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**TENNESSEE CLEAN WATER NETWORK REPORTS:**  
TN Department of Environment and Conservation  
Expedited Enforcement Program

*(July 18, 2006) Tennessee Clean Water Network recently discovered the TN Department of Environment and Conservation (TDEC) launched an expedited construction stormwater enforcement process this May. This is the Department's latest effort to make the construction stormwater program more effective and to decrease the number of water pollution violations from construction sites. The Tennessee Clean Water Network supports TDEC's first steps to more effectively enforce our clean water laws and advises this program and future programs should include goals of increasing water quality and decreasing pollution impacts on Tennessee's communities.*

The Expedited Director's Order is a two-page document that field officers in the eight (8) regional offices can carry to sites and use as checklists for water pollution permits and water pollution permit violations. Within days, the developer, contractor or builder receives a fine with a cover letter from Nashville.

In Tennessee, sediment from construction and other land disturbances is the leading stream pollutant. Sediment in our waters increase flooding, transports chemical and degrades aquatic habitat.

All construction sites that are over one (1) acre need to have state and local water pollution permits.

To get coverage under the state General Construction permit each applicant needs a Storm Water Pollution Prevention Plan (SWPPP) for each site. This plan outlines how developers will keep sediment onsite, and not in streams or neighboring yards.

When inspectors go to a site, they often give a Notice of Violation (NOV) that outlines why the site is not in compliance with the water pollution permit, corrections required, and a deadline.

If water pollution violations are not corrected, the field officer can request that the enforcement division fine the violator. Previously, the process took months or even years to go through appeals and hearings before the Water Quality Control Board (WQCB).

With that in mind, TDEC developed the Expedited Director's Order (EDO) to allow field officers to give violators nearly immediate fines. The EDO lists \$11,500 in fines and has Paul Davis's signature (the Director of Water Pollution Control) on the form.

Davis pre-approved these orders, and empowered field officers to issue them without further review. A regular Director's Order can fine permit holders \$10,000 per violation per day and a Commissioner's Order has no limit. On the EDO, failure to retain sediment on site is a \$1,000 fine. The largest fine available through the EDO is \$9,500.

The field officer checks the boxes, adds the fines, and sends the paperwork to TDEC's central office in Nashville. Nashville gives it a tracking number, attaches a cover letter and mails it to the permit holder for the site.

<b>Violations:</b>	<b>Fines</b>
Failure to obtain permit coverage	\$2,500
Failure to retain sediment onsite	\$1,000
An unauthorized non-storm water discharge	\$1,000
Notice of Coverage under the general permit not posted	\$500
No Storm Water Pollution Prevention Plan (SWPPP) on site	\$1,000
SWPPP Incomplete	\$500
SWPPP not current	\$500
Erosion Pollution and Sediment Control (EPSC) measures not in accordance with SWPPP \$1,000	
EPSC measures not properly maintained	\$1,000
Disturbance of greater than 50 acres at one time	\$1,000
Failure to retain buffer zone (where applicable)	\$1,000
Failure to have certified inspector (after June 17, 2007)	\$500

Since May 1, TDEC has used the Expedited Director's Order 2-3 times per week, and that number is rising as field officers get comfortable with the process.

Field officers can still award Notices of Violation immediately, and can pursue Directors' and Commissioners' Order, that carry heavy fines and corrective actions, if violations continue.

While the Expedited Director's Orders can also be appealed, most of the violations are black and white and appeals could be considered frivolous. The Water Quality Control Board could increase the fine to cover staff and board expenses or an arbitrary amount if it decided the appeal was frivolous and intended only to waste time.

**Background Information:** *Water Pollution Control Division of TDEC Stats*

- 102 employees in regional offices, most field officers
- 3,272 permits issued in 2005, 84% of which were for construction storm water
- 12,000 outstanding permits, 33% of which are for construction storm water
- Enforcement in 2005
  - 1,800 NOVs sent to permit holders violating the Clean Water Act (no fines, no indication in the record of how many went to repeat offenders or the same site)
  - WPC issued 150 enforcement actions
  - 500 formal compliance review meetings
  - Assessed fines of \$3.7 million
  - Collected less than \$1 million after forgiving 80% under compliance agreements
  - 5,703 compliance inspections in 2005 (averaging out to 56 per year per field officer).
    - 2,061 construction storm water compliance inspections in 2005
    - 998 Aquatic Resource Alteration Permit inspections
    - 451 municipal inspections
    - 1,078 mining inspections
    - 116 Confined Animal Feeding Lot inspections
    - 103 pre-mining inspections
    - 896 industrial inspections
  - 1,709 complaint investigations
  - 30 criminal cases initiated

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