

ORDINANCE # 2009-08

AN ORDINANCE TO REQUIRE A PERMIT FOR ALL APPLICABLE  
LAND DISTURBANCE ACTIVITIES WITHIN THE CITY

**WHEREAS**, the City Council of City of Springville, Alabama while in regular session held a public hearing on the 17<sup>th</sup> day of August, 2009 to discuss the adoption of an Ordinance requiring all property owners obtain a permit prior to the commencement of land-disturbing activities; and

**WHEREAS**, the City of Springville, Alabama (the "City") desires and has the authority to promote the overall health, safety and general welfare of its citizens; and

**WHEREAS**, the City has the authority to regulate the alteration of real property within the City to protect its citizens, their property and the public improvements within the City; and

**NOW, THEREFORE** be it **ORDAINED** by the City of Springville, Alabama, while in regular session on the 17<sup>th</sup> day of August, 2009, as follows:

**Section 1: Short Title**

This Ordinance shall hereafter be known and referred to herein as the "Land Disturbance Permit Ordinance."

**Section 2: Definitions**

For the purposes of this Article, the following words and terms shall have the meaning assigned to them in this section:

Accidental discharge: A discharge prohibited by this article into the MS4 (defined below) or community water which occurs by chance and without planning or consideration prior to occurrence.

Adverse impact: Any deleterious effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics or usefulness for human or natural uses which are, or may potentially be, harmful or injurious to human health, welfare, safety or property or to biological productivity, diversity or stability, or which would unreasonably interfere with the enjoyment of life or property.

Agriculture: Activities undertaken on land for the production of plants, crops, and animals which are useful to man.

Alabama Department of Environmental Management (herein abbreviated as "ADEM"): The State of Alabama regulatory agency, created under Code of Ala. 1975, § 22-22A-1 et seq.,

responsible for administering and enforcing the stormwater laws of the United States of America and the State of Alabama.

**Applicant:** Any person, firm, corporation or governmental agency who executes the necessary forms to procure approval of best management practices plans from the official.

**Best management practices (herein abbreviated as "BMP"):** Activities, prohibitions of practices, maintenance procedures and management practices designed to prevent or reduce the pollution of waters to the MS4. Best management practices also include treatment requirements, operating procedures and practices to control facility site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage and construction sites.

**Best management practices plan (herein abbreviated as "BMP Plan"):** A set of drawings and/or other documents submitted by a person as a prerequisite to obtaining a permit, which contain all of the information and specifications pertaining to the BMP.

**Clean Water Act (herein abbreviated as "CWA"):** The federal act (33 U.S.C. § 1251 through § 1387) which was formerly referred to as the Federal Water Pollution Control Act and Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 6-483 and Public Law 97-117, 33 U.S.C. § 1251-1387.

**Clearing:** The removal of trees and brush from the land, not including the ordinary mowing of grass or the maintenance of previously cleared areas.

**Community waters:** Any or all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wetlands, wells and other bodies of natural or artificial surface or subsurface water into which the MS4 outfalls flow.

**Contour:** A line of equal elevation above a specified datum, usually mean sea level.

**Contour line:** A line joining points having or representing equal elevations.

**City:** City of Springville, Alabama

**City Council:** the City Council for the City of Springville, Alabama

**Discharge:** The passing of water or other liquid through an opening or along a pipe, conduit or channel; the rate of flow of water, silt, or other mobile substance which emerges from a pipe, conduit or channel, usually expressed as cubic feet per second, gallons per minute or million gallons per day.

**Drainage:** The removal of surface water from a given area either by gravity or by pumping; commonly applied to surface water and groundwater.

**Drainage area:** That area contributing runoff to a single point measured in a horizontal plane, which is enclosed by a ridge line; the area of a drainage basin or watershed, expressed in acres, square miles or other unit of area.

**Engineer:** A person currently licensed by the Alabama State Board of Registration for Professional Engineers and Land Surveyors to provide engineering services.

**Erosion:** Wearing away of lands by running water.

**Erosion control:** The application of measures to reduce erosion of land surfaces.

**Grading:** Any act by which soil is cleared, stripped, stockpiled, excavated, scarified or filled, or any combination thereof.

**Illicit connection:** Any manmade conveyance connecting an illicit discharge directly to the MS4.

**Illicit discharge:** Any discharge that is not composed entirely of stormwater, except discharges pursuant to an NPDES permit (other than NPDES Permit ALS000001) and discharges which are specifically excepted from this article.

**Minor extension:** An addition to an existing utility pipeline or other utility line in which the land disturbed consists of fewer than 7,500 linear feet.

**Municipal separate storm sewer (herein abbreviated as "MS3"):** A conveyance or conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels and storm drains), owned or operated by a city, town or county or other public body (created by, or pursuant to, state law) having jurisdiction over stormwater.

**Municipal separate storm sewer system (herein abbreviated as "MS4"):** A system of municipal separate storm sewers, as defined hereinbefore.

**NPDES:** National Pollutant Discharge Elimination System.

**Outfall:** A point source (meaning any discernible, confined and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged, but not including return flows from irrigated agriculture or agricultural water runoff) at the point of a discharge to waters of the United States of America.

**Permit:** Any permit issued pursuant to this article.

**Permittee:** A person, party, government entity and all others who receive a permit to discharge under the NPDES.

Pollutant includes, but is not limited to, the pollutants specified in Code of Ala. 1975, § 22-22-1(b) (3), and any other effluent characteristics specified in a permit.

Pollutant loading: The amount of a pollutant entering the MS4.

Qualified credentialed professional: A certified professional in erosion and sediment control ("CPESC") as determined by the Soil and Water Conservation Society ("SWCS") or the International Erosion Control Association ("IECA"). Other registered or certified professionals such as a professional engineer or a landscape architect, registered land surveyor, registered architect, registered geologist, registered forester, registered environmental manager as determined by the National Registry of Environmental Professionals ("NREP"), certified professional soil scientist ("CPSS") as determined by the American Registry of Certified Professionals in Agronomy, Crops and Soils ("ARCPACS"), who can document the necessary education, training, and professional certification, registration, or credentials acceptable to the official and can demonstrate proven experience in the field of erosion and sediment control shall be considered a qualified credentialed professional. The qualified credentialed professional must be familiar with, and have expertise, in current industry standards for erosion and sediment controls and must be able to inspect and assure that nonstructural BMPs or other pollution control devices (silt fences, erosion control fabric, rock check devices, etc.) and erosion control efforts, such as grading, mulching, seeding and growth management, or management strategies have been properly implemented and regularly maintained according to good engineering practices and the requirements of this permit. A professional engineer ("PE") registered in the State of Alabama must certify the design and construction of structural practices such as spill prevention control and counter measures ("SPCC") plan containment structures, dam construction, etc.

Sediment: Solid material settled from suspension in a liquid that has been transported and deposited from its site of origin by air, water, ice or gravity as a product of erosion and has come to rest on the earth's surface either above or below a water surface, usually, inorganic or organic particles originating from weathering, chemical precipitation, or biological activity.

Silviculture: The care and cultivation of forest trees, including site preparation, planting, pruning, thinning and harvesting.

Site: Any tract, lot or parcel of land or combination of contiguous tracts, lots or parcels of land which are in one ownership, and any combination of tracts, lots and parcels which are contiguous, are owned by two or more parties and are to be developed as a unit, subdivision or project.

Stabilization: The prevention of soil movement by any of various vegetative and/or structural means.

Stormwater: The excess water running off from the surface of a drainage area during and immediately after a period of rain. It is that portion of the rainfall and resulting surface flow that

is in excess of that which can be absorbed through the infiltration capacity of the surface of the basin.

**Stormwater management:** The incorporation of a variety of activities and equipment into a plan to address concerns associated with stormwater for the purpose of preventing pollution, improving water quality, keeping pollutants out of runoff, and the implementation of best management practices.

**Stormwater management program (herein referred to as "the management program" or "the program"):** A program which covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and, where necessary, intergovernmental coordination, to reduce the discharge of pollutants, to the maximum extent practicable, using management practices control techniques and system design and engineering methods and such other provisions which are appropriate.

**Stormwater permit:** A permit which grants permission to the holder to discharge stormwater to the MS4 under the NPDES.

**Stream:** A course of running water usually flowing in a particular direction in a definite channel and discharging into some other course of running water or body of water.

**Structural controls:** Measures incorporated into existing stormwater drainage systems or newly constructed systems to prevent or minimize the discharge of pollutants for the purpose of maintaining and/or improving water-quantity and -quality management; quantitative control by a system of vegetative and structural measures that control the increased volume and rate of surface runoff caused by manmade changes to the land; qualitative control by a system of vegetative, structural and other measures that reduce or eliminate pollutants that might otherwise be carried by surface runoff.

**Turbidity:** A condition in water or wastewater caused by the presence of suspended matter, resulting in the scattering and absorption of light rays. A measure of fine suspended matter in liquids.

**Utility:** A business or service which is engaged in regularly supplying the public with some commodity or service which is of public consequence and need, such as electricity, gas, water, telephone service and telegraph service.

**Variance:** The modification of the minimum stormwater management requirements in situations in which exceptional circumstances, applicable to the site with respect to which the variance is requested, exist so that strict adherence to the provisions of this article would result in unnecessary hardship and the granting of such modification would not result in a condition contrary to the intent of this article.

### **Section 3: ADMINISTRATION**

#### **Enforcement.**

The municipal engineer for the city, the municipal official or employee who is a qualified credentialed professional, such other municipal official or employee who has had sufficient experience dealing with erosion and sedimentation control to enable him to enforce the provisions of this article and who is designated by the city council (referred to herein as the "official") (whenever the word "official" is used in this article, it shall include the authorized agent of the official) shall be the person responsible, on behalf of the city, to enforce the provisions of this ordinance. The official shall be designated in a resolution adopted by the city council.

### **Section 4: APPLICATION AND FEES**

#### **Application**

(a) Before the commencement of any land-disturbing activity that is not exempted from obtaining a permit under this article, the owner of the land on which such activity shall be conducted, or his duly authorized agent, must file with the official an application for the approval of the owner's BMP plan. The official must either approve or disapprove the BMP plan within 14 days of the day it is filed with the official. If the BMP plan is disapproved, the official must inform the applicant, in writing, of the reasons for its disapproval. If the applicant, on one or more occasions, revises the BMP plan or submits to the official additional documents or information in connection with the BMP plan, the official must make a written response to the applicant with respect to whether such revised BMP plan and/or additional documents and information have been approved or disapproved by the official. All such additional responses must be made by the official to the applicant within 14 days of the day such revised BMP plan or additional documents or information are submitted to the official. The land-disturbing activity may not be commenced prior to the issuance of the permit by the official. The issuance of the permit shall not excuse the owner from the need to obtain other required state and local permits or licenses.

(b) The minimum standards for the issuance of a permit must meet the requirements of this article.

(c) Facilities that are covered under an ADEM NPDES permit for stormwater discharge associated with construction activities ("ADEM NPDES permit") are exempt from the permitting requirements of this article. However, prior to the commencement of any land-disturbing activity, the owner or developer of facilities that are covered under an ADEM NPDES permit shall submit to the official copies of the ADEM NPDES permit authorization issued by ADEM, any relevant notice of intent and a copy of the BMP plan. The holders of an ADEM NPDES permit shall be subject to the relevant portions Sections 7 and 8 of this Ordinance.

### Permit application fee

Each application for the issuance of a permit shall be accompanied by a nonrefundable fee of \$100.00 for individual single-family residences and \$400.00 for all other types of land-disturbing activities to help defray the city's cost of processing and reviewing the application and the inspections associated with the application. The applicant must submit three sets of its BMP plan with its application and fee to the official.

### Data required on the application for a permit

(a) All applications for a permit must include the following information:

- (1) Name of applicant;
- (2) Telephone number of applicant, telecopier number, if any, of applicant, and e-mail address, if any, of applicant;
- (3) Address where applicant, or other person who can furnish information about the land-disturbing activity (such other person must be a resident of Jefferson County, Shelby County or St. Clair County, Alabama) ("contact person"), can be reached;
- (4) Name, address, telephone number, telecopier number, if any, and e-mail address, if any, and the ground lessee of the property, if any, on which the land-disturbing activity is to be conducted if the applicant is not the owner of the project and such property;
- (5) Legal description and address, if any, of the property upon which the land-disturbing activity is to be conducted;
- (6) Names, addresses, telephone numbers, telecopier numbers, if any, and e-mail addresses, if any, of all contractors and subcontractors who shall implement any BMP plan; provided, however, that if the contractor and the subcontractors have not been selected when the application for a permit is filed, the applicant shall furnish such information to the official within five days of the day or days on which the contractor and/or subcontractors are selected;
- (7) Name, address, telephone number, telecopier number, if any, and e-mail address, if any, of the qualified credentialed professional who has approved the BMP plan application (this is required for all land-disturbing activities except those related to the construction of individual single-family residences);
- (8) Each application for a permit must be accompanied by a map or a plot of the land on which the land-disturbing activity will be conducted and any other information that is required under the provisions of Section 6.

(b) The detail of the BMP plan must be commensurate with the size of the project, severity of the site condition and potential for off-site damage, as provided in Section 6 of this Ordinance.

#### Maintenance of records

Records of compliance with the provisions of the permit shall be maintained in the office of the owner or the applicant, shall be available to the contact person and shall be made available at any time for review by the official; provided, that if such records are maintained without the State of Alabama and, because of their size, cannot be transmitted to the official by telecopier, such records must be delivered to the official (at no expense to the city or the official) within 48 hours of the earliest of the receipt by the owner, applicant or contact person of a request by the official for such records.

#### Amended application; transfer of permit

(a) A permit may be amended, without the payment of an additional fee, upon the filing with the official of an amended or restated permit application, containing all changes from the original application: provided that the holder of the permit shows to the reasonable satisfaction of the official that there are no proposed changes which may affect the quantity and/or quality of stormwater runoff. If an amended or restated application is filed with the official with respect to land-disturbing activities for which a permit has been issued, such existing permit shall continue in effect, and the holder of the permit may continue to operate under it, unless and until an amended permit is issued in response to the amended or restated application ("amended permit") at which time the original permit shall expire and all land-disturbing activities must be conducted in accordance with the amended permit.

(b) A permit may be transferred, without the payment of an additional fee, upon the filing with the official of an application for transfer; provided that the holder and proposed transferee of the permit show to the reasonable satisfaction of the official that, upon or following the transfer, there will be no proposed changes which may affect the quantity and/or quality of stormwater runoff. If there is a request for the transfer of a permit and there are to be one or more changes in the operation of the project which is the source of the land-disturbing activity which may affect the quantity and/or quality of stormwater runoff, the new owner or operator of such project must apply to the city for a new permit prior to his involvement with the operation of such project.

#### Signatory requirements.

(a) All applications and correspondence required by this article to be submitted to the official shall be signed as follows:



(1) If an application or correspondence is submitted by a corporation, it must be signed by the president of the corporation or by a vice-president of the corporation who is in charge of a principal business function of the corporation, or any other person who performs similar policy-making or decision-making functions for the corporation, or who has been authorized to sign such applications and/or correspondence by a resolution adopted by the board of directors of the corporation. Proof of the authority of the signatory shall be provided to the official, upon his request.

(2) If an application or correspondence is submitted by a limited liability company, it must be signed by a manager or other person who serves the same or similar function as the president of a corporation.

(3) If an application or correspondence is submitted by a partnership, it must be signed by a general partner of the partnership.

(4) If an application or correspondence is submitted by a sole proprietorship, it must be signed by the proprietor.

(5) If an application or correspondence is submitted by a municipality, the state or the federal government or by any municipal, state or federal agency, it must be signed by either the chief executive officer or a principal executive officer of any such government or by either the chief executive officer, a principal executive officer or a senior executive officer having responsibility for the overall operations of a principal geographic unit of any such governmental 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 I am familiar with, the information in this document and such attachments. 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."

## **Section 5: EXCLUSIONS**

### **Requirements.**

No person may conduct any land-disturbing activity without (i) having obtained a permit from the official or (ii) having provided the official with a copy of an ADEM NPDES permit, any relevant notice of intent and a copy of the BMP plan.

Land-disturbing activities.

Land-disturbing activities shall include any land change which may result in soil erosion from water or wind and the movement of sediment to the MS4, including, but not limited to, the clearing, dredging, grading, excavating, transporting and filling of land, except that the term shall not include the following:

- (a) Any land change on property about which the owner of the property has submitted information to the official proving, to the satisfaction of the official, that such change does not cause drainage to the MS4 or cause adverse affect on adjacent and/or downstream property owners.
- (b) Agriculture.
- (c) Silviculture.
- (d) Such minor land-disturbing activities as home gardens, landscaping on individual residential lots (excluding landscaping performed by, or on behalf of, a developer or builder, who builds a house on any such lot), home repairs, home maintenance work, minor additions to houses, the construction, maintenance or repair of accessory structures and other related activities which result in minor soil erosion.
- (e) Minor land-disturbing activities such as individual connections for utility services and sewer services for single- or two-family residences, minor grading for driveways, yard areas and sidewalks, excluding any grading done by, or on behalf of, a developer or builder in connection with the construction of a house.
- (f) Minor maintenance, minor repair, and the minor extension of any existing underground public utility lines, except sewer lines; provided that the utility company which owns such lines has received approval of a general BMP plan from the official for such maintenance, repair, and extension; and provided further, that any utility company making a minor extension in connection with which the land disturbed consists of more than 1,000 linear feet must give the official written notice of such extension prior to the commencement of such minor extension.
- (g) The construction, repair or rebuilding of railroad tracks.
- (h) Minor subsurface exploratory excavations under the direction of soil engineers or engineering geologists.
- (i) The opening of individual burial sites in property which has been approved for such use by all necessary governmental authorities.
- (j) Digging of water wells or environmental monitoring wells.

The activities referred to in items (b) through (i) above may be undertaken without a permit; however, the persons conducting these excluded activities shall remain responsible for otherwise conducting such activities in accordance with the provisions of this ordinance and any other applicable law, including the proper control of sedimentation and runoff to the MS4 and/or to adjacent and/or downstream property owners and/or City Improvements. This Ordinance shall apply to such land-disturbing activities listed in this Section that drain to the MS4 and/or to adjacent and/or downstream property owners and/or City Improvements if a stormwater pollution problem is shown to be caused by such activity following monitoring procedures and complaints.

## **Section 6: BMP APPROVAL REQUIREMENTS**

### **General requirements.**

No land-disturbing activity shall be conducted within the city until either (i) a permit shall have been issued by the official allowing such activity pursuant to the provisions of this article or (ii) an authorization issued by ADEM under the ADEM NPDES permit, any relevant notice of intent and a copy of the BMP plan has been submitted to the official. The ADEM NPDES permit, notices of intent, and BMP plans shall be kept on file by the official and shall be on the job site, or other reasonable location, for inspection by the official until the project has been completed and notice of termination of the relevant NPDES permit has been sent to ADEM. The ADEM NPDES permits shall be required in addition to any building permits or other local permits required for land-disturbing activities or other activities on the site. The following are BMP approval requirements:

(a) Persons conducting land-disturbing activities shall take all reasonable measures referred to, or provided for, in this article to protect all public and private property from damage caused by such activities and to reduce stormwater pollution to the maximum extent practicable.

(b) No land-disturbing activities subject to this article shall be undertaken except in accordance with the following requirements:

1. The person(s) proposing to conduct any land-disturbing activity or an agent, contractor or other representative of such person must contact the official at least five business days before commencement of the land-disturbing activity to advise the official of the commencement of such land-disturbing activity, unless, for good cause shown, the official permits such person, contractor, agent or other representative to contact him nearer to the date of the commencement of such land-disturbing activity.

2. Other than land-clearing activities required to install the appropriate BMP in accordance with BMP plans, any downslope erosion and sediment control measures, on-site stream channel protection and upslope diversion of drainage required by the BMP plan shall be in place and functional before any clearing or earth-moving operations begin, and shall be constructed and maintained throughout the construction period.

Temporary measures may be removed at the beginning of the workday, but shall be replaced at the end of the workday.

3. The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. Any slope or fill which has been graded shall, within 14 days of the completion of such grading or the completion of any phase of grading, be planted or otherwise provided with ground cover, materials, devices or structures sufficient to restrain erosion. The BMPs shall remain in place in accordance with the BMP plan until the graded slope or fill is stabilized.

4. Adequate protective measures shall be provided for the containment of hazardous substances, including petroleum products, lubricants, paint and any other materials which may pollute the MS4 and/or adjacent and/or downstream property owners and/or City Improvements.

5. All control measures shall be checked, and repaired as necessary, monthly in dry periods and within 24 hours after any rainfall at the site of .75 inch within a 24-hour period. During prolonged rainfalls, daily checking and, if necessary, repairing shall be done. The permittee shall maintain written records of such checks and repairs, which records shall be subject to the inspection of the official at any reasonable time.

6. The BMP plan shall show the size of disturbed area and a schedule of the projected starting and completion dates of the land-disturbing activity.

7. A site plan, accompanied by a written description of BMPs which are shown on the site plan, and a schedule of implementation during land-disturbing activities and construction shall be furnished to the official prior to the commencement of any land-disturbing activities.

8. A description of, and procedures for, proper storage, handling and disposal of construction materials stored on-site which could contribute to the pollutant loading to the MS4 and/or to adjacent and/or downstream property owners and/or City Improvements, shall be furnished to the official prior to the commencement of any land-disturbing activities.

#### Design and performance standards.

The following are required for all land-disturbing activities except those related to the construction of individual single-family residences.

All applications for a permit must contain, or be accompanied by, the materials and information necessary to satisfy the above applicable requirements and must be accompanied by a soil erosion and sediment control plan ("control plan"). The control plan shall be prepared by a qualified credentialed professional and shall include the following:

- (a) The control plan shall be accompanied by a map or plot of the property upon which land-disturbing activities are to be conducted, prepared by a registered land surveyor, showing the present contour lines of such property and the present contour lines of at least the nearest 25 feet of the properties immediately adjacent to such property and the existing grades and elevations of all streets which abut such property. Such map or plot shall show all existing drainage facilities and all natural drainage on such property and on such adjacent property.
- (b) All proposed contours, the proposed temporary and permanent disposition of surface water and the proposed drainage structures; provided, however, the control plans for utility projects, except sewer projects, shall not be required to show the proposed contours.
- (c) The proposed contours in the map or plot shall be depicted in contour intervals of two or fewer feet; provided, however, the control plans for utility projects, except sewer projects, shall not be required to show the proposed contours. All maps, plots and plans submitted shall be on a sheet of paper at least 24 inches by 36 inches and drawn to a scale of not less than one inch equals 100 feet. Contour intervals of more than two feet and maps, plots or plans which are smaller than the required size may be approved by the official, upon written request and for good cause shown.
- (d) The control plan shall contain a description of the existing site conditions, a description of adjacent topographical features, the information necessary to determine the erosion qualities of the soil on the site, potential problem areas of soil and erosion and sedimentation, soil stabilization specifications, stormwater management considerations, a projected time schedule for the commencement and completion of the land-disturbing activity, specifications for BMP plan maintenance during the project and after the completion of the project, clearing and grading limits, and all other information needed to depict accurately the solutions to potential soil erosion and sedimentation problems to the MS4. The control plan shall include the series of BMPs and shall be reviewed by, and subject to the approval of, the official prior to the issuance of the permit.
- (e) Where appropriate, in the opinion of the qualified credentialed professional who prepares the control plan, to the maximum extent practicable, the control plan shall include measures to reduce erosion and other adverse impact to MS4 drainage which would result from an increase in the volume of water and the rate of runoff of water during the conduct of land-disturbing activities.
- (f) Whenever the official determines that a control plan does not comply with this section, he shall notify the applicant in writing of the ways in which the control plan does not comply with this section.
- (g) To the maximum extent practicable, sediment in runoff water must be minimized by using appropriate BMPs.

(h) Structural controls shall be designed and maintained as required to minimize erosion and pollution to the maximum extent practicable. All surface water flowing toward the construction area shall, to the maximum extent practicable, either be passed through the site in a protected channel or 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 the disturbed areas or drainage areas, to minimize erosion and to control sediment, to the maximum extent practicable. Discharges from sediment basins and traps must be conducted in a manner consistent with good engineering practices. Sediment-laden, or otherwise polluted, water discharged to MS4 must be addressed in a manner consistent with good engineering practices and the requirements of this section.

(i) Control measures shall be maintained as an effective barrier to sedimentation and erosion in accordance with the provisions of this section.

(j) There shall be no distinctly visible floating scum, oil, or other matter contained in the stormwater discharge. The stormwater discharge to an MS4 must not cause an unnatural color (except dyes or other substances discharged to an MS4 for the purpose of environmental studies and which do not have a harmful effect on the bodies of water within the MS4) or odor in the community waters. The stormwater discharge to the MS4 must result in no materials in concentrations sufficient to be hazardous or otherwise detrimental to humans, livestock, wildlife, plant life or fish and aquatic life in the community waters. No items which are prohibited to be added or included in the MS4 may be transferred to any downstream or adjacent property owners or onto City Improvements.

(k) When the land-disturbing activity is finished and stable vegetation or other permanent controls have been established on all remaining exposed soil, the owner of the land where the land-disturbing activity was conducted, or his authorized agent, shall notify the official of these facts, and request a final inspection. The official shall then inspect the site within five working days after receipt of the notice, and may require additional measures to stabilize the soil and control erosion and sedimentation. If additional measures are required by the official, written notice of such additional measures shall be delivered to the owner, and the owner shall continue to be covered by the permit issued with respect to the land-disturbing activity until a final and complete inspection is made and the official approved the project as having been satisfactorily completed and delivers to the owner, within ten days of the date of such approval, a certification of completion showing that the requirements of the permit have been fulfilled. At that time the site and/or the project constructed thereon may come under the operation of other ordinances of the city.

(l) The control plan must be accompanied by a surety bond or a cash bond, with the city having the right to determine which type of security shall be furnished. A surety bond or a cash bond (a surety bond and a cash bond shall be herein collectively referred to as "security") shall be furnished to the city in accordance with the following provisions:

1. The official shall require a surety bond or a cash bond in such amount as specified herein to assure that the work, if not completed or if not in accordance with the permitted

plans and specifications, will be corrected to eliminate hazardous conditions, erosion and/or drainage problems. In lieu of a surety bond required by the city, the owner may file a cash bond with the city in an amount equal to that which would be required in the surety bond.

2. The security shall contain, or have attached to it as an exhibit, a legal description of the site. The security shall remain in effect for such reasonable period of time as may be required by the official.

3. The security for clearing operations only shall be in the amount of \$1,000.00 per acre for each acre, or fraction of an acre, disturbed or affected by such operations.

4. The security for earthwork or clearing and earthwork operations shall be in the amount of \$3,000.00 per acre for each acre, or fraction of an acre, disturbed or affected by such operations.

5. Security equal to double the amounts required in subsections 3. and 4. herein shall be required where clearing or earthwork is performed in areas designated as floodways, floodplains or areas susceptible to landslides.

6. Each surety bond must be issued by a surety company which is qualified to do business in Alabama and with [which] is otherwise reasonably satisfactory to the city.

## **Section 7:     **MONITORING AND INSPECTION****

### **Monitoring.**

The official may periodically monitor the quality of stormwater and the concentration of pollutants in stormwater discharges from land-disturbing activities permitted to the MS4 and/or to adjacent and/or downstream property owners and/or City Improvements pursuant to this article.

### **Detection of illicit connections, improper disposal and/or discharges.**

The official shall take appropriate steps to detect and eliminate illicit connections and eliminate improper disposal and or discharge to the MS4 and/or to adjacent and/or downstream property owners and/or City Improvements, including the required dry-weather and wet-weather programs to screen illicit connections and improper discharges and identify their source or sources from land-disturbing activities.

### **Inspections.**

(a) The official, bearing proper identification, may enter and inspect all land-disturbing activities for regular periodic inspections, investigations, monitoring, observations, measurements, enforcement, sampling and testing to verify compliance with the provisions of

this article and the specific BMP plans and control plans for such land-disturbing activities. The official shall notify the owner of such property, his contact person or his representative on the construction site prior to inspection, and the inspections shall be conducted at reasonable times. The owner or operator of a construction site with respect to which an NPDES permit has been issued shall provide the official with the information required in subsection 38-170(c) prior to the commencement of the work on the construction site. The official shall inspect the construction site to confirm the implementation and the maintenance of BMP plans, otherwise, such site shall be inspected when the official believes, as a result of complaints or monitoring activity, that land-disturbing activities on the site are causing a substantial pollutant loading which threatens the MS4 and/or adjacent and/or downstream property and/or City Improvements.

(b) Upon the refusal by any property owner to allow the official to enter, or to continue an inspection on, a site on which land-disturbing activities or construction work is being done; the official shall terminate the inspection or confine the inspection to areas to which no objection is raised. If an agent of the official was making, or attempting to make, such inspection, the agent shall promptly report to the official the refusal and the reasons for the refusal, if the reasons are known by the agent. The official may seek appropriate legal remedies to enable him to make or complete such inspection, including seeking appropriate legal remedies from any court having jurisdiction over the matter. If the court grants a remedy to the official, the property owner must reimburse the city all of the costs and expenses incurred by the city in obtaining such remedy, including court costs and reasonable attorneys' fees.

(c) If the official has reasonable cause to believe that discharges from the land-disturbing activities to the MS4 and/or to adjacent and/or downstream property and/or City Improvements may cause an imminent threat to human health or the environment, an inspection of the site may take place at any time and without notice to the owner of the property or a representative on site. The official shall present proper credentials upon request of the owner or his representative.

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

## **Section 8: ENFORCEMENT AND ABATEMENT**

### **Unauthorized discharge a public nuisance.**

Any discharge of stormwater made in violation of this article or of any condition of a permit issued pursuant to this article is hereby declared a public nuisance and shall be subject to correction and or abatement in accordance with applicable law.



The following direct or indirect discharges into the MS4 and/or to adjacent and/or downstream property owners and/or City Improvements are allowable under the terms of this article unless determined by the official to be a source of contamination to the community water: landscape irrigation; uncontaminated water from foundation and footing drains; discharges from springs; lawn watering; and discharges from firefighting activities.

Accidental discharges.

(a) In the event of any discharge of a hazardous substance or a significant spill of a hazardous substance to the MS4 and/or to adjacent and/or downstream property owners and/or City Improvements which could constitute a threat to human health or the environment, the owner or operator of the site shall give notice to the official and the local emergency management authority in the same manner and within the same time as is required by state regulations for notice to ADEM.

(b) The owner or operator of such property shall take all reasonable steps to minimize any adverse impact to the community waters caused by discharges to the MS4 and/or to adjacent and/or downstream property owners and/or City Improvements, including such improved or additional monitoring as may be necessary to determine the nature and impact of the discharge. Absent a compelling public interest to the contrary, it shall not be a defense for the owner or operator in an enforcement action that it would have been necessary to halt or reduce the business or activity of the site, or any project or facility thereon, to maintain water quality and minimize any adverse impact that the discharge may cause.

NPDES permits for stormwater discharge associated with construction activities.

(a) Compliance with the conditions, limitations and restrictions set forth in an ADEM NPDES permit shall be deemed compliance with the terms of this article, except as specifically noted in Sections 7 and 8.

(b) No enforcement action shall be taken by the city for a violation of the terms of this article if any of the following has occurred:

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

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

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

(c) Any determination or resolution made by ADEM with respect to an alleged violation shall be final, and the alleged violation shall not be made the subject of any additional enforcement action by the city; provided, however, that an enforcement action may be pursued by the city for continued or continuing substantial violations, subject to the provisions of section 38-227(b) and pursuant to the following:

- (1) ADEM will provide the official with access to the ADEM NPDES permits issued with respect to each property within its jurisdiction, including inspections and notification of any enforcement actions taken by ADEM.
- (2) The official will notify ADEM and the permit holder, in writing, when the official demonstrates that an NPDES permit holder is causing a substantial pollutant loading to the MS4.
- (3) The official will rely on ADEM to regulate, and to take enforcement actions against, permittees until such time as a permittee is in continuing substantial violation of its NPDES permit and ADEM has failed to respond in a timely manner in accordance with Code of Ala. 1975, § 11-89C-1 et seq. If there is a continuing substantial violation of an ADEM NPDES permit and ADEM fails to respond as stated above, the permittee shall be subject to this article for that violation.

Immediate threats to public health or welfare.

Notwithstanding any other provision in this article to the contrary, in the event of an immediate threat to the public health or welfare, the official may take all appropriate measures to remove or alleviate such threat.

Notification; enforcement remedies.

(a) Notification of violation: Whenever the official finds that any person is in violation of any provision of this article, or any order issued hereunder, the official or his agent may serve upon such person written notice of the violation. Within ten calendar days of the date of such notice, an explanation of the violation and a plan for the satisfactory correction and future prevention thereof, including specific required actions, shall be submitted to the official. Submission of such plan shall in no way relieve such person in violation of this article of liability for any violations occurring before or after receipt of the notice of violation.

(b) Compliance orders: When the official finds that any person has violated, or continues to violate, this article, he may issue a compliance order to the violator, directing that, within a specified time period, adequate structures and devices be installed, or procedures implemented, and properly operated, or other action be taken, to remedy such violation. Compliance orders may also contain such other requirements as may be reasonably necessary and appropriate to address such violation, including the construction of appropriate structures, installation of devices and self-monitoring and management practices.

(c) Cease and desist orders: When the official finds that any person has violated, or continues to violate, this article or any order issued under this article, the official may issue an order to such person to cease and desist all such violations immediately, and direct such person in violation of this article to:

- (1) Comply with this ordinance forthwith; or
- (2) Take such appropriate remedial or preventive action as may be required to address properly a continuing or threatened violation of this article, including halting operations and terminating the discharge.

#### Unlawful acts, misdemeanor

It shall be unlawful for any person to:

- (a) Violate any provision of this article;
- (b) Violate the provisions of any permit issued pursuant to this article;
- (c) Fail or refuse to comply with any lawful notice to abate issued by the official which has not been appealed to the Zoning Board of Adjustment within the time specified by such notice; or
- (d) Violate any lawful order of the board.

Such person shall be guilty of a misdemeanor; and each day of such violation, failure or refusal to comply with this article shall be deemed a separate offense and punishable accordingly. Any person found to be in violation of any of the provisions of this ordinance shall be punished by a fine of not less than \$100.00 and not more than \$500.00 and/or up to 180 days in jail.

#### Judicial proceedings and relief.

(a) The official may initiate proceedings in any court of competent jurisdiction against any person who has, or who, the official has reason to believe, is about to:

- (1) Violate any provision of this article;
- (2) Violate any provision of a permit;
- (3) Fail or refuse to comply with any lawful order issued by the official which has not been timely appealed to the board; or
- (4) Violates any lawful order of the board.

(b) The official, with the consent of the city council, may also initiate civil proceedings in any court of competent jurisdiction seeking monetary damages for any damages caused to public stormwater facilities by any person, and may 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 official or the board.

**Section 9: APPEAL PROCESS**

(b) Any person aggrieved by an order of the official may appeal said order or determination to the City of Springville's Zoning Board of Adjustment. (the "board") and have such order reviewed by the board. A written notice of appeal shall be filed with the official and with the board, and such notice shall set forth with particularity the order complained of, and the relief sought by, the person filing the appeal. The appeal may be heard at a regular meeting of the board or the chairman of the board may call a special meeting of the board to consider such appeal. The board may, in its discretion, suspend the operation of the order until the board has acted upon the appeal, which suspension must be made in writing and delivered to the official and the person who filed the appeal by personal delivery or by certified or registered mail, return receipt requested.

Variances.

(a) The board may grant variances from the requirements of this article; provided that to do so would not result in the violation of the NPDES permit ALS000001 or any state or federal law or regulation; and provided further that exceptional circumstances, applicable to the site with respect to which the variance is requested, exist so that strict adherence to the provisions of this article would result in unnecessary hardship and the granting of such variance would not result in a condition contrary to the intent of this article.

(b) A party seeking a variance must submit a written petition for a variance, which sets forth the specific variance sought and the reasons therefore, with supporting data as to why the requested variance should be granted. The petition shall include all information necessary to evaluate the requested variance. The petition for a variance shall be filed with the official.

(c) The official shall conduct a review of the petition for a variance within ten working days after his receipt of such petition and may either support, or object to, the petition. The official shall prepare a written statement of support of, or a written statement of the reason or reasons for his objection to, such petition, and deliver a copy of such statement to the board and to the person requesting the variance.

(d) Once the official has issued such statement or such ten-day period for review has expired, the petition shall be subject to board action at the next regularly scheduled meeting of the board or at a special meeting of the board, called at the discretion of the chairman of the board.

**Section 10: MISCELLANEOUS**

Notices.

Whenever the city is required or permitted to:

- (a) Give a notice to any party, such notice must be in writing; or
- (b) Deliver a document to any party, such notice or document may be delivered by personal delivery, certified mail (return receipt requested), registered mail (return receipt requested) or a generally recognized overnight carrier, to the address of such party which is in the records of the city or is otherwise known to the city.

References.

Whenever a section or subsection is referred to in this article, unless the context clearly indicates the contrary, such reference shall be to a section or a subsection of this Ordinance.

**Section 11:** That all ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

**Section 12:** That this ordinance shall become effective as provided by law after passage, approval and publication.

**ADOPTED** and **APPROVED** this the 17<sup>th</sup> day of August, 2009.

CITY OF SPRINGVILLE, ALABAMA

By: \_\_\_\_\_  
William Isley, Mayor

ATTEST: \_\_\_\_\_  
Brenda Roberts, City Clerk

\_\_\_\_\_  
Jennifer Milner, Assistant City Clerk

**CERTIFICATION**

I, the undersigned, City Clerk of the City of Springville, Alabama, do hereby, certify that the above is a true and correct copy of an Ordinance duly adopted by the City Council at its meeting held on August 17, 2009 and as same appears of record in Minute Book of said City, and approved by the City Council on the 17<sup>th</sup> day of August, 2009.

GIVEN UNDER MY HAND AND CORPORATE SEAL of the City of Springville,  
Alabama, this \_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Brenda C. Roberts, City Clerk

\_\_\_\_\_  
Jennifer Milner, Assistant City Clerk