

ORDINANCE NO. 04-_____

BE IT ORDAINED by the City Council of the City of Decatur, Alabama, as follows:

Section 1. That the Code of Decatur, Alabama, is hereby amended by adding a chapter to be numbered Chapter 19.5, said chapter to read as follows:

“Chapter 19.5 STORMWATER MANAGEMENT

Sec. 19.5-1. Intent.

The purpose of this chapter is to provide for the health, safety and general welfare of the citizens of the City of Decatur through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this chapter are:

- (a) to regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user;
- (b) to prohibit illicit connections and discharges to the municipal separate storm sewer system; and
- (c) to establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

Sec. 19.5-2. Definitions.

For purposes of this chapter, the following words and phrases shall be defined as follows:

- (a) **Best management practices (BMPs):** schedules of activities; prohibitions of practices; general good housekeeping practices; pollution prevention and education practices; maintenance procedures; and other management practices to prevent or reduce the discharge of pollutants directly or indirectly into stormwater, receiving waters or stormwater conveyance systems. BMPs also include treatment

practices; operating procedures and practices to control site runoff, spillage or leaks; sludge or water disposal; or drainage from raw materials storage.

- (b) **City Engineer:** the director of the City of Decatur's Engineering Department or his/her designated representative.
- (c) **Clean Water Act:** the federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*), as most recently amended.
- (d) **Construction activity:** activities subject to NPDES construction permits. NPDES Stormwater Phase II permits are required for construction projects resulting in land disturbance of one (1) acre or more. Such activities include, but are not limited to, clearing and grubbing; grading; excavating; and demolition.
- (e) **Hazardous material:** any material, including any substance, waste or combination thereof, which, because of its quantity, concentration or physical, chemical or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property or the environment when improperly treated, stored, transported, disposed of or otherwise managed.
- (f) **Illegal discharge:** any direct or indirect non-stormwater discharge to the storm drain system, except as exempted herein.
- (g) **Illicit connection:**
 - (1) any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system, including, but not limited to, any conveyances which allow any non-stormwater discharge, including sewage, process wastewater and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by the City of Decatur; or

- (2) any drain or conveyance connected from a commercial or industrial land use to the storm drain system and which has not been documented in plans, maps or equivalent records and approved by the City Engineer.
- (h) **Industrial activity:** any activity subject to NPDES industrial permits as defined in 40 CFR §122.26(b)(14).
- (i) **National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit:** a permit issued by the United States Environmental Protection Agency (EPA) or by a state under authority delegated pursuant to 33 USC § 1342(b) that authorizes the discharge of pollutants into waters of the United States, whether the permit is applicable on an individual, group or general area-wide basis.
- (j) **Non-stormwater discharge:** any discharge to the storm drain system that is not composed entirely of stormwater.
- (k) **Person:** any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner of any premises subject to this chapter or as said owner's agent.
- (l) **Pollutant:** anything which causes or contributes to pollution. Pollutants may include, but are not limited to:
 - (1) paints, varnishes and solvents;
 - (2) oil and other automotive fluids;
 - (3) non-hazardous liquid and solid wastes and yard wastes;
 - (4) refuse, rubbish, garbage, litter or other discarded or abandoned objects and accumulations that may cause or contribute to pollution;
 - (5) floatables;
 - (6) pesticides, herbicides and fertilizers;
 - (7) hazardous substances and wastes;
 - (8) sewage, fecal coliform and pathogens;
 - (9) dissolved and particulate metals;
 - (10) animal wastes;

- (11) wastes and residues that result from constructing a building or structure; and
- (12) noxious or offensive matter of any kind.
- (m) **Premises:** any building, lot, parcel of land or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.
- (n) **Storm drainage system:** publicly-owned facilities by which stormwater is collected and/or conveyed, including, but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs and other drainage structures.
- (o) **Stormwater:** any surface flow, runoff and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.
- (p) **Stormwater Pollution Prevention Plan:** a document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems and/or receiving waters, to the maximum extent practicable.
- (q) **Wastewater:** any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

Sec. 19.5-3. Applicability.

This chapter shall apply to all water entering the storm drain system generated on any developed or undeveloped lands, unless specifically exempted by the City Engineer.

Sec. 19.5-4. Responsibility for administration.

The City of Decatur Engineering Department shall administer, implement and enforce the provisions of this chapter. Any powers granted or duties imposed upon the City Engineer may be delegated by him/her to persons or entities acting in the beneficial interest or in the employ of the City.

Sec. 19.5-5. Severability.

The provisions of this chapter are hereby declared to be separate and severable. If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person, establishment or circumstance shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.

Sec. 19.5-6. Ultimate responsibility.

The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore, this chapter does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution or unauthorized discharge of pollutants.

Sec. 19.5-7. Discharge prohibitions.

No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any material, including, but not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.

(a) **Exceptions to illegal discharge prohibition.**

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited, except for the discharges described as follows:

- (1) water line flushing or other potable water sources;
- (2) landscape irrigation or lawn watering;
- (3) diverted stream flows;
- (4) rising ground water;
- (5) ground water infiltration to storm drains;
- (6) uncontaminated pumped ground water;
- (7) foundation or footing drains (not including active groundwater dewatering systems);
- (8) crawl space pumps;
- (9) air conditioning condensation;
- (10) springs;
- (11) non-commercial washing of vehicles;
- (12) natural riparian habitat or wetland flows;

- (13) swimming pools, if dechlorinated (typically less than one (1) PPM chlorine);
 - (14) fire fighting activities;
 - (15) discharges specified in writing by the City Engineer as being necessary to protect public health and safety;
 - (16) dye testing, provided the mandatory requirement of verbal notification has been provided to the City Engineer prior to the time of the test; and
 - (17) any other water source not containing pollutants.
- (b) The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver or waste discharge order issued to the discharger and administered under the authority of the EPA, provided that the discharger is in full compliance with all requirements of the permit, waiver or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.
- (c) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made prior to the date this chapter was adopted, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is considered to be in violation of this chapter if the person connects a line conveying sewage to the MS4 or allows such a connection to continue beyond the date of enactment of this chapter.

Sec. 19.5-8. Suspension of MS4 access.

- (a) **Suspension due to illicit discharges in emergency situations.**

The City Engineer may, without prior notice, suspend MS4 discharge access to a person when such

suspension is necessary to stop an actual or threatened discharge which presents or may present imminent or substantial danger to the environment, to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the City Engineer may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

(b) **Suspension due to the detection of illicit discharge.**

Any person discharging to the MS4 in violation of this chapter may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City Engineer will notify a violator of the proposed termination of its MS4 access. The violator may petition the City Engineer for a reconsideration and hearing. A person commits an offense if, without the prior approval of the City Engineer, the person reinstates MS4 access to premises to which access has been terminated pursuant to this chapter.

Sec. 19.5-9. Industrial or construction activity discharges.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City Engineer prior to the allowing of discharges to the MS4.

Sec. 19.5-10. Monitoring of discharges.

(a) **Applicability.**

This chapter applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.

(b) **Access to facilities.**

(1) The City Engineer shall be permitted to enter and inspect facilities subject to regulation under this chapter as often as may be necessary to determine compliance herewith. If a discharger has security measures in force

which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the City Engineer.

- (2) Facility operators shall allow the City Engineer ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- (3) The City Engineer shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City Engineer to conduct monitoring and/or sampling of the facility's stormwater discharge.
- (4) The City Engineer has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- (5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City Engineer and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (6) Unreasonable delay in allowing the City Engineer access to a permitted facility is a violation of a stormwater discharge permit and of this chapter. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with

industrial activity commits an offense if the person denies the City Engineer reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this chapter.

- (7) If the City Engineer has been refused access to any part of the premises from which stormwater is discharged and he/she is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this chapter or any order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the City Engineer may seek issuance of a search warrant from any court of competent jurisdiction.

Sec. 19.5-11. Requirement to prevent, control and reduce stormwater pollutants by the use of Best Management Practices.

The City of Decatur will adopt requirements identifying BMPs for any activity, operation or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system or waters of the United States. The owner or operator of a commercial or industrial establishment shall provide and bear the expense of reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise which is or may be the source of an illicit discharge may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this chapter. These BMPs shall

be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

Sec. 19.5-12. Watercourse protection.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation and other obstacles that would pollute, contaminate or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse so that such structures will not become a hazard to the use, function or physical integrity of the watercourse.

Sec. 19.5-13. Notification of spills.

Notwithstanding other requirements of law, as soon as any person who is responsible for a facility or operation or who is responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the City Engineer in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City Engineer within three (3) business days of the original notice. If the discharge of prohibited materials originates from a commercial or industrial establishment, the owner or operator or such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

Sec. 19.5-14. Enforcement.

(a) **Notice of violation.**

Whenever the City finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the City Engineer may order compliance by sending written notice of the violation to the responsible person. Such notice may require, without limitation:

- (1) the performance of monitoring, analyses and reporting;
- (2) the elimination of illicit connections or discharges;
- (3) that violating discharges, practices or operations shall cease and desist;
- (4) the abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (5) payment of a fine to cover administrative and remediation costs; and/or
- (6) the implementation of source control or treatment BMPs.

(b) **Deadline for remediation/restoration.**

If abatement of a violation and/or restoration of affected property shall be required, the notice shall set forth a deadline within which such remediation and/or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate and/or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

Sec. 19.5-15. Appeal of notice of violation.

All rulings, requirements, decisions or interpretations of the City Engineer shall be final and binding upon all parties thereto unless properly appealed to the City Council. Any person receiving a notice of violation and wishing to appeal the same shall file written notice in the office of the City Clerk within ten (10) days from the date of the notice of violation. Hearing on the appeal before the City Council shall be held within thirty (30) days from the date of the filing of the notice of appeal. The decision of the City Council shall be final.

Sec. 19.5-16. Enforcement measures after appeal.

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within fifteen (15) days of the issuance of a determination by the City Council upholding the decision of the City Engineer, then the City Engineer shall enter upon the subject private property and is hereby authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the City, the City Engineer, or a City-designated contractor to enter upon the premises for the purposes set forth above.

Sec. 19.5-17. Cost of abatement of the violation.

Within thirty (30) days of abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. If full payment of the costs is not received within fifteen (15) days of the owner's original receipt of notification of the costs due and owing, the costs shall be presented to the City Council for assessment as a lien on the property.

Sec. 19.5-18. Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. If a person has violated or continues to violate the provisions of this chapter, the City Engineer may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to either abate or remediate the violation.

Sec. 19.5-19. Compensatory action.

In lieu of the enforcement proceedings, penalties and remedies authorized by this chapter, the City Engineer may impose alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

Sec. 19.5-20. Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided herein, any condition caused or permitted to exist in violation of

any of the provisions of this chapter is to be considered a threat to public health, safety and welfare; is hereby declared and deemed a nuisance; and may be summarily abated or restored at the violator's expense. In the event of a violation of this chapter, it is hereby declared that a civil action to abate, enjoin or otherwise compel the cessation of such nuisance may be instituted.

Sec. 19.5-21. Criminal prosecution.

Any person violating or continuing to violate this chapter shall be subject to criminal prosecution and to the range of penalties authorized by *Ala. Code* § 11-45-9, as last amended, and established in *Code of Decatur, Alabama* §1-8, as last amended.

Sec. 19.5-22. Remedies not exclusive.

The remedies listed herein are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City Engineer to seek cumulative remedies.

Sec. 19.5-23. Repeal of conflicting provisions.

All prior ordinances, sections and parts of ordinances in conflict with this chapter are hereby repealed."

Section 2. This ordinance shall become effective immediately upon its approval and publication as provided by law.

ADOPTED this ____ day of _____, 2004.

Authenticated:

City Clerk

APPROVED this ____ day of _____, 2004.

Mayor