

STORMWATER ORDINANCE REVIEW WORKING GROUP

Summary notes from the meeting of April 14, 2010

The following is a summary of the notes from the working group at the meeting on April 14, 2010. The presentation was made by Daniel Sanders. For clarity and consistency, the notes have been edited.

Federal and state laws establish what local governments can do regarding stormwater management and enforcement. Much of what Knox County can do, even though it is a home rule charter county, is influenced by the Dillon Rule, which means that local governments can only do what is expressly allowed by state law.

The Clean Water Act (CWA) and Tennessee Code Annotated (TCA) outline the prime powers of enforcement.

One thing missing from the Knox County Stormwater Ordinance (SWO) is a statement of purpose, which could be based on what TCA and CWA include.

The primary difference between the CWA and the SWO is that the CWA regulates contaminants, while the SWO regulates facilities.

There is often confusion on the regulations between Knox County, Knoxville and the Federal government. When one affects the other(s), what are the regulations?

Regarding fines and penalties, what happens when fines are not paid? It is iffy as to whether or not liens or other measures can be used to get fines paid.

The use of bonds may be a way to recover costs. Stop work orders and folding building permits may be other remedies.

Factors in accessing civil penalties---

- Harm done to public health and environment
- Substantial economic detriment to illegal activity
- Economic gain by the violator
- Amount of effort put forth by violator to remedy situation
- Unusual/extraordinary enforcement
- Amount of penalty established by ordinance
- Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

How much should citizens do in enforcement? Should citizens help in identifying possible violations?

Need to establish an environmental appeals board.

Other procedural issues might include bullet-proofing administrative hearings and establishing minimum control standards.

Daniel then briefly reviewed changes to the ordinance that he has been working on, including, but not limited to the following:

Add a purpose statement similar to what is included in TCA.

Make changes for clarity under Section (a).

Simplify the administration of the ordinance under (c)

Simplify the definitions. If they are in the ordinance, they have a technical meaning.

- Don't include terms that are not in the SWO
- Move definitions that are used once into the body of the ordinance.
- Certain definitions because of their universal usage and acceptance should not be included in the ordinance.

Director's authority should be based on TCA provisions.

Should not be able to grant variances to the CWA or NPDES permit.

On penalties and appeals, make expectations clear. What is required?

Additional changes were reviewed by Daniel, but will be discussed in more detail later. In fact, the working group may want to review these changes before the draft goes to county commission for adoption.

Additional comments:

Frustration was expressed by citizens and regulators regarding enforcement issues. Stormwater folks sometimes do not get respect when they try to enforce the regulations. Someone in the group suggested we establish a formal agreement with the sheriff so that the regulators have support when enforcing. The group should not lose sight of this option.

We discussed closing the gaps we have with current process. One of the big gaps was county BZA's past practice of granting variances that did not meet the criteria. We need to engage the BZA members in that discussion at some point so they are aware of how their decisions relate to CWA or NPDES.