ORDINANCE NO. 98-09-28-8

AN ORDINANCE TO ESTABLISH STORM WATER MANAGEMENT AND WATER QUALITY CONTROLS, PROGRAMS, REGULATIONS, PROHIBITIONS, AND PENALITIES FOR SHELBY COUNTY

WHEREAS, uncontrolled storm water drainage and discharge may have a significant, adverse impact on the health, safety, and general welfare of Shelby County and the quality of life of its citizens by carrying pollutants into the receiving community waters; and

WHERAS, Shelby County is required by federal law, particularly 33 U.S.C. ¶1342 (P) and 40 CFR ¶ 122.26, to obtain a National Pollutant Discharge Elimination System (NPDES) permit from the Alabama Department of Environmental Management for storm water discharges from the Municipal Separate Storm Sewer System (MS4). The NPDES permit requires the County to impose controls to reduce the discharge of pollutants in storm water to the maximum extent practicable using management practices, control techniques and system design and engineering methods, and such other provisions which are determined to be appropriate for the control of such pollutants.

NOW, THEREFORE,

BE IT ORDAINED BY THE SHELBY COUNTY COMMISSION,

OF SHELBY COUNTY, ALABAMA:

That the following ordinance is hereby adopted and enacted and shall be implemented to address storm water drainage and discharge in those unincorporated areas specifically designed by NPDES Permit ALS000003 from the Alabama Department of Environmental Management and all other unincorporated areas of Shelby County.

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DIVISION 1. GENERALLY

Sec. 01-001. Authority

The Alabama Department of Environmental Management, pursuant to the authority delegated to it under the Clean Water Act, 33 U.S.C. Section 1251, *et seq*., has required Shelby County to obtain a National Pollutant Discharge Elimination System (NPDES) permit for storm water discharges from the Municipal Separate Storm Sewer System (MS4), effective October 1, 1995. Therefore, the County is subject to the federal storm water laws, as presented in 33 U.S.C. ¶ 1342 (P) and 40 CFR ¶ 122.26, and as such, is required to adopt a local storm water management ordinance. Act No. 95-775, Legislature of Alabama – § 11-89C-1-14, Code of Alabama 1975, and other provisions thereof, grants the authority to adopt such ordinances to the governing bodies of all Class 1 municipalities within the state and to the county governing bodies in which the Class 1 municipalities are located and to the governing bodies of all municipalities located within those counties, and where any such municipality is also located partially within an adjoining county, then to the governing body of such adjoining county ant to which governing bodies are specifically designated by ADEM pursuant to the authority delegated to in under the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*

Sec. 01-002. Purpose.

(a) It is the purpose of this ordinance to protect, maintain, and enhance the environment of Shelby County and the sort-term and long-term public health, safety, and general welfare of the citizens of Shelby County by controlling discharges or pollutants to the MS$ and to maintain and improve the quality of the community waters into which the storm water outfalls flow, including, without limitation, the lakes, streams, ponds, wetlands, sinkholes, and groundwater of Shelby County. This ordinance prohibits the discharge of non-storm water into the MS4 and the community waters and provides enforcement procedures and penalties to ensure compliance.

(b) It is further the purpose of this ordinance to enable Shelby County to comply with the National Pollutant Discharge Elimination System (NPDES) permit and applicable regulations (40 CFR ¶ 122.26) for storm water discharges.

Sec. 01-003. Definitions.

For the purpose of this ordinance the following terms, phrases and words and their derivatives, shall have the meaning given herein:

"Accidental Discharge" shall mean a discharge prohibited by this article into the

“Community Waters” or to the “Waters of the State” which occurs by change and without planning or consideration prior to occurrence.

“Alabama Department of Environmental Management: or “ADEM” shall mean the State of Alabama regulatory agency which administers and enforces those laws governing storm water in the State of Alabama.

“Applicant” shall mean any person, firm, or corporation required by this ordinance to obtain a Shelby County Storm Water Discharge Permit.

“Best Management Practices” or “BMPs” shall mean schedules of activities, prohibitions or practices, maintenances procedures and other management practices to prevent or reduce the discharge of pollutants to the municipal separate storm sewer system. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

“Clean Water Act” shall mean the Federal Water Pollution Control Act, as amended, codified at 33 U.S.C. ¶ 1251, et seq., and regulations promulgated thereunder.

“Community Waters” shall mean any or all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wetlands, wells and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of Shelby County or the waters into which the Shelby County Municipal Separate Storm Sewer System outfalls flow.

“County” shall mean Shelby County, Alabama.

“Discharge” shall mean the addition of any substance to the municipal separate storm sewer system.

“Environmental Protection Agency” or “EPA” shall mean the federal regulatory agency which administers those laws governing storm water in the United States of America.

“Erosion” shall mean wearing away of the lands by running water, winds or waves.

“Illicit Discharge” shall mean a discharge to the municipal separate storm sewer system or to the community waters that is not composed entirely of storm water, except discharges pursuant to an NPDES permit and other allowable discharges dictated by this ordinance.

“Industrial Facility” shall mean a business or businesses engaged in industrial production, manufacturing or service which may or may not have raw materials stored on site, produce excessive dust or other industrial by-products, or in the opinion of the Shelby County Environmental Office, may pose a threat of contamination to the MS4 or to the community.

“Manager” shall mean the person, or his or her duly authorized representative, designated by the Shelby County Commission to supervise the operations of the storm water management program and who is charged with certain duties and responsibilities by this ordinance.

“Municipal Separate Storm Sewer System” or “MS4” shall mean a conveyance or system of conveyances (including roads with drainage systems, streets, catch basins, curbs, gutters, easements, swales, ditches, man-made channels or storm drains” carrying storm water runoff which is directly or indirectly discharged into the Cahaba River drainage basin upstream of Big Piney Woods Creek and which are owned, operated or maintained by Shelby County. Privately-owned storm water conveyances may be included in this definition at the County’s discretion in order to prevent contamination of the public portion of the MS4.

“National Pollutant Discharge Elimination System” or NPDES” permit shall mean a permit issued pursuant to Section 402 of the Clean Water Act (33 U.S.C. ¶ 1342).

“Notice of Intent” or “NOI” shall mean a written notices by a discharger to the Director of ADEM that the person wishes his or her discharge to be authorized under a general storm water discharge permit authorized by state law or regulation.

“Person” shall mean any individual, partnership, copartnership, firm, syndicate, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. The masculine gender shall include the feminine and the singular shall include the plural where indicated in text.

“Pollutants” shall mean any substance deemed by the Manager to be a threat to human health or the environment, including, but not limited to: dredged soil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials (except those regulated under Atomic Energy Act of 1954, as amended), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, domestic and agricultural waste.

“Pollution” shall mean a condition created by the presence of harmful or objectionable material in water.

“Sanitary Sewer” shall mean a sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm or surface waters that are not admitted intentionally.

“Sediment” shall mean the organic or inorganic solid material settled from suspension in a liquid.

“Significant Spills” shall mean spills which include, but are not limited to, releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the Clean

Water Act (see 40 DFR 110.10 and CFR 117.21) or Section 102 of CERCLA (see 40 CFR 302.4).

"Storm Water" shall mean runoff associated with a rain event, snow melt runoff, and surface runoff and drainage.

"Storm Water Management" shall mean the collection, conveyance, storage, treatment and disposal of storm water runoff in a manner to meet the objective of this ordinance and its terms, including, but not limited to, measures that control the increased volume and rate of storm water runoff and water quality impacts caused by manmade changes to the land.

"Storm Water Management Program" shall mean the program developed by Shelby County pursuant to NDES Permit ALS000003 to control the flow of pollutants into the MS4.

"Toxic Pollutants" shall mean any pollutant or combination of pollutants listed as toxic in 40 CFR Part 401 promulgated by the Administrator of the Environmental Protection Agency under the provisions of 33 U.S.C. ¶ 1317.

"Variance" shall mean the modification of the minimum storm water management requirements contained in this ordinance and the Storm Water Management Program for specific circumstances where strict adherence of the requirements would result in unnecessary hardship as limited by the terms of this permit, and not fulfill the intent of this ordinance.

"Wastewater" shall mean the spent water of a community. It may be a combination of liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with any groundwater, surface water and storm water that may be present. Also called sanitary sewage.

"Water Quality" shall mean those characteristics of storm water runoff that relate to the physical, chemical, biological, or radiological integrity of water.

"Water Quantity" shall mean those characteristics of storm water runoff that relate to the rate and volume of the storm water runoff.

"Wetland" shall mean lands that are inundated or saturated with water to the extent that the soil will support vegetation typically adapted to saturated soil conditions. The lands may or may not be saturated at all times.

Sec. 01-004. Severability.

If any section, sub-section, phrase, clause or provision of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of the ordinance as a whole or any part or portion thereof other than the part declared to be involved.

Sec. 01-005. Effective Date.

This ordinance shall take effect upon its adoption or otherwise as provided by law.

Secs. 01-006 - - 01-008. Reserved.

DIVISION 2. APPLICATIONS AND PERMITS FOR INDUSTRIAL AND COMMERCIAL FACILITIES

Sec. 01-009. Existing facilities required to obtain permit.

(a) All existing industrial facilities, service stations, convenience stores with gasoline pumps, vehicular repair shops and vehicular parts repair shops which discharge storm water directly or indirectly into the municipal separate storm sewer system of unincorporated Shelby County, and which do not have current NPDES permits issued by ADEM authorizing the discharge of storm water, are required to apply for a Shelby County Storm Water Drainage Permit on or before the dates set forth in the following schedule:

(1) Service stations, convenience stores with gasoline pumps, vehicular repair shops and vehicular parts repair shops by August 1, 1999;
(2) Industrial facilities by February 1, 2000.

All other existing commercial facilities located in unincorporated Shelby County, and which do not have current NPDES storm water permits, are not required to apply for a Shelby County Storm Water Discharge Permit. However, these facilities shall comply with Divisions 5 and 6 of this ordinance.

(b) Permit application forms may be acquired from the Manager beginning October 1, 1998. Completed application forms are to be returned to the Manager by the dates set forth in the above schedule. Upon receipt of the application, the Manager will evaluate the information provided and either deny a permit to the applicant or issue the applicant of Shelby County Storm Water Discharge Permit. An approved permit may require the facility or commercial establishment to implement additional structural and non-structural Best Management Practices to reduce or eliminate the potential to discharge pollutants. If the application is denied, the Manager shall notify the applicant of deficiencies and allow thirty (30) days for the application to be revised and resubmitted. If the noted deficiencies are not corrected within thirty (30) days and/or the permit is not resubmitted, any discharge of storm water after that date into the municipal separate storm sewer system shall be unlawful. Once issued, a permit shall be valid for five (5) years, unless sooner revoked for violations of permit conditions, changes in applicable law, or other good cause.

(c) The application for Shelby County Storm Water Discharge Permit for an existing facility or commercial establishment shall include, at a minimum, the following information:

(1) description and type of facility and the nature of work performed;

(2) a description of significant materials that are currently, or were formerly, treated, stored or disposed outside the facility or commercial establishment; materials management practices currently used to minimize contact of these materials with storm water runoff; and a description of any treatment the storm water receives prior to discharge;
(3) the name of contact person for permit compliance, including job title, facility address and telephone number;
(4) a description of ways the facility or commercial establishment plans to implement programs to reduce the discharge of pollutants through storm water flow; and
(5) any other information deemed necessary by the Manager to effectively evaluate the potential for contamination of the MS4 by storm water runoff.

Sec. 01-010. Existing facilities required to have an NPDES permit.

(a) All existing industrial facilities, service stations, convenience stores with gasoline pumps, vehicular repair shops and vehicular parts repair shops which discharge storm water directly or indirectly into the municipal separate storm water sewer system of unincorporated Shelby County, and which have current NPDES permits issued by ADEM authorizing the discharge of storm water, are required to submit to the Manager a copy of the Notice of Intent (NOI) and ADEM's subsequent letter of verification of coverage under the NPDES General Permit, on or before August 1, 1999. If the facility has an individual NPDES storm water discharge permit, a copy of the permit, in its entirety, shall be submitted to the Manager on or before August 1, 1999.
(b) Upon expiration and renewal of the existing NPDES permit, the facility shall be required to submit a copy of the new NOI and coverage verification, or individual NPDES permit, to the Manager within thirty days.
(c) The NOI or NPDES permit shall be accompanied by the name of the contact person for permit compliance, including his or her job title and the telephone number.

Sec. 01-011. New facility permit

(a) All new industrial facilities, service stations, convenience stores with gasoline pumps, vehicular repair shops and vehicular parts repair shops which discharge storm water directly or indirectly into the municipal separate storm sewer system of unincorporated Shelby County, and which do not require and NPDES permit issued by ADEM authorizing the discharge of storm water, are required to apply for a Shelby County Storm Water Discharge Permit prior to construction. This permit shall be required in addition to any permit required by ADEM for storm water discharges associated with construction activity and any other permit required by this ordinance for land clearing activities. All other new commercial facilities located in unincorporated Shelby County, and which do not require an NPDES storm water permit, are not required to apply for a Shelby County Storm

Water Discharge Permit. However, these facilities shall comply with Divisions 5 and 6 of this ordinance.

(b) Permit application forms may be acquired from the Manger beginning August 1, 1998. Completed application forms are to be returned to the Manager. Upon receipt of the application, the Manager will evaluate the information provided and either deny a permit to the applicant or issue the applicant a Shelby County Storm Water Discharge Permit. An approved permit may require the facility to implement additional structural and non-structural Best Management Practices to reduce or eliminate the potential to discharge pollutants. If the application is denied, the Manager shall notify the applicant of deficiencies and allow thirty (30) days for the application to be revised and resubmitted. If the noted deficiencies are not corrected within thirty (30) days and/or the permit is resubmitted, any discharge of storm water after that date into the municipal separate storm sewer system shall be unlawful. Once issued, a permit shall be valid for five (5) years, unless sooner revoked for violations of permit conditions, changes in applicable law, or other good cause.

(c) The application for a Shelby County Storm Water Discharge Permit for a new facility shall include, at a minimum, the same information as that required for an existing facility.

Sec. 01-012. New facilities required to have an NPDES permit.

(a) All new industrial facilities, service stations, convenience stores with gasoline pumps, vehicular repair shops and vehicular parts repair shops which discharge storm water directly or indirectly into the municipal separate storm sewer system of unincorporated Shelby County, and which require an NPDES permit issued by ADEM authorizing the discharge of storm water, are required to submit to the Manager a copy of the Notice of Intent (NOI) and ADEM's subsequent letter of verification of coverage under the NPDES General Permit. If the facility requires an individual NPDES permit, a copy of the permit, in its entirety, shall be submitted to the Manager. In addition, any permit required by ADEM for storm water discharges associated with land clearing and construction activities shall be submitted to the Manager prior to construction.

(b) Upon expiration and renewal of the NPDES permit, the facility will be required to submit a copy of the new NPDES permit to the Manager within thirty (30) days.

(c) The NPDES permit shall be accompanied by the name of the contact person for permit compliance, including his or her job title, and the telephone number.

Sec. 01-013. Permit application fees.

(a) Each application for the issuance of a Shelby County Storm Water Discharge Permit for an existing industrial or commercial facility shall be accompanied by a

non-refundable fee of one hundred dollars ($100.00) plus fifteen dollars per acre ($15.00/acre).

(b) Each application for the issuance of a Shelby County Storm Water Discharge Permit for a new industrial or commercial facility shall be accompanied by a non-refundable fee of one hundred dollars ($100.00) plus fifteen dollars per acre ($15.00/acre) and any such additional fees for land disturbance or construction activities as may be required per this ordinance.

Secs. 01-014 - - 01-018. Reserved.

DIVISION 3. APPLICATIONS AND PERMITS FOR LAND DISTURBANCE AND CONSTRUCTION ACTIVITIES

Sec. 01-019 Land disturbance and construction activities required to have a permit.

(a) All land disturbance and construction activities which discharge storm water directly or indirectly in the municipal separate storm sewer system of unincorporated Shelby County, and which are not required to have an NPDES permit issued by ADEM authorizing the discharge of storm water, require a Shelby County Storm Water Discharge Permit prior to the commencement of the land disturbance or construction. It shall be unlawful for any person to conduct, or permit to be conducted, any land disturbing activity upon land owned or controlled by them without a permit issued under this ordinance if less than five acres are disturbed and if the discharge flows into the MS4 of unincorporated Shelby County. For purposes of this ordinance the phrase "land disturbing activity" is defined as follows:

Land disturbing activity is any change which may result in soil erosion from water and wind and the movement of sediments, directly or indirectly, into the community waters, including, but not limited to, clearing, dredging, grading, excavating and filling of land, except that the term shall not include the following:

(1) such minor land disturbing activities as home gardens, individual home landscaping, home repairs, home maintenance work and other related activities which result in minor soil erosion;
(2) the construction of single-family residences when built separately on lots within a subdivision which has a current Shelby County Storm Water Discharge Permit issued pursuant to this ordinance, provided that excavation is limited to trenches for the foundation, basements, utility service and sewer connections, and minor grading for driveways, yard areas and sidewalks;
(3) individual utility service and sewer connections for single or two-family residences;
(4) construction, installation or maintenance of electrical, telephone and cable television lines and poles, provided these activities do not pose a significant threat of contamination to community waters; and
(5) installation, maintenance and repair of any underground public utility lines when such activity occurs on an existing hard-surface road, street or sidewalk, provided the activity is confined to the area of the road, street or sidewalk which is hard-surfaced.

These activities may be undertaken without a permit; however, the persons conducting these excluded activities shall remain responsible for

otherwise conducting those activities in accordance with the provisions of this ordinance and other applicable laws.

(b) Permit application forms may be acquired from the Manager beginning October 1, 1998. Completed application forms are to be returned to the Manager. Upon receipt of the application, the Manager will evaluate the information provided and either deny a permit to the applicant or issue the applicant a Shelby County Storm Water Discharge Permit. An approved permit may require the applicant to implement additional structural and non-structural Best Management Practices to reduce or eliminate the potential to discharge pollutants. If the application is denied, the Manager shall notify the applicant of deficiencies and allow the application to be revised and resubmitted. It shall be unlawful to commence land disturbance or construction activities as described in this Section prior to the issuance of a Shelby County Storm Water Discharge Permit. Once issued, a permit shall be valid for two (2) years, unless sooner revoked for violations of permit conditions, changes in applicable law, or other good cause. Upon project completion, the applicant shall notify the Manager and request termination of permit coverage. The Manager shall grant termination within thirty (30) days unless it is determined that the applicant has failed to meet the requirements of this ordinance, particularly those regarding proper soil stabilization.

(c) The application for a Shelby County Storm Water Discharge Permit for land disturbance and construction activities shall include, at a minimum, the following information:

(1) name and telephone number of applicant;
(2) business or residence address of applicant;
(3) name and address of owner of subject property;
(4) address and legal description of subject property;
(5) name and address of the contractor and any subcontractors who shall perform the land disturbing activity and who shall implement the Best Management Practices;
(6) 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;
(7) a description of specific Best Management Practices that will be used to control the discharge of storm water runoff from the site, the extent of which shall be commensurate with the size of the project, severity of site conditions, and the potential for contamination of community waters; and
(8) any other information deemed necessary by the Manager to effectively evaluate the potential for contamination of the MS4 by storm water runoff.

Sec. 01-020. General requirements for land disturbance activities.

No land disturbing activity shall be conducted within the unincorporated areas of Shelby County except in such manner that:

(a) Stripping of vegetation, regrading and other development activities shall be conducted so as to minimize erosion. Clearing and grubbing must be held to the minimum necessary for grading and equipment operation. Construction shall be sequenced to minimize the exposure time of cleared surface area.
(b) Property owners shall be responsible upon completion of land disturbing activities to leave slopes so that they will not erode, through such methods as revegetation, mulching, rip-rapping, or gunniting. Regardless of the method used, the objective shall be to leave the site as erosion-free and maintenance-free as practicable.
(c) Whenever feasible, natural vegetation shall be retained, protected and supplemented, especially adjacent to natural drainage ways. If feasible, natural streams flowing to and through the site should be maintained in their natural channel and provided with a vegetative buffer zone.
(d) Permanent or temporary soil stabilization must be applied to disturbed areas to the extent feasible within seven (7) days on areas that will remain unfinished for more than thirty (30) calendar days. Permanent soil stabilization with perennial vegetation shall be applied as soon as practicable after final grading is completed on any portion of the site. Soil stabilization refers to measures which protect soil from the erosive forces of wind, raindrop impact and flowing water, and includes the growing of grass, sod, application of straw, mulch, fabric mats, and the early application of gravel base on areas to be paved.
(e) A permanent vegetative cover shall be established on disturbed areas not otherwise permanently stabilized.
(f) To the extent necessary, sediment in runoff water shall be trapped by the use of sediment basins, silt traps or similar measures until the disturbed area is stabilized.
(g) Erosion and sediment control measures must be in place and functional before earth moving operations begin, and must be constructed and maintained throughout the construction period as necessary. Temporary measures may be removed at the beginning of the work day, but shall be replaced at the end of the workday.
(h) Structural controls shall be designed and maintained as required to prevent pollution. All surface water flowing toward the construction area shall, to the extent practicable, be diverted by using berms, channels, or sediment traps as necessary. Erosion and sediment control measures shall be designed according to the size and slope of disturbed and/or drainage areas to effectively detain runoff and trap sediment.
(i) All control measures shall be checked and repaired as necessary to prevent the contamination of community waters.
(j) The storm water runoff from the site shall contain no floating scum or oil, shall not cause an objectionable color contrast in the receiving water, and shall not contain any materials in concentrations sufficient to be hazardous or otherwise detrimental to humans, livestock, wildlife, plant life, or fish and aquatic life in the receiving stream.

Sec. 01-021. Land disturbance and construction activities required to have an NPDES permit.

(a) All land disturbance and construction activities which are larger than five acres in size or that are a part of a larger development or project that is, or will eventually be, larger than five acres in size in unincorporated Shelby County requires and NPDES permit issued by ADEM authorizing the discharge of storm water. If an NPDES storm water permit is required, a copy of the Notice of Intent (NOI) shall be submitted to the Manger prior to the land disturbance or construction. A copy of ADME's verification of coverage shall also be submitted when available.

(b) If the current NPDES permit should expire during land clearing or construction, a copy of the new NOI and ADEM's subsequent verification of coverage shall be submitted to the Manager within thirty (30) days.

(c) The NOI shall be accompanied by the name of the contact person for NPDES permit compliance, including job title, site and office addresses and telephone numbers.

Sec. 01-022. Permit application fees.

Each application for the issuance of a Shelby County Storm Water Discharge Permit for land disturbance and construction activities shall be accompanied by a non-refundable fee of one hundred and twenty-five dollars ($125.00).

Sec. 01-023 - - 01-027. Reserved.

DIVISION 4. GENERAL PERMIT REQUIREMENTS

Sec. 01-028. Availability of permit.

An approved copy of the Shelby County Storm Water Discharge Permit shall be stored in the office of the designated contact person and at the permitted site or facility and shall be made available for review at any time by the Manager, or his or her representative.

Sec. 01-029. Transfer of permit.

A Shelby County Storm Water Discharge Permit may be transferred only upon the filing of an amendment to the permit application or an amended or restated application containing all changes from the original application providing there are no changes in the operation of the industrial or commercial facility or construction site which may affect the quantity or quality of the storm water runoff. If there are to be any changes in the operation of the facility or construction site which may affect the quantity or quality of storm water runoff, then the new owner or operator shall reapply for a Shelby County Storm Water Discharge Permit prior to the beginning of operation of the facility or construction activities. The filing of an amended or restated application shall be treated as an interim permit allowing the continued operation of the facility or construction site pending review of the application by the Manager, which shall remain in force until the application shall be approved or denied by the Manager.

Sec. 01-03. Signatory requirements.

(a) All applications and correspondence required by this ordinance to be submitted to the Manager shall be signed as follows:
   (1) Corporation: by a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation.
   (2) Partnership or sole proprietorship: by a general partner or the proprietor.
   (3) Municipality, State, Federal, or other public facility: by either a principal executive officer or the chief executive officer of the agency, or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(b) Any person signing any application or correspondence required by this article shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision and that I have personally examined and am familiar with the information therein. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and civil penalty."

Secs. 01-031—01-035. Reserved.

DIVISION 5. MONITORING AND INSPECTION

Sec. 01-036. Monitoring.

The Manager shall periodically monitor the quantity of, and the concentration of pollutants in storm water discharges from the industrial and commercial facilities and construction sites permitted pursuant to this ordinance and from any other facilities or sites the Manager deems a potential source of contamination to the community waters, including those facilities and sites which hold current NPDES permits.

Sec. 01-037. Detections of illicit connections and improper disposal.

(a) The Manager, or his or her duly authorized representatives, shall take appropriate steps to detect and eliminate illicit connections to the municipal separate storm sewer system.

(b) The Manager, or his or her duly authorized representative, shall take appropriate steps to detect and eliminate improper discharges to the municipal separate storm sewer system.

Sec. 01-038. Inspections.

(a) The Manager, or his or her designee, bearing proper credentials and identification, may enter and inspect all properties for regular periodic inspections, investigations, monitoring, observation, measurement, enforcement, sampling and testing, to effectuate the provisions of this ordinance and the Shelby County Storm Water Management Program. The Manager, or his or her designee, shall duly notify the owner of said property or the representative on site and the inspection shall be conducted at reasonable times.

(b) Upon refusal by any property owner to permit an inspector to enter or continue an inspection, the inspector shall terminate the inspection or confine the inspection to areas concerning which no objection is raised. The inspector shall immediately report the refusal and the grounds to the Manager. The Manager may seek appropriate compulsory process.

(c) In the event the Manager, or his or her designee, reasonably believes that discharges from the property into the MS4 or the community waters may cause an imminent and substantial threat to human health or the environment, the inspection may take place at any time and without notice to the owner of the

property or a representative on site. The inspector shall present proper credentials upon reasonable request by the owner or representative.

(d) At any time during the conduct of an inspection or at such times as the Manager, or his or her designee, may request information from an owner or representative, the owner or representative may identify areas of the facility or establishment, material or processes which contain or which might reveal a trade secret. If the Manager, or his or her designee, has no clear or convincing reason to question such identification, the inspection report shall note that trade secret information has been omitted. To the extent practicable, the Manager shall protect all information which is designated as a trade secret by the owner or their representative.

(e) In the event a substantial pollutant loading to the community waters exists, the Manager will take the following steps:

(1) Field inspection to verify possible source of pollution, when needed.

(2) Additional sampling to verify possible source of pollution, if needed.

(3) Informing the owner and/or operator of the facility or site found to be the source of the problem and working with them to determine appropriate corrective actions.

(4) Following up with the owner and/or operator to determine the status of corrective actions.

(5) Enforcement procedures shall be as provided in Division 6 of this ordinance, if needed.

DIVISION 6. ENFORCEMENT AND ABATEMENT

Sec. 01-044. Unauthorized discharge a public nuisance.

Discharge of storm water in any manner in violation of this ordinance or of any condition of a permit issued pursuant to this ordinance is hereby declared a public nuisance and shall be corrected or abated.

Sec. 01-045. Allowable non-storm water discharges.

The following direct or indirect discharges into the MS4 or the community waters are allowable under the terms of this ordinance unless determined by the manager to be a source of contamination to the MS4 or the community waters:

(1) waterline and fire hydrant flushings;

(2) landscape irrigation;

(3) rising ground waters;

(4) uncontaminated ground water;

(5) uncontaminated water from foundation and footing drains;

(6) air conditioning condensation;

(7) discharges from springs;

(8) water from crawl space pumps;

(9) lawn watering;

(10) individual residential car washing;

(11) flows from riparian habitats and wetlands;

(12) dechlorinated swimming pool and hot tub discharges;

(13) street was water; and

(14) discharges from firefighting activities.

Sec. 01-046. Illicit discharge and illegal dumping.

The following direct or indirect discharges into the MS4 or the community waters and direct or indirect discharges therein or thereto caused by or resulting from the following activities, practices and/or conditions are prohibited and shall be unlawful:

(1) non-storm water discharges, except pursuant to a storm water discharge permit issued by ADEM or Section 01-045 of this article;

(2) chlorinated swimming pool or hot tub discharge;

(3) discharge of any polluted household wastewater, such as, but not limited to, laundry washwater and dishwater, except to a sanitary sewer or septic system;

(4) leaking sanitary sewers and connections, which shall have remained uncorrected for seven (7) days or more;

(5) leaking water lines which shall have remained uncorrected for seven (7) days or more;

(6) commercial, industrial or public vehicle was discharge;

(7) garbage or sanitary waste disposal;

(8) animal carcasses or animal fecal waste;

(9) sewage dumping or dumping of sewage sludge;

(10) dredged or spoil material;

(11) solid or chemical waste; and

(12) wrecked or discarded vehicles or equipment.

Sec. 01-047. Accidental discharges.

(a) In the event of any discharge of a hazardous substance in amounts which could cause a threat to public drinking supplies, a "significant spill" or any other discharge which could constitute a threat to human health of the environment, the owner or operator of the facility shall give verbal notice to the Storm Water Manager and ADEM as soon as practicable, but in no event later than the close of business on the day the accidental discharge occurs or the day the discharger becomes aware of the circumstances. A written report must be provided within five days of the time the discharger becomes aware of the circumstances, unless this requirement is waived by the Manager for good cause shown on a case-by-case basis, containing the following particulars; (1) a description of the discharge, (2) the exact dates and times of discharge and (3) steps being taken to eliminate and prevent recurrence of the discharge.

(b) The discharger shall take all reasonable steps to stop the discharge and minimize any adverse impact to the community waters, including such accelerated or additional monitoring as necessary to determine the nature and impact of the discharge. It shall not be a defense for the discharger in an enforcement action that it would have been necessary to halt or reduce the business or activity of the facility in order to maintain water quality and minimize any adverse impact that the discharge may cause.

(c) It shall be unlawful for any person to fail to comply with the provisions of this section.

Sec. 01-048. NPDES permits issued by ADEM.

(a) Compliance with the conditions, limitations and restrictions set forth in an individual or general NPDES storm water discharge permit issued by ADEM, excluding NPDES Permit ALS000003, shall be deemed compliance with the terms of this ordinance, excluding the requirements of Sections 01-010, 01-

012, 01-021 and 01-047. However, all NPDES permit holders are subject to enforcement action under the terms of this ordinance for continued substantial violation of the NPDES permit, as determined by the Manager. The following procedure shall be used for NPDES permit holders:

(1) ADEM will provide the Manager with access to the NPDES storm water permits for any property within the County's jurisdiction.

(2) The Manager will notify ADEM and the permit holder in writing when it has been determined that the NPDES permit holder is causing a continuing substantial pollutant load to the community waters.

(3) The Manager will rely on ADEM to regulate and take enforcement action against NPDES permit holders until such time that the permit holder is in continuing substantial violation of its NPDES permit and ADEM has failed to respond in a timely manner.

(4) At this time the NPDES permit holder will be subject to the terms and penalties of this ordinance.

(b) No enforcement action shall be taken by the County against any person for violation of the terms of this ordinance if any of the following occur:

(1) ADEM has issued a notice of violation with respect to the same alleged violation and is proceeding with enforcement action;

(2) ADEM has issued an administrative order with respect to the same alleged violation and is proceeding with enforcement action; or

(3) ADEM has commenced and is proceeding with enforcement action or has completed any other type of administrative or civil action with respect to the same alleged violation.

(c) Any determination or resolution with respect to an alleged violation made by ADEM shall be final, and such alleged violation shall not be made the subject of any additional enforcement action taken by the County, provided, however, that enforcement action may be pursued by the County for continued and continuing violations.

Sec. 01-049. Administrative enforcement remedies.

(a) Notification of Violation: Whenever the manager finds that any applicant or any person discharging storm water has violated or is violating this ordinance, or a Shelby County Storm Water Discharge Permit or order issued hereunder, the Manager or his or her agent may serve upon said discharger written notice of the violation. Within ten (1) days of the receipt of this notice, an explanation of the violation and a plan and schedule for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the Manager. Submission of this plan in no way relieves the discharger of liability for any violations occurring before or after receipt of this notice of violation.

(b) Consent Orders: The Manager is hereby 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 discharger 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 paragraph (d) below.

(c) Show Cause Hearing: The Manager may order any person who causes or contributes to violation of this ordinance or Storm Water Discharge Permit or order issued hereunder, to show cause why this proposed enforcement action should not be taken. 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, and 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 or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any principal executive, general partner or corporate officer.

(d) Compliance Order: When the Manager finds that any person has violated or continues to violate this ordinance or a Shelby County Storm Water Discharge Permit or order issued hereunder, he or she may issue an order to the violator, directing that, following a specified time period, adequate structures and 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 the noncompliance, including the construction of appropriate structures, installation of devices, self-monitoring and management practices.

(e) Cease and Desist Orders: When the Manager finds that any person has violated or continues to violate this ordinance or a Shelby County Storm Water Discharge Permit or order issued hereunder, the Manager 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 threated violation, including halting operations and terminating the discharge.

Sec. 01-050. Unlawful acts, misdemeanor.

It shall be unlawful for any person to:

(a) violate any provision of this ordinance;

(b) violate the provisions or any permit issued pursuant to this ordinance;

(c) fail or refuse to comply with any lawful notice to abate, issued by the Manager, which has not been appealed to the Storm Water Regulations Board within the time specified by such notice; or

(d) violate any lawful order of the Storm Water Regulations Board within the time allowed by such order.

Said persons shall be guilty of a misdemeanor; and each day of such violation, failure or refusal to comply shall be deemed a separate offense and punishable accordingly. Any person to be in violate of the provisions of this ordinance shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500.00) for each offense.

Sec. 01-051. Civil Penalty.

(a) Any person who performs any of the following acts or omissions shall be subject to a civil penalty of up to five thousand dollars ($5000.00) per day each day during which the act or omission continues or occurs:

(1) fails to obtain any permit required by this ordinance;

(2) violates the terms or conditions of a permit issued pursuant to a pretreatment program;

(3) violates a final determination or order of the Storm Water Regulations Board; or

(4) violates any provisions of this ordinance.

(b) Any civil penalty shall be assessed in the following manner:

(1) The Manager may issue an assessment against any person responsible for the violation.

(2) Any person against whom an assessment has been issued may secure a review of such assessment by filing with the Manager a written petition setting forth the grounds and reasons for his or her objections and asking for a hearing in the matter involved before the Storm Water Regulations Board and if a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator shall be deemed to have consented to the assessment and it shall become final;

(3) Whenever any assessment has become final because of a person's failure to appeal the Manager's assessment, the Manager may apply to the appropriate court for a judgement and seek execution of such judgement, and the court, in such proceedings, shall treat a failure to appeal such assessment as a confession of judgement in the amount of the assessment;

(4) In assessing the civil penalty, the Manager may consider the following factors:

(i) whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;

(ii) damages to the County, including compensation for the damage or destruction of public storm water facilities, and also including any penalties, costs and attorneys' fees incurred by the County as a result of the illegal activity, as well as the expenses involved in enforcing this ordinance and the costs involved in rectifying any damages;

(iii) cause of the discharge or violation;

(iv) the severity of the discharge and its effects upon public storm water facilities and upon the quality and quantity of the receiving waters;

(v) effectiveness of action taken by the violator to cease the violation;

(vi) the technical and economic reasonableness of reducing or eliminating the discharge; and

(vii) the economic benefit gained by the violator.

(c) The Storm Water Regulations Board may establish, by regulation, a schedule of the amount of civil penalty which can be assessed by the Manager for certain specific violations or categories of violations.

Sec. 01-052. Judicial proceedings and relief.

(a) The Manager may initiate proceedings in any court of competent jurisdiction against any person who has or is about to:

(1) violate the provisions of this ordinance;

(2) violate the provisions of any permit issued pursuant to this ordinance;

(3) fail or refuse to comply with any lawful order issued by the Manager, which has not been timely appealed to the Storm Water Regulations Board, within the time allowed by this ordinance; or

(4) violates any lawful order of the Storm Water Regulations Board within the time allowed by such order.

(b) Any person who shall commit any act or fail to perform any act declared unlawful under this ordinance shall be guilty of a misdemeanor, and each day of such violation or failure shall be deemed a separate offense and punishable accordingly.

(c) The Manager, with the consent of the County Commission, may also initiate civil proceedings in any court of competent jurisdiction seeking monetary damages for any damages caused to publicly owned storm water facilities by any person, and to seek injunctive or other equitable relief to enforce compliance with the provisions of this ordinance or to force compliance with any lawful orders of the Manager of the Storm Water Regulations Board.

Sec. 01-053. Disposition of permit fees, damage payments and penalties.

All permit fees collected pursuant to this ordinance, all damages collected under the provisions of Section 01-050 and civil penalties collected under Section 01-051, following adjustment for the expenses incurred in making such collections, shall be allocated and appropriated to the Shelby County Public Works Department for the administration of its storm water management programs.

Secs. 01-054 - - 01-058. Reserved.

DIVISION 7. STORM WATER REGULATIONS BOARD

Sec. 01-059. Established.

There is hereby established a Board of five (5) members to be known as the "Storm Water Regulations Board."

Sec. 01-060. Composition; terms; filling vacancies.

The five (5) members of this board shall be appointed by the Shelby County Commission for terms of four (4) years. The County Commission shall, when deemed possible or practicable in the sole discretion of the County Commission, appoint members with the following or other appropriate qualifications: an environmental engineer or environmental scientists, an attorney or other person experienced in environmental law, a person employed or retired from an industrial or commercial establishment regulated by this article, a person employed by or holding membership in an environmental group, and a land developer. All members shall serve until their successor is appointed and all members shall serve at the pleasure of the County Commission. In the event of a vacancy, the County Commission shall appoint a member to fill the unexpired term. The Board shall select its own chairman, vice-chairman and secretary. The members shall serve without compensation, but are eligible for reimbursement of their actual expenses incurred in attending meetings of the Board and the performance of any duties as members of the Board as are properly documented and authorized by Law.

Sec. 01-061. General duties of the Board

In addition to any other duty or responsibility otherwise conferred upon the Board by this chapter, the Board shall have the duty and power as follows:

(a) To recommend from time to time to the County Commission that it amend or modify the provisions of this ordinance;

(b) To hold hearings upon appeals from orders or actions of the Manager as may be provided under any provision of this chapter;

(c) To hold hearings related to the suspension, revocation or modification of Shelby County Storm Water Discharge Permit and issue appropriate orders relating thereto;

(d) To hold such other hearings as may be required in the administration of this chapter and to make such determinations and issue such orders as may be necessary to effectuate the purposes of this ordinance;

(e) To request assistance from any officer, agent or employee of Shelby County and to obtain such information or other assistance as the Board might need;

(f) The Board, acting through its chairman, shall have the power to issue subpoenas requiring attendance and testimony of witnesses and the

production of documentary evidence relevant to any matter properly heard by the Board; and

(g) The Chairman, vice-chairman or chairman pro tem shall be authorized to administer oaths to those persons giving testimony before the Board.

Sec. 01-062. Variances

(a) The Board may grant a variance from the requirements of this ordinance providing to do so would not result in the violation of any state or federal law or regulation and if exceptional circumstances applicable to the site exist such that strict adherence to the provisions of this ordinance will result in unnecessary hardship and will not result in a condition contrary to the intent of the ordinance.

(b) A written petition for variance shall be required and shall state the specific variance sought and the reasons, with supporting data, why a variance should be granted. The request shall include all information necessary to evaluate the proposed variance. The petition shall be filed with the Manager.

(c) The Manager shall conduct a review of the request for a variance within ten (10) working days after receipt and may either support the petition or may object to the petition. If the Manager objects to the variance, he or she shall state the reasons therefor.

(d) Once the Manager's review is complete or the ten (10) days for review have expired, the petition shall be subject to Board action at the next regularly scheduled meeting or at a special meeting called at the discretion of the chairman.

Sec. 01-063. Meetings; quorum.

(a) The Board shall hold regular semiannual meetings and such special meetings as the Board may find necessary.

(b) Three (3) members of the Board shall constitute a quorum, but a lesser number may adjourn a meeting from day to day. Any substantive action of the Board shall require three (3) votes, but a majority of the quorum may decide any procedural matter.

Sec. 01-064. Hearing Procedure; judicial review.

(a) <u>When to be held</u>: The Storm Water Regulations Board shall schedule an adjudicatory hearing to resolve disputed questions of fact and law whenever provided by any provision of this ordinance.

(b) <u>Record of hearing:</u> At any such hearing, all testimony presented shall be under oath or upon solemn affirmation in lieu of oath. The Board shall make a record of such hearing, but the same need not be a verbatim record. Any party coming before the Board shall have the right to have such hearing recorded stenographically, but in such event the record need not be transcribed unless any party seeks judicial review of the order or action of the

Board as herein provided, and in such event the parties seeking such judicial review shall pay for the transcription and provide the Board with the original of the transcript so that it may be certified to the court.

(c) Subpoenas: The chairman may issue subpoenas requiring attendance and testimony of witnesses or the production of evidence, or both. A request for issuance of a subpoena shall be made by lodging with the chairman at least ten (1) days prior to the scheduled hearing date a written request for a subpoena setting forth the name and address of the party to be subpoenaed and identifying any evidence to be produced. Upon endorsement of a subpoena by the chairman, the same shall be delivered to the Sheriff of Shelby County for service by any officer of the County, if the witness resides in the County. If the witness does not reside in the County, the chairman shall issue a written request that the witness attend the hearing.

(d) Depositions: Upon agreement of all parties, the testimony of any person may be taken by deposition or written interrogatories. Unless otherwise agreed, the deposition shall be taken in a manner consistent with state regulations, with the chairman to rule on such matters as would require a ruling by the court under such rules.

(e) Hearing procedure: The part at such hearing bearing the affirmative burden of proof shall first call his or her witnesses, to be followed by witnesses called by other parties, to be followed by any witnesses which the Board may desire to call. Rebuttal witnesses shall be called in the same order. The chairman shall rule on any evidentiary questions arising during such hearing and shall make such other rulings as may be necessary or advisable to facilitate an orderly hearing, subject to approval of the Board. The Board, the Manager, or his or her representative, and all parties shall have the right to examine any witness. The Board shall not be bound by or limited to rules of evidence applicable to legal proceedings.

(f) Appeal to Board of Manager's order: Any person aggrieved by any order or determination of the Manager may appeal said order or determination to the Board and have such order or determination reviewed by the Board under the provisions of this section. A written notice of appeal shall be filed with the Manager and with the chairman, and such notice shall set forth with particularity the action or inaction the Manager complained of and the relief sought by the person filing said appeal. A special meeting of the Board may be called by the chairman upon the filing of such appeal, and the Board may, in its discretion, suspend the operation of the order or determination of the Manager until such time as the Board has acted upon the appeal.

(g) Absence of chairman: The vice-chairman or the chairman pro tem shall possess all the authority delegated to the chairman by this section when acting in his or her absence or in his or her stead.

(h) Review of Board's decision: Any person aggrieved by any final order of determination of the Board hereunder may within fifteen (15) days thereafter

appeal therefrom to the Circuit Court of Shelby County or other court within Shelby County having jurisdiction by filing with the Board a written notice of appeal specifying the judgement or decision from which appeal is taken. In case of such appeal, the Board shall cause a transcript of all the proceedings in the cause to be certified to the court to which the appeal is taken and the cause in such court shall be tried do novo.