

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
)	
SHELBY COUNTY PHASE II MS4s)	
STATUTORY PERMIT APPEAL)	CASE NUMBER WPC15-0137
NPDES PERMIT NO. TNS000000)	

SETTLEMENT AGREEMENT & DISMISSAL

On September 30, 2016, the Division of Water Resources (“Division”) issued the NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer Systems, TNS000000 (“Permit”). On October 25, 2016, the Town of Arlington, City of Bartlett, Town of Collierville, City of Germantown, City of Lakeland, City of Millington, and Shelby County (“Petitioners”) filed a timely petition to appeal the Permit. Pursuant to Tenn. Code Ann. §§ 4-5-105 and 69-3-110(a), the parties have reached a settlement. To implement this settlement, (1) the Division has agreed to defer specific permit requirements for these small municipal separate storm sewer systems (“sMS4s”) in Shelby County as herein described, and (2) the Petitioners have agreed to, and by entering into this Settlement Agreement & Dismissal do also hereby, waive their right to a contested case hearing before the Board in this matter and hereby voluntarily dismiss their appeal of the Permit. The Parties stipulate and agree as follows:

PARTIES

I.

Tisha Calabrese Benton is the duly appointed Director of the Tennessee Division of Water Resources by the Commissioner of the Tennessee Department of Environment and Conservation.

II.

Each Petitioner is a Tennessee municipality located in Shelby County, Tennessee.

JURISDICTION

III.

The Commissioner is authorized by Tenn. Code Ann. § 69-3-108(g) to issue permits for the construction, installation, modification, or operation of any treatment works, including but not limited to land application of wastewater. Pursuant to Tenn. Code Ann. § 69-3-105(i), a permit applicant may file a petition for permit appeal within 30 days after public notice of the issuance of the permit. Pursuant to Tenn. Code Ann. § 69-3-107(13), the Commissioner may delegate to the Director any of the powers, duties, and responsibilities of the Commissioner under the Act. Robert J. Martineau, Jr., Commissioner of the Department of Environment and Conservation, has delegated such authority to Tisha Calabrese Benton, Director of the Tennessee Division of Water Resources.

IV.

Each Petitioner is a “person” within the meaning of Tenn. Code Ann. § 69-3-103(26).

FACTS

V.

Each Petitioner sought and obtained coverage under the 2010 version of TNS000000, and thus would be required to submit a notice of intent to be covered by the Permit. Each Petitioner sought, and obtained, an extension of time to implement the post-construction stormwater measures contained in the 2010 version of TNS000000.

VI.

The Petitioners seek to defer implementation of the “green infrastructure” requirements outlined in Section 4.2.5, Permanent Stormwater Management at New Development and Redevelopment Projects, until such time that the City of Memphis is required to implement equivalent post-construction stormwater management requirements pursuant to its renewed individual MS4 permit. The Petitioners commented on this issue during the public comment period, and the Division responded in its Notice of Determination that it would work with the sMS4s to coordinate implementation. However, the Permit did not expressly incorporate a coordinated implementation schedule.

VII.

The City of Memphis’ individual NPDES permit authorizing discharges from its MS4 (TNS068276) was last renewed on June 30, 2003, and has been administratively extended. This permit does not include post-construction stormwater management equivalent to either the 2010 or 2016 versions of TNS000000. The Division anticipates preparing a draft renewal permit for the City of Memphis, placing it on public notice, and issuing a final permit in the near future. The Division anticipates that the post construction stormwater requirements are likely to be similar to those in the Permit. That permit would be subject to appeal by the City of Memphis and any aggrieved person who comments during the public comment period, potentially further delaying implementation.

AGREEMENT

VIII.

The Division and Petitioners agree that it is not practicable for the sMS4s located in Shelby County to implement the Permit’s post-construction stormwater management

requirements before the City of Memphis is required to do so. Accordingly, the Division hereby authorizes the Town of Arlington, City of Bartlett, Town of Collierville, City of Germantown, City of Lakeland, City of Millington, and Shelby County to continue to implement their current programs to reduce the discharge of pollutants in stormwater from new development and redevelopment sites, but to postpone implementation of the specific measures required by Section 4.2.5 of the Permit until the latter of (1) a decision by the Board of Water Quality, Oil, and Gas concerning the third-party appeals of the Permit, and (2) the date when the City of Memphis is required to implement equivalent specific measures. This includes time to resolve any appeals that stay such requirements of the Memphis permit.

XIX.

The Parties agree the foregoing Settlement Agreement is a fair and reasonable resolution of this case.

AUTHORITY TO SIGN

The undersigned representatives of the Division and the Respondent hereby represent and warrant that they are fully authorized and competent to execute this Settlement Agreement and Dismissal on behalf of the entity for which they are signing.

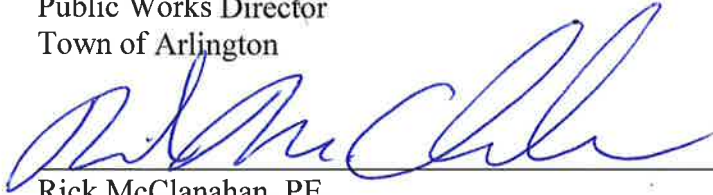
Executed on this 19 day of January, 2017.



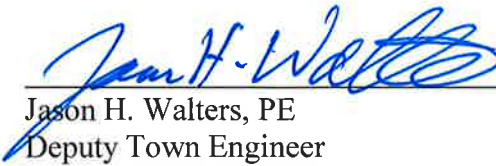
Tisha Calabrese Benton, Director
Division of Water Resources
Tennessee Department of Environment and Conservation



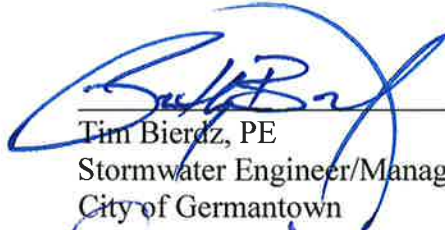
Bobby Kendall, PE
Public Works Director
Town of Arlington



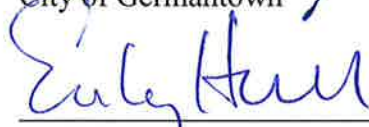
Rick McClanahan, PE
City Engineer
City of Bartlett



Jason H. Walters, PE
Deputy Town Engineer
Town of Collierville



Tim Bierdz, PE
Stormwater Engineer/Manager
City of Germantown



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