
- (v) “*Sediment*” means solid material, either mineral or organic, that is in suspension, being transported, or has been moved from its site of origin by erosion.
- (w) “*Small Lot Erosion and Sediment Control Plan*” means the plan necessary for obtaining a Grading Permit issued by the City authorizing commencement of land disturbing activities on a site smaller than one acre. This plan is designed to eliminate or reduce erosion and off-site sedimentation from a site during construction activities.
- (x) “*State*” means the State of Tennessee or, where the context indicates, any state of the United States.
- (y) “*Stormwater Pollution Prevention Plan (SWPPP)*” means a written plan that includes appropriate site maps, identification of construction activities that could cause pollutants in the stormwater and a description of measures or practices to control these pollutants.
- (z) “*Subdivision*” means the division, subdivision, or re-subdivision of any lot or parcel of land as defined in the subdivision regulations of the city.
- (aa) “*Tennessee Erosion & Sediment Control Handbook*” or “*Handbook*” means the handbook bearing such title, as amended from time to time, published by the Tennessee Department of Environment and Conservation.
- (bb) “*Tennessee Construction General Permit*” means the “General NPDES Permit for Discharges of Stormwater Associated with Construction Activities, Permit No. TNR 100000” issued by the Tennessee Department of Environment and Conservation, as amended from time to time.
- (cc) “*TDEC*” means the Department of Environment and Conservation of the State of Tennessee.
- (dd) “*Transporting*” means any moving of earth materials from one place to another, other than such movement incidental to grading, as authorized by an approved plan.
- (ee) “*Waters*” or “*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 single ownership which do not combine or effect a junction with natural surface or underground waters.

(4) Compatibility. If any provision of these regulations or any other provision of law impose overlapping or contradictory requirements, or contain any restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards or requirements shall govern. These regulations do not relieve the applicant from provisions of any other applicable codes, ordinances or regulations not explicitly repealed by these regulations.

(5) Severability. If any section, subsection, sentence, clause, phrase, or portion of these regulations is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of these regulations.

(6) Permitting. The review and permitting of plans and specifications for clearing and/or earthwork is not intended as approval of the overall layout, structural design, grading procedures, situation control, engineer's reports or construction procedures. These responsibilities shall remain with and be those of the owner or his consultants.

(7) Disclaimer or liability. The issuance of either QLP permit coverage or a Grading Permit by the City of Cookeville signifies only that the applicant has met all the application requirements specified by these regulations, including the submittal of plans for permit purposes shall not mean that those plans have been checked in detail for technical competency. The developer and his design consultant shall remain totally responsible for the adequacy of the plans to protect neighboring properties, and the developer and his contractor shall be responsible for constructing the project in accordance with the plans.

These regulations are considered reasonable for regulatory purposes and shall not create a liability on the part of, or a cause of action against, the City of Cookeville or any officer or employee thereof for any damages that result from reliance on these regulations, or any administrative decision lawfully made thereunder.

14-502. General Requirements.

(1) Applicability

- (a) All land disturbing, construction or construction support activities that cause off site sedimentation or sediment discharges to the municipal separate storm sewer system or waters of the state shall be in violation of this ordinance.
- (b) No owner or operator of any property within the city shall commence land disturbing activities unless he has obtained all applicable federal, state and city permits.
- (c) The issuance of either QLP Permit coverage or a Grading Permit shall be conditioned upon the approval of all plan requirements, for the applicable permit, by the Public Works Director. The city shall serve as the plan approval agency only, and in no instance are its regulations construed as designing the stormwater pollution prevention plan or other stormwater systems.
- (d) No building permit shall be issued until the owner or operator has obtained either QLP Permit coverage or a Grading Permit and is in compliance with the permit, where the same is required by this article.
- (e) All land disturbing activities shall employ adequate erosion and sediment control best management practices.
- (f) Federal and state agencies (e.g., Tennessee Valley Authority and Tennessee Department of Transportation) are required by TDEC to obtain their Permit for stormwater runoff from construction sites from TDEC. In those instances, the federal and state agencies are required to obtain a Grading Permit (regardless of the size of the disturbed area) from the City of Cookeville as well as their Construction General Permit from TDEC so that City requirements and approvals are also met.

(2) Exemptions from plans submittal. The following activities shall not require submittal and approval of a stormwater pollution prevention plan, a small lot erosion and sediment control plan, or a Grading Permit:

- (a) For single family residence construction resulting in less than one acre of disturbed area a grading permit will not be required in addition to the Building Permit unless the proposed construction is part of a larger common plan of development. Such construction shall remain responsible for controlling erosion and for protecting adjacent properties and drainage facilities from sedimentation in accordance with these regulations.
- (b) Minor land disturbing activities such as home gardens and individual home landscaping, repairs or maintenance work that are less than one acre and are not part of a larger common plan of development;
- (c) Additions or modifications to existing, individual, single-family structures that are less than one acre and are not part of a larger common plan of development;
- (d) Emergency work to protect life, limb or property, and emergency repairs, provided that the land area disturbed shall be shaped and stabilized in accordance with the requirements of this article;
- (e) Existing nursery and agricultural operations conducted as a permitted main or accessory use;
- (f) State and federal projects subject to the submission requirements of TDEC; and
- (g) Public utility installations, less than one acre in disturbed area, as follows: lateral sanitary sewer lines, water lines, storm sewer lines, telephone lines, cable television lines, electrical lines and gas lines. Although exempt, public agencies are required to notify the public works department prior to starting any construction and to submit plans, if requested, to allow coordination with other activities.

(3) All other provisions of this article shall apply to the exemptions noted in subsection (2) above.

(4) Responsibility not waived. Although the activities listed in § 14-502 (2) may be undertaken without a permit, the persons conducting these excluded activities shall remain responsible for controlling erosion and for protecting adjacent properties and drainage facilities from sedimentation in accordance with the provisions of these regulations.

(5) Hazardous conditions must be rectified. Whenever the Building Official or the Public Works Director, or his designee, is made aware of and determines that any existing land condition or exposed surface created or caused by means of clearing, earthwork or other land disturbing activity has:

- (a) Become a hazard to life and limb;
- (b) Endangered property;
- (c) Affected the safety, use or stability of a public way or drainage channel, or
- (d) Caused erosion,

the owner, upon receipt of notice in writing from the Building Official or Public Works Director, or his designee, shall rectify or eliminate the stated hazardous condition within the time period specified therein to bring the property into conformance with the requirements with these regulations.

It shall be a violation of these regulations for the owner to fail to eliminate the hazardous condition within that time.

(6) Soil Engineering Report. A soil engineering report will be required if deemed necessary by the owner's architect, landscape architect, or civil engineer. A soil engineering report may also be required by either the Public Works Director or the Building Official.

This report will include data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading procedures and design criteria for corrective measures when necessary, and opinions and recommendations covering the adequacy of sites to be developed by the proposed grading.

(7) Engineering Geology Report. An engineering geology report shall be required if deemed necessary by the owner's architect, landscape architect or civil engineer. An engineering geology report may also be required by either the Public Works Director or the Building Official. This report will include adequate description of the geology of the site, conclusions and recommendations regarding the effect of geological conditions of the proposed development, and opinions and recommendations covering the adequacy of sites to be developed by the proposed grading.

(8) Federal and State Permits. Approval by the City of Cookeville does not relieve the applicant of responsibility for obtaining any permits required by the U.S. Army Corps of Engineers, Tennessee Department of Environment and Conservation – Division of Water Resources, Region IV of the U.S. Environmental Protection Agency, or by any other federal or state agencies.

Following is a non-inclusive list of permits that may be required:

(a) U.S. Army Corps of Engineers. Section 301 of the Clean Water Act prohibits the discharge of dredged or fill materials into waters of the United States unless the work has been previously authorized by a permit pursuant to Section 404 of the same Act. Placement of dredged or fill material below ordinary high water of any water in conjunction with drainage improvements (e.g., channel realignments, concrete slope paving) will require a Department of the Army permit prior to construction.

The placement of dredged or fill material or any grading activities within a wetland must also be in compliance with Section 404 of the Clean Water Act.

If a permit is required, approximately sixty (60) days would normally be required for permit processing. Depending on the nature and location of the work, it is possible that the work has been previously approved under authority of the nationwide permit and individual processing would not be required.

(b) Tennessee Department of Environment and Conservation – Division of Water Resources. In accordance with the Tennessee Water Quality Act, Tennessee Code Annotated, §69-3-108, any activity which alters a course or physical character of a stream, requires an Aquatic Resource Alteration Permit (ARAP). This permit is required for activities such as stream channelization, stream enlargement, dredging, or diversion in box culverts.

(9) Adoption of Standards.

(a) The design, installation, operation, maintenance, inspection, record keeping and reporting of construction site runoff best management practices intended for erosion prevention and the control of sediment and other construction related wastes or pollutants shall be

performed in accordance with the requirements of the Tennessee Construction General Permit that is effective at the time the stormwater pollution prevention plan is approved. Where the provisions of this section conflict or overlap with the Tennessee Construction General Permit or the Tennessee Erosion & Sediment Control Handbook, the regulation which is more restrictive or imposes higher standards or requirements shall prevail.

- (b) The City adopts as its erosion and sediment control design standards and best management practices manual the Tennessee Erosion & Sediment Control Handbook which is incorporated herein by reference. This handbook includes a list of acceptable BMPs, including the specific design performance criteria, operation, and maintenance requirements for each BMP.
- (c) The requirements set forth in the Tennessee Construction General Permit and in the handbook may be updated and expanded at the discretion of the Public Works Director, based on improvements in engineering, science, monitoring, and local maintenance experience.
- (d) Erosion and sediment control BMPs that are designed, constructed, and maintained in accordance with the BMP criteria set forth in the Tennessee Construction General Permit and the handbook shall be presumed to meet the minimum water quality performance standards required by the city.
- (e) Additional requirements for discharges into impaired or Exceptional Tennessee Waters that are set forth in the Tennessee Construction General Permit shall be implemented for all priority construction activities. The Public Works Director, at his discretion, may require BMPs that conform to a higher than minimum standard for priority construction activities, or for exceptional Tennessee waters or where deemed necessary.

(10) Stormwater Pollution Prevention Plan (SWPPP).

- (a) The SWPPP is required for obtaining QLP Permit coverage for sites with a disturbed area greater than one acre. A SWPPP shall present in detail the best management practices that will be employed to minimize erosion and control sedimentation.
- (b) The plan shall be sealed in accordance with the Tennessee Construction General Permit.
- (c) Best management practices presented in the plan shall conform to the requirements found in the Tennessee Erosion & Sediment Control Handbook, and shall meet or exceed the requirements of the Tennessee Construction General Permit.
- (d) The plan shall include measures to protect legally protected state or federally listed threatened or endangered aquatic fauna or flora or critical habitat (if applicable).
- (e) The plan submitted shall be subject to any additional requirements set forth in the city's subdivision regulations, zoning ordinance, erosion and sediment control policy and any other applicable city regulations.
- (f) Riparian buffer zones shall meet the requirements both in accordance with the Tennessee Construction General Permit and with the Buffer Zone Ordinance for the City of Cookeville.
- (g) Construction of the site in accordance with the approved plan must commence within one year from the approval date of the stormwater pollution prevention plan, or the stormwater pollution prevention plan will become null and void and the plan must be resubmitted for approval.
- (h) Stormwater pollution prevention plans shall include the components required by the Tennessee Construction General Permit and any other information deemed necessary by

the Public Works Director. See the Erosion and Sediment Control Policy for additional plan requirements.

(11) Small lot erosion and sediment control plan contents.

- (a) Land disturbing activities that affect less than one acre and are not exempt from obtaining a Grading Permit, shall submit and obtain approval of a small lot erosion and sediment control plan and obtain a Grading Permit prior to obtaining a building permit.
- (b) The plan shall include such information as may be required by the Public Works Director consistent with this article. See the Erosion and Sediment Control Policy for additional plan requirements.
- (c) The Public Works Director has the discretion to require a fully engineered stormwater pollution prevention plan.

14-503 Compliance.

(1) Conformity to approved plan.

- (a) The approved stormwater pollution prevention plan or the small lot erosion and sediment control plan shall be followed during the entire duration of the construction at the site.
- (b) The Public Works Director may require reports or records from the permittee or person responsible for carrying out the plan to ensure compliance.
- (c) No land disturbing activity shall be commenced without prior plan approval by the Public Works Director and the issuance of either QLP Permit coverage or a Grading Permit.
- (d) Priority construction activities shall not commence until after the owner or operator has attended a pre-construction meeting with the Public Works Director.

(2) Amendments to approved plans. The permittee shall modify and update the plan in accordance with the requirements of the Tennessee Construction General Permit.

(3) Maintenance.

- (a) Maintenance, site assessments, and inspections of the best management practices shall be implemented in the manner specified in the Tennessee Construction General Permit and the Tennessee Erosion & Sediment Control Handbook by qualified personnel that are provided by the owner or operator of the land disturbing activity.
- (b) The owner or operator shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the owner or operator to achieve compliance with this article. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by an owner or operator only when necessary to achieve compliance with this article.
- (c) Any inadequate control measures or control measures in disrepair shall be repaired, replaced, or modified, as may be necessary, in accordance with the inspection and maintenance timeframes set forth in the Tennessee Construction General Permit and the maintenance guidance provided in the Tennessee Erosion & Sediment Control Handbook.
- (d) If sediment escapes the permitted property, the permittee shall remove off-site accumulations in accordance with the requirements of the Tennessee Construction General Permit.

(e) Records shall be retained in accordance with the Tennessee Construction General Permit.

(4) Inspections by the City.

- (a) The City shall have the right to enter onto private property for the purposes of conducting unrestricted periodic inspections of all land disturbing activities to verify compliance with the approved plan.
- (b) The City shall have the right to enter onto private property for the purposes of investigating a suspected violation of this article.
- (c) Failure on the part of an owner or operator to allow such inspections by the City shall be cause for the issuance of a stop work order, withholding of a certificate of occupancy, and civil penalties.

14-504. Fees. Neither QLP Permit coverage or a Grading Permit shall be issued until the fee prescribed below has been paid, nor shall an amendment to a permit be released until the additional fee, due to an increase in the project size, is paid.

FEE PER ACRE OF PROJECT

Project less than One Acre	\$50.00
Project more than One Acre but less than 5 Acres	\$250.00
Project more than 5 Acres but less than 50 Acres	\$1000.00
Project more than 50 Acres but less than 150 Acres	\$4,000.00
Project more than 150 Acres	\$7,500.00

Where work for which either QLP Permit coverage or a Grading Permit is required by these regulations is started prior to obtaining said permit, the fees herein specified shall be doubled, but the payment of such double fee shall not relieve any persons from fully complying with the requirements of these regulations in the execution of the work not from any penalties prescribed herein.

14-505. Warranty of improvements required.

- (1) For work requiring either QLP Permit coverage or a Grading Permit, the property owner shall submit to the Public Works Department a warranty of improvements to assure that the work is completed in accordance with the permitted plans and specifications. Said warranty of improvements shall be in the form of a letter of credit, redeemable at a bank located within the Cookeville city limits, or certified check.
- (2) At a minimum the warranty of improvements shall remain in force for one (1) year after the anticipated date of the completion of the installation of vegetation. The expiration date shall be specified in the warranty of improvements along with an exact description of the work being guaranteed.
- (3) The warranty of improvements for clearing operations only shall be in the amount of \$1,000.00 per acre for each acre or fraction thereof disturbed or affected by such operations.

- (4) The warranty of improvements for earthwork or clearing and earthwork operations shall be in the amount of \$3,000.00 per acre for each acre or fraction thereof disturbed or affected by such operations.
- (5) Additional surety, equal to double the amounts required in 14-505(3) and 14-505(4) herein, shall be required where clearing or earthwork is performed in areas designated as floodways, floodplains, sinkhole retention areas or if determined by the Public Works Director, the site is susceptible to landslides.

14-506. Administration.

- (1) Department of Public Works. This department is responsible for reviewing all plans submitted with applications for QLP Permit coverage, Grading Permits and for site inspections to insure compliance with these regulations. The plan review shall be conducted by the Director of Public Works or his designee, and site inspections will be conducted by the Public Works Director or his designee. Once the application has been approved the Public Works Department is responsible for collecting fees and warranty of improvements and issuing the permit.
- (2) Right of entry. The Public Works Director or any of his duly authorized representatives may enter upon the premises of any land located within the Cookeville, Tennessee city limits for the purpose of inspecting the site before, during, and after construction to determine compliance with these regulations.

14-507. Enforcement.

- (1) Enforcement authority. The Director of the Public Works Department (hereafter referred to as Director) or his designees shall have the authority to issue notices of violation and citations, and to impose the civil penalties to anyone that violates this ordinance, who violates the provisions of any permit issued pursuant to this ordinance, or who fails or refuses to comply with any lawful communication or notice to abate or take corrective action. The director's enforcement authority includes the following sections as set forth in the City's Enforcement Response Plan (ERP).
- (2) Notifications of violation.
 - (a) Written Notice. Whenever the Director finds that any permittee or any other person has failed to comply with these regulations or a permit or order issued hereunder, the Director or his designee may serve upon such person written notice of the violation. Within the notice of violation will be a list of failures that have led to the violation and measures required to correct the deficiencies. Such measures might include repair of existing Best Management Practices (BMPs), installation of new/additional BMPs, containment of discharged materials, cleanup of said materials, and a timetable for meeting the goals.
 - (b) Consent Orders. The Director or his designee is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the person to correct the noncompliance within a time

period also specified by the order. Consent orders shall have the same force and effect as administrative orders issued pursuant to paragraphs (d) and (e) below.

- (c) **Show Cause Hearing.** The Director may order a person who violates this ordinance or permit, or order issued hereunder, to show cause why a proposed enforcement action should not be taken. The hearing shall be before the Public Works Director. Notice shall be served on the person specifying the time and place for the meeting, the proposed enforcement action and the reasons for such action, a request that the violator show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered mail or certified mail (return receipt requested) at least ten (10) days prior to the hearing.
- (d) **Compliance Order.** When the Director or his designee finds that any person has violated or continues to violate this ordinance or a permit or order issued thereunder, he may issue an order to the violator directing that, following a specific time period, adequate structures, devices, be installed or procedures implemented and properly operated. Orders may also contain such other requirements as might be reasonably necessary and appropriate to address noncompliance, including the construction of appropriate structures, installation of devices, self-monitoring, and best management practices.
- (e) **Cease and Desist Orders.** When the Director finds that any person has violated or continues to violate this ordinance or any permit or order issued hereunder, the Director or his designee may issue an order to cease and desist all such violations and direct those persons in noncompliance 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.

14-508. Penalties.

- (1) **Violations.** Any person who shall commit any act declared unlawful under this ordinance, who violates any provision of this ordinance, who violates the provisions of any permit issued pursuant to this ordinance, or who fails or refuses to comply with any lawful communication or notice to abate or take corrective action by the Public Works Department, shall be guilty of a civil offence.
- (2) **Penalties.** Under the authority provided in Tennessee Code Annotated §68-221-1106, the municipality declares that any person violating the provisions of this ordinance may be assessed a civil penalty by the Public Works Department 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) **Measuring civil penalties.** In assessing a civil penalty, the director of the Public Works Department may consider:
 - (a) The harm done to the public health or the environment;
 - (b) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
 - (c) The economic benefit gained by the violator;
 - (d) The amount of effort put forth by the violator to remedy this violation;

- (e) An unusual or extraordinary enforcement costs incurred by the municipality;
 - (f) The amount of penalty established by ordinance or resolution for specific categories or violations; and
 - (g) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.
- (4) Recovery of damages and costs. In addition to the civil penalty in subsection (2) above, the municipality may recover:
- (a) All damages proximately caused by the violator to the municipality, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this ordinance, or any other actual damages caused by the violation.
 - (b) The costs of the municipality's maintenance of stormwater best management practices when the owner of such facilities fails to maintain them as required by this ordinance.
- (5) Other remedies. The municipality may bring legal action to enjoin the continuing violation of this ordinance, and the existence of any other remedy, at law or equity, shall be no defense of any such actions.
- (6) 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.
- (7) Referral to TDEC. In accordance with the City's Enforcement Response Plan and the NPDES Permit requirements, the Public Works Department may also notify TDEC of violations.

14-509. 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 ordinance may appeal said penalty or damage assessment to the Board of Environmental Appeals.

- (1) Appeals to be in writing. The appeal shall be in writing and filed with the City 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 any appeal, the Board of Environmental 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 in a daily newspaper of general circulation. Ten (10) days' notice by registered 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.
- (3) Appealing decisions of the Board of Environmental Appeals. Any alleged violator may appeal a decision of the Board of Environmental Appeals pursuant to the provisions of Tennessee Code Annotated, Title 27, Chapter 8.

- (4) 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.

14-510 Erosion and Sediment Control Policy

For Land Disturbing Activities Less Than One Acre

Grading Permit Application Required:

To obtain a Grading Permit the owner shall first file with the Public Works Department an application in writing on a form furnished for that purpose. Each applicant shall provide:

1. The names, addresses and telephone numbers of the owner or owners of the subject property.
2. The names, addresses and telephone numbers of the contractor and any subcontractor(s) who shall perform the land disturbing activity, and who shall implement the plans for erosion and sediment control.
3. The address of the subject property, and a map or plat of the property upon which the limits of the land disturbing activity is shown.
4. If required under these rules three (3) copies each of the grading/drainage plan and the erosion and sediment control plan shall be submitted with the application, see Plan Requirements.
5. A statement setting forth the nature, extent and purpose of the land disturbing activity, including the size of the area for which the permit shall be applicable, and a schedule for the starting and completion dates of the land disturbing activity.
6. A certification by the owner that prior to beginning any work he agrees to the following:
 - (a) Hold the City of Cookeville, its officers, agents and employees, harmless from any and all claims made against the City of Cookeville which arise out of any action or omission of the owner, contractor or subcontractor, or any of their officers, employees or agents, and any and all claims which result from any condition arising out of, created or maintained by the owner, contractor, or subcontractor or any of their officers, employees or agents.
 - (b) That no work, including clearing and/or earthwork shall be performed without first installing all temporary erosion control measures, unless approved by the Public Works Department.
 - (c) That the applicant has read the application and that all information contained therein is true and correct.
 - (d) That the applicant agrees to comply with all city ordinances and state laws regulating this construction.
 - (e) That the applicant is the owner or is authorized to act as the owner's agent for the described work.

For Land Disturbing Activities Greater Than One Acre

QLP Permit coverage Application Required:

To obtain coverage under the Construction General Permit through the QLP a Notice of Intent (NOI) application shall be required for any project that formerly would require a NPDES Construction General Permit as would have been available from the Tennessee Department of Environment and Conservation.

Each applicant shall provide:

1. Site or Project Name
2. Street address or location
3. Site description
4. County
5. QLP/MS4 Jurisdiction
6. Start date
7. Estimated end date
8. Latitude (dd°.dddd) and Longitude (dd°.dddd)
9. Acres disturbed
10. Total Acres
11. Information as to the presence of streams or wetlands adjacent to the construction site
12. Wetlands delineation report if wetlands are present
13. Aquatic Resource Alterations Permit (ARAP) number if relevant
14. Receiving waters name if known
15. Stormwater Pollution Prevention Plan (SWPPP)
16. Location Map
17. Site owner/Developer contact information
18. Owner/Developer Certification
19. Contractor Certification

QLP Permit applications must be accompanied by three (3) sets of grading/drainage plan and the erosion and sediment control plan. If a project involves clearing only, this requirement may be waived by the Public Works Department. See Plan Requirements for information on drawings required.

Standards:

1. The design, installation, operation, maintenance, inspection, record keeping and reporting of construction site runoff best management practices intended for erosion prevention and the control of sediment and other construction related wastes or pollutants shall be performed in accordance with the requirements of the Tennessee Construction General Permit that is effective at the time the stormwater pollution prevention plan is approved.
2. The City adopts as its erosion and sediment control design standards and best management practices manual the Tennessee Erosion & Sediment Control Handbook which is incorporated herein by reference. This handbook includes a list of acceptable

BMPs, including the specific design performance criteria, operation and maintenance requirements for each BMP.

3. The requirements set forth in the Tennessee Construction General Permit and in the handbook may be updated and expanded at the discretion of the Public Works Director, based on improvements in engineering, science, monitoring and local maintenance experience.
4. Erosion and sediment control BMPs that are designed, constructed and maintained in accordance with the BMP criteria set forth in the Tennessee Construction General Permit and the handbook shall be presumed to meet the minimum water quality performance standards required by the city.
5. Additional requirements for discharges into impaired or Exceptional Tennessee Waters that are set forth in the Tennessee Construction General Permit shall be implemented for all priority construction activities. The Public Works Director, in his discretion, may require BMPs that conform to a higher than minimum standard for priority construction activities, or for exceptional Tennessee waters or where deemed necessary.
6. The following certification signed by either the engineer or the surveyor regarding the presence or absence of water resources on the site:

CERTIFICATE OF PRESENCE OF WATER RESOURCES ON SITE

I hereby certify that to the best of my knowledge any and all on site water resources are located and identified on this plan. Water resources are defined as streams, ponds, wetlands, springs, reservoirs.

Date Signed

Engineer/Surveyor's Signature

Plan Requirements

QLP Permit coverage and Grading Permit applications must be accompanied by three (3) copies of grading/drainage plan and the erosion and sediment control plan. If a project involves clearing only, this requirement may be waived by the Public Works Department.

Plans will be drawn to scale and shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that they will conform to the provisions of these regulations and all relevant laws, ordinances and rules. The first sheet of each set of plans shall give the location and the name and address of the owner and the person by whom they were prepared. The plan shall be prepared by a professional engineer registered in the State of Tennessee.

Plans shall include the following information:

1. General vicinity of the proposed site

2. Property limits and accurate contours of the existing ground in two (2) foot intervals, and details of terrain and area drainage. Contour intervals other than two (2) feet may be approved by the Director of Public Works upon request should the reason for the exception have validity.
3. Proposed contours using the same contour interval as #2 above, as well as proposed drainage channels and related construction.
4. Detailed plans of all surface and subsurface drainage devices, walls, cribbing, dams and other protective devices to be constructed with, or as a part of, the proposed work together with a map showing the drainage area and the estimated runoff of the area served by any drains.
5. Location of any buildings or structures on the property where work is to be performed and the location of any buildings or structures on land of adjacent property owners which are within fifteen (15) feet of the property or which may be affected by the proposed grading operations.
6. All elevations must be stated in mean sea level datum and this fact indicated in a note on the plan sheet.
7. Areas of special flood hazard and/or sinkhole retention areas shall be shown on all site plans where applicable. Areas of special flood hazard shall be identified by the Flood Insurance Rate Maps for Putnam County, Tennessee and Incorporated Areas dated May 16, 2007, or any subsequent amendments to said maps. Sinkhole retention areas shall be identified by the Sinkhole Retention Maps of the City of Cookeville or as determined by the Director of Public Works.
8. Specifications shall contain information covering construction and material requirements. It shall be acceptable to reference existing specifications that have been approved by the Director of Public Works, and that are on file in the Public Works Department.
9. Erosion and sediment controls.

The drainage plan must be prepared by a registered civil engineer proficient in the field of hydrology and hydraulics and licensed in the State of Tennessee. The plan may be submitted as part of the grading plan, but must be clearly identified as a "drainage plan". Drainage plans will be drawn to an appropriate scale that will enable ready identification and recognition of submitted information and will include:

1. Flow lines of surface water onto and off the site.
2. Building pads and existing and proposed finished floor and street elevations if building construction is proposed.
3. Existing and proposed drainage channels, including drainage swales, wetlands, ditches and berms.
4. Locations of all manmade facilities, such as buildings, parking lots, sidewalks, etc.
5. Location and design of any proposed facilities for storage or conveyance of runoff into indicated drainage channels, including sumps, basins, channels, culverts, retention or detention ponds, bio-retention facilities, storm drains and drop inlets.

6. Estimates of existing and increased runoff resulting from the proposed improvements and a statement explaining the amount of the proposed effects on the existing drainage system and adjacent property.
7. Plans and specifications for all drainage provisions, retaining walls, planting, anti-erosion devices, or other protective devices whether temporary or permanent to be constructed in connection with or as part of the proposed project.
8. A map depicting the drainage area of land tributary to the site and a statement explaining the amount of estimated runoff used to determine the design characteristics of any drainage device.
9. Upstream drainage shall be considered in the design calculations.
10. Downstream improvements may be required of the developer if such improvements are required to handle stormwater generated by the proposed development.
11. The requirements of title 14, chapter 7, Stormwater Management shall be met for all applicable developments.

Erosion and Sediment Control Plan Requirements

An erosion and sediment control plan and a narrative Stormwater Pollution Prevention Plan (SWPPP) is required whenever QLP Permit coverage is required. In addition, a separate erosion and sediment control plan may be required for a Grading Permit if the Public Works Department determines that the development is so complex that soil erosion and sediment controls cannot be included in the grading plan in a clear and understandable manner or if it is determined that the site is in a special hazard area.

The erosion and sediment control plan shall be prepared by a professional engineer registered in the state of Tennessee. This plan will be clearly identified as an “erosion and sediment control plan”. A Stormwater Pollution Prevention Plan must be developed by persons meeting the requirements for SWPPP preparation as required by the Tennessee Construction General Permit that is effective at the time the stormwater pollution prevention plan is approved.

Erosion and sediment control plans will conform to the requirements of the Tennessee Construction General Permit.

Standards for Erosion and Sediment Control Plans

The Tennessee Erosion and Sediment Control Handbook (Latest edition) has been adopted by the City of Cookeville as an Approved Best Management Practices Manual. Other specifications may be used upon review and approval of the Public Works Director.

Requirements for Erosion and Sediment Control

The design, installation, operation, maintenance, inspection, record keeping and reporting of construction site runoff best management practices intended for erosion prevention and sediment control and other construction related wastes or pollutants shall be performed in accordance with

the requirements of the Tennessee Construction General Permit that is effective at the time the Grading Permit or the QLP permit coverage is obtained.

The requirements set forth in the Tennessee Construction General Permit and the Tennessee Erosion and Sediment Control Handbook may be updated and expanded at the discretion of the Director of Public Works, based on improvements in engineering, science, monitoring and local maintenance experience.

Neighboring persons and property shall be protected from damage or loss resulting from excessive stormwater runoff, soil erosion or deposition upon private property or public right-of-way of water transported silt and debris. Adjacent property owners shall be protected from land devaluation due to exposed bare banks.

Permitting Procedures

The following procedures for applying for either a Grading Permit or QLP Permit coverage shall apply:

1. Pre-application conference. A pre-application conference with the Public Works Department is required to assure timely permit application preparation and review. This conference will be used to determine if a proposed project qualifies for exemption and to determine how technical guidelines and criteria should be applied. At this time a decision will be made as to which permit is required for the project.
2. Submittal. Submission of the permit application, plans (one set) and any other required submittals, i.e. drainage calculations, water quality is to be made to the Public Works Department. Plans and submittals for a Building Permit must be submitted to the Codes Department for the review by the plans examiner.
3. Review. The Public Works Department will review the permit application to ensure that all information is provided in accordance with the regulations. Should the application be found to be incomplete, it will be returned to the applicant with a written request for additional information. The application will not be processed until such time as any requested information or reports are submitted.
4. Permit issuance. If the work described in the permit application, including drawings and/or SWPPP, conforms to the requirements of these regulations and any other pertinent laws and ordinances, and when the fees and warranty of improvements have been paid, a Grading Permit or QLP Permit coverage will be issued. Alternately if the permit application does not meet the requirements the application will be denied and a written explanation will be provided to the applicant. The issuance of either permit will not be construed to mean approval for violation of any of the provisions of these regulations or any other law or regulation; and such permit will not be valid, except insofar as the work or use that it authorizes is lawful. The issuance of a grading permit shall not prevent the Director of Public Works from requiring the correction of errors or changes due to unforeseen problems in permitted plans and specifications. The Director of Public Works may require operations and project design be modified if significant problems occur

which were not considered at the time the permit was issued. The issuance of a Grading Permit or QLP Permit coverage in no way implies that a building permit will be issued.

5. Revisions to approved plans. Prior to or during construction, should changes be anticipated that would constitute a revision of the plans already approved by the Public Works Director, the approved plans are to be revised and resubmitted in triplicate with a letter stating why such changes are believed necessary. Approval or disapproval by the Public Works Director will be given in written form.
6. Expiration. Every permit issued by the Public Works Director under provisions of these regulations shall expire by limitation and become null and void if the work authorized by such permit is not commenced within ninety (90) days from the date of issuance of the permit, provided that consecutive renewal of such permit may be granted, at no additional cost, upon written request to the Public Works Director with good cause shown. The work authorized by such permit shall not be suspended or abandoned at any time after the work is commences and shall be carried to completion or the permit shall be void. If work is suspended or abandoned, the required warranty of improvements may be issued to correct or eliminate erosion, drainage problems, or hazardous conditions.
7. Suspension or revocation. The Public Works Director shall suspend or revoke a permit issued under provisions of these regulations by giving notice in writing to the owner whenever the permit is issued in error, on the basis of incorrect information supplied or in violation of any ordinance, regulation or any of the provisions of these regulations.

Construction Procedures

1. Permit required prior to commencing any work. A person, firm, or corporation required to obtain a Grading Permit or QLP Permit coverage in compliance with these regulations must do so prior to commencing any work pertaining to the permit. Corrective measures, including but not limited to, stop work orders, penalties, and injunctions may be taken as required to enforce the terms of this requirement.
2. Posting of permit. Work requiring a Grading Permit or QLP Permit coverage shall not be commenced until the permit holder or his agent has posted the permit and SWPPP if one is required, in a conspicuous place on the front of the premises. The permit/SWPPP shall be protected from the weather and be placed to allow easy access for recording entries. The permit shall remain posted until the certificate of occupancy has been issued and/or a notice of termination has been turned into the Public Works Director on QLP Permit coverage.
3. Notification of construction. After posting the permit, the permittee must first install all erosion and sediment control measures as shown on the plans. All clearing and/or earthwork are subject to inspection by the City and should it be determined that additional erosion control measures are needed they shall be promptly acquired and installed by the permittee.

4. Observation of construction. The owner shall be responsible for the ongoing observation, review and field issuance of reports in the actual earthwork. This responsibility shall include, but need not be limited to, testing, inspection and issuing field reports as to the establishment of line, grade and drainage of the project area. Civil engineering record documents shall be preserved in accordance with state law. Permittees with QLP Permit coverage are responsible for documented inspections on approved inspection forms and shall be performed in accordance with the requirements of the Tennessee Construction General Permit that is effective at the time the stormwater pollution prevention plan is approved.
5. Notification of non-compliance. If the owner, his contractor or his consultants finds that the work is not being done in conformance with these regulations or the permitted plans, the discrepancies if not corrected in a timely manner, must be reported immediately in writing to the Director of Public Works. Plans for corrective measures must be submitted to the Director of Public Works along with an appropriate schedule for completion of such corrections.
6. Replacement of contractors or consultants. If the owner's contractor, civil engineer, engineering geologist or the testing agency of record, are changed during the course of the work, the owner shall replace the contractor or consultants of record with a qualified individual, and will notify the Director of Public Works in writing. Those with QLP permit coverage are required to have the contractor listed on their QLP NOI and any change in the contractor must be noted and the new contractor must sign the QLP permit.
7. Notification of completion. Holders of a Grading Permit must notify the Director of Public Works when the project has been completed, including installation of any permanent stormwater management facilities in accordance with the final permitted plans. Those with QLP Permit coverage must complete a Notice of Termination (NOT) form provided in accordance with the requirements of the Tennessee Construction General Permit that is effective at the time the stormwater pollution prevention plan is approved. Once a NOT has been received by the Public Works Department the department will review the NOT and inspect the site to determine if coverage under the QLP permit can be terminated or if there are deficiencies that must be corrected prior to permit termination. Any deficiencies are discovered the permittee will be notified in writing within thirty (30) days of receiving the NOT. When the site meets the termination criteria, the NOT should be re-submitted.
8. Release of warranty of improvements. One (1) year following the installation of permanent vegetation the owner may request the public works department check the vegetation on site and if it is found to have 75% coverage and be in good condition the warranty of improvements will be released. If it is discovered that the vegetation is not established the warranty of improvements must be kept by the City until such time as the vegetation is well established. Should the warranty of improvements be in

the form of a letter of credit, upon receiving notice that the letter of credit needs to be renewed the owner will provide the public works department with a letter of credit for an additional year.

Checklist

1. Have a pre-application meeting with the Public Works Department
2. You need 3 sets each of : grading plan, erosion & sediment control plan, and drainage plan
3. One set of drainage/detention calculations
4. Determine the size of the disturbed area
 - If less than one acre you need to apply for a Grading Permit – your permit cost will be \$50.00 and for work involving more than \$3,000.00 in value a warranty of improvements of \$3,000.00 for grading or \$1,000.00 for clearing will be required – either a cashier’s check or a letter of credit – you may skip the following steps unless notified by Public Works Department
 - If greater than one acre you need QLP Permit coverage – Continue on to #5
5. You must complete and turn in #1-4 above and complete a Notice of Intent (NOI) available online at www.cookeville-tn.org/pw/stormwater-management
6. You must provide a Stormwater Pollution Prevention Plan (SWPPP) which meets the requirements of the Tennessee General Construction Permit
7. Your QLP Permit coverage cost is determined by disturbed acreage:

>1 acre & < 5 acres	\$250
> 5 acres & < 50 acres	\$1,000
> 50 acres & < 150 acres	\$4,000
>150 acres	\$7,500
8. You will be required to submit a warranty of improvements in the amount of \$3,000/acre or fraction thereof for grading or \$1000.00/acre or fraction thereof for clearing – either a cashier’s check or a letter of credit.