

ju6lwrt.01
Recommended by:
Finance and Administration Committee
Submitted by: Rowena Teague, Law

ORDINANCE NO. 99-131

SOIL EROSION AND SEDIMENT CONTROL ORDINANCE

An Ordinance to Amend in total Ordinance 88-148, known as the Soil Erosion and Sediment Code of the City of Birmingham of the General Code of the City of Birmingham, 1980 to add provisions and amend various existing provisions in order to comply with the City's obligations under the Clean Water Act and to be in compliance with the City's NPDES permit ALS000001 in addition to protecting the safety, use and stability of the City's public ways, drainage facilities and other public infrastructure and providing for the health, safety and welfare of the citizens of Birmingham. as follows:

RECITALS

WHEREAS, the sedimentation of streams, lakes and other waters of this state constitutes a major pollution problem, the discharge and surface water runoff of sediment adversely affects the safety, use and stability of public ways, drainage channels and private property, and otherwise poses a threat to the public health, safety and welfare ; and

WHEREAS, sedimentation occurs from the erosion or depositing of eroded soil and other materials into the waters which are discharged or the run off from land-disturbing activities, and control of erosion and sedimentation is deemed vital to the public interest and is necessary to the public health and welfare, and expenditures of funds for an erosion and sedimentation control program shall be deemed to benefit the public health and welfare; and

WHEREAS, the purpose of this ordinance is to provide for the creation, administration, control and enforcement of a program to reduce erosion and sedimentation problems and which will permit the development in the City of Birmingham, ("City") to continue with the least detrimental effects from pollution by sedimentation; and

WHEREAS, ADEM, pursuant to the authority delegated to it under the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, has required the City to obtain an NPDES permit for storm water discharges from the MS4, effective March 1, 1995 and, therefore, the City is subject to the federal storm water laws and regulations contained in 33 U.S.C. ¶ 1342 (P) and 40 C.F.R. ¶ 122.26, and is required to adopt a local erosion control ordinance. Act No. 95-775 of the Alabama State Legislature (Code of Alabama 1975, § 11-89C 1-14) and other provisions of the Code of Alabama 1975 grant the authority to adopt such ordinances

to the governing bodies of all Class 1 municipalities within the State of Alabama; and

WHEREAS, it is the purpose of this ordinance to protect and maintain the environment of the City and the short-term and long-term public health, safety and general welfare of the citizens of the City by controlling discharges and surface runoff of eroded soil, sediment and other pollutants, thereby, maintaining and improving 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 the City, preserving and protecting the City's investment in the safety and use of its roads, rights of way, storm sewer system and other public property, and preventing the creation of hazards and/or nuisances; and

WHEREAS, this ordinance controls the discharge and surface runoff of eroded soil, sediment and other pollutants from land on which land-disturbing activities are conducted, to the maximum extent practicable, and provides enforcement procedures and penalties to ensure compliance with such controls; and

WHEREAS, it is further the purpose of this ordinance to enable the City to comply with the NPDES permit and applicable regulations (40 C.F.R. ¶ 122.26) for storm water discharges; and

WHEREAS, the objectives of this ordinance are to:

- (a) control (1) the discharge and surface runoff of eroded soil, sediment and other pollutants associated with land-disturbing activities and (2) the quality of storm water discharged from sites of land-disturbing activity;
- (b) prohibit illicit discharges to the Municipal separate Storm Sewer System of the City of Birmingham ("MS4");
- (c) control the discharge of any spills, dumping or disposal of materials other than storm water from sites of land-disturbing activity; and
- (d) provide for inspections, surveillance and monitoring procedures necessary to determine compliance and noncompliance with any land-disturbing activity permits.

WHEREAS, said Act 95-775 authorizes certain municipalities, including the City of Birmingham, to form a public corporation to administer and oversee the requirements of the NPDES permit ALS000001 on behalf of each municipality; and

WHEREAS, Jefferson County, Alabama and twenty-three municipalities within Jefferson County, including the City of Birmingham formed such a public corporation on March 13, 1997, under the name of Storm Water Management Authority, Inc. ("Authority"); and

WHEREAS, NPDES permit ALS000001 requires the control of sedimentation discharged into the MS4 as well as requiring control of pollution to the MS4 from other pollutants; and

WHEREAS, the City of Birmingham and several other members of the Authority have previously enacted Soil Erosion and Sediment Control Ordinances in their respective jurisdictions; and

WHEREAS, the control of soil erosion and discharge of sediment as a result of land-disturbing activities, in addition to concerns for the quality of storm water runoff and discharge, also is necessary and desirable to protect the safety, use or stability of public

ways, prevent public nuisances, endangerment to property and hazards to persons; and

WHEREAS, the City, in order to comply with NPDES permit ALS000001 and provide for the safety, health and welfare of its inhabitants, shall provide for the administration and review of construction best management practices plans ("BMP Plan"), and inspection of sites within its municipal limits on which land-disturbing activities are conducted.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Birmingham, ("City Council") as follows:

SECTION 1:

"CHAPTER 1 - GENERAL

Section 100 Purpose, Title

(a) The purpose of this Code is to safeguard life, limb, property and the public health, safety and welfare by regulating clearing, earthwork and other land-disturbing activities and by requiring temporary and permanent provisions for erosion and sediment control.

(b) This Ordinance shall be known as the Soil Erosion and Sediment Control Code of the City of Birmingham, Alabama.

Section 101 Hazards

(a) Whenever the City Engineer is made aware of and determines that any existing land condition or exposed surface created or caused by means of clearing, earthwork or other land-disturbing activity has: (1) become a hazard to life and limb, (2) endangered property, (3) created a nuisance, (4) adversely affected the safety, use or stability of a public way or drainage channel, or (5) caused erosion, the owner, upon notice in writing from the City Engineer, shall rectify or eliminate the stated hazardous condition within the time period specified in the notice to bring the property into conformance with requirements of this Ordinance. It shall be a violation of this Ordinance for the owner to fail to eliminate the hazardous condition within that time.

(b) In the event the owner fails to eliminate the hazardous condition within the required time, the City Engineer may cause the hazardous condition to be eliminated as provided in section 11-47-117, section 11-47-118 and/or section 11-49-2, Code of Alabama, 1975.

Section 102 City Engineer, duties

(a) The City Engineer shall provide for the administration and enforcement of the provisions of this Ordinance and further to be responsible, on behalf of the City, for enforcement of the provisions of this ordinance to meet the City's obligations as a part of the storm water management program under NPDES permit ALS000001.

(b) When the City Engineer determines that the City needs assistance in its enforcement of the provisions of this ordinance, or that assistance would be helpful in the enforcement of this ordinance, the City Engineer may request the assistance of the Authority on behalf of the City.

(c) The Authority shall be requested to assist the City and act as the City Engineer's authorized agent in the requirements contained in this Ordinance for

regulation, inspection, monitoring, and testing for pollutant loading to the City's MS4.

Section 103 Definitions.

For the purposes of this ordinance, the following words and terms shall have the meaning assigned to them in this section. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number, the words he, him, and his shall include both masculine and feminine. The word "shall" is mandatory and the word "may" is permissive. Words not defined shall have their common and ordinary meanings.

Accidental Discharge - a discharge prohibited by this Article into the MS4 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 ("ADEM") - the State of Alabama regulatory agency, created under Code of Alabama 1975, §§ 22-22A-1, et seq., responsible for administering and enforcing the storm water laws of the United States of America and the State of Alabama.

Applicant - any person, firm, corporation, entity or governmental agency who is the owner or authorized agent of the owner of land on which land-disturbing activity is proposed and who executes the necessary forms as the responsible party to procure a soil erosion and sediment control permit.

Authority - Storm Water Management Authority, Inc.

Best Management Practices ("BMP") - activities, prohibitions of practices, maintenance procedures and management practices designed to prevent or reduce the discharge or surface runoff of sediment or other pollution. 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 ("BMP Plan") - a set of drawings and/or other documents which contain all of the information and specifications pertaining to BMP.

City Engineer - the City Engineer or his duly authorized representative.

Clean Water Act ("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 from the land of trees, shrubs, grass, brush and/or other varied

ground cover and vegetation useful for windbreaks, water retention and the maintenance of topsoil, 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.

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.

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.

Earthwork - Land-disturbing activity as defined herein but shall not include clearing.

Erosion - wearing away of land surface as a result of the movement of wind or 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 man-made conveyance connecting an illicit discharge directly to the MS4.

Illicit Discharge - any discharge that is not composed entirely of storm water, except discharges pursuant to a NPDES permit (other than NPDES Permit ALS000001) and discharges which are specifically excepted from this ordinance.

Individual Single Family Dwelling - A single dwelling being constructed by or for one or more individuals as opposed to a developer constructing a dwelling for resale or as part of a development of two or more dwellings.

Land-disturbing activity - any land change which may result in soil erosion from water or wind and the movement of sediment, including, but not limited to, the clearing, dredging, grading, compaction, excavating, transporting and filling of land.

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 storm water.

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 soil erosion and sediment control permit issued pursuant to this ordinance.

Permittee - a person, party, government entity and all others who receive a soil erosion and sediment control permit.

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

Pollutant Loading - the amount of a pollutant, including eroded soil or sediment, 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, registered landscape architect, registered architect, registered geologist or engineering geologist, or Registered Environmental Manager as determined by the National Registry of Environmental Professionals ("NREP"), who can document the professional certification, registration, or credentials acceptable to the City Engineer 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 in good standing with the authority granting the registration. The qualified credentialed professional must be familiar, and have expertise, with 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 any permit issued pursuant to this Ordinance.

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.

Storm Water - 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.

Storm Water Management - the incorporation of a variety of activities and equipment into a plan to address concerns associated with Storm Water for the purpose of preventing pollution, improving water quality, keeping pollutants, including eroded soil and sediment, out of runoff, and the implementation of Best Management Practices.

Storm Water Management Program (herein referred to as "the Management Program" or "the Program") - a program for management of storm water runoff and sediment and pollution control under NPDES permit ALS000001 which covers the duration of the permit. A requirement of the program and permit ALS000001 is to reduce the discharge of pollutants, including sediment and eroded soil, to the maximum extent practicable using management practices control techniques and system design and engineering methods and such other provisions which are appropriate.

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 Storm Water drainage systems or newly constructed systems to prevent or minimize the discharge of pollutants, including eroded soil and sediment, 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 man-made changes to the land; qualitative control by a system of vegetative, structural and other measures that reduce or eliminate pollutants, including eroded soil and sediment, that might otherwise be carried by surface runoff.

Turbidity - a condition in water or wastewater caused by the presence of suspended matter. A measure of fine suspended matter in liquids.

Utility - a publicly regulated 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 storm water 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 ordinance would result in unnecessary hardship and the granting of such modification would not result in a condition contrary to the intent of this ordinance.

CHAPTER 2 - PERMITS AND PLANS

Section 200 Permit required .

It shall be unlawful to commence or continue to conduct or for the owner to allow the commencement or conduct of any land-disturbing activity that is not exempted from obtaining a Permit under this ordinance without first having obtained a soil erosion and sediment control permit from the City Engineer. A separate permit shall be required for each site. The issuance of the Permit shall not excuse the owner from the need to obtain other required state and local permits or licenses.

Section 201 Permit exemptions.

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

- (1) Agriculture.
- (2) Silviculture.
- (3) This shall include 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, the maintenance or repair of accessory structures and other related activities which result in minor soil erosion.
- (4) 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.
- (5) 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 Authority 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 City Engineer written notice of such extension prior to the commencement of such minor extension.
- (6) The construction, repair or rebuilding of railroad tracks.
- (7) Minor subsurface exploratory excavations under the direction of soils engineers or engineering geologists.
- (8) The opening of individual burial sites in property which has been approved for such use by all necessary governmental authorities.
- (9) Digging of water wells or environmental monitoring wells.

(b) The activities referred to above may be undertaken without this 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.

Section 202 Application review.

(a) It shall be the duty of the owner of the land on which land-disturbing activity is proposed to be conducted, or his duly authorized agent, to file with the City Engineer an application which shall include the owner's BMP Plan. 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. Once a complete application, including all required submittals, has been filed, the City Engineer shall accept or reject the application within fourteen (14) days of the day it is filed with the City Engineer. Incomplete applications shall not be deemed to have been filed. If the application is rejected, the City Engineer must inform the Applicant, in writing, of the reasons for its rejection. If the Applicant, on one or more occasions, revises the BMP Plan or submits to the City Engineer additional documents or written information in connection with the application, the City Engineer must either accept the application as revised or make a written response to the Applicant of the reasons for rejection within fourteen (14) days of the day such revised BMP Plan or additional documents or information are submitted to the City Engineer.

(b) In order for a permit to be issued the application must meet the requirements of this Ordinance.

Section 203 Permit Application Fee.

(a) A fee for each soil erosion and sediment control permit shall be paid to the City Engineer as set forth below:

SOIL EROSION AND SEDIMENT CONTROL PERMIT FEES

	Fee
<i>Individual single family residence a flat rate of.....</i>	\$10.00
<i>All other land-disturbing activity and erosion control measures value</i>	
\$1,000 or less	\$ 10.00
\$1,001 to \$10,000	40.00
\$10,001 to \$25,000	120.00
\$25,001 to \$50,000	190.00
\$50,001 to \$100,000	250.00
\$100,001 to \$200,000	500.00

Plus 0.05% for all over \$200,000

This fee for soil erosion and sediment control shall include the cost for all land-disturbing activity, temporary and permanent erosion and sediment control measures, vegetation and drainage, and shall be based on the contract value or engineer's estimate of those items.

(b) The fee for a soil erosion and sediment control permit authorizing work additional to that under a current, valid permit shall be the difference between the fee paid for the original permit and the fee shown for the entire project.

(c) The fee for a soil erosion and sediment control permit for which application

is not made until after work has begun on the project shall be equal to double the amount of the fee required for the entire project.

Section 204 Required Application Contents.

- (a) All applications for a Permit must include the following information:
- (1) identify and describe the work to be performed and the proposed use of the site;
 - (2) name, address, telephone number, and cellphone number, pager number, telecopier number, and e-mail address, if any, of each of the following:
 - a. the applicant
 - b. the owner of the project;
 - c. the owner of the property on which the project is to be located; and
 - d. the ground lessee of the property, if the applicant is not the owner of the project or the property;
 - e. contact person who is a resident of Alabama if not one of the above;
 - f. 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 City Engineer within five (5) days of the day or days on which the contractor and/or subcontractors are selected, provided however such information shall be provided prior to any such entities beginning work on the site
 - g. the qualified credentialed professional who has approved the BMP Plan (this is required for all land-disturbing activities except those related to the construction of individual single-family residences);
 - (3) legal description and address, if any, of the property upon which the land-disturbing activity is to be conducted and also a description of the size and particular location on the site for the proposed land-disturbing activity;
 - (4) 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 Chapter 2.
 - (5) include a soil survey where topographically or geologically difficult sites are encountered which shall detail any limitations on use and development which may be restrictive to construction, drainage, soil integrity, slope stability and revegetation of property;
 - (6) Be accompanied by three sets of each category of plans and specifications as required by this Ordinance;
 - (7) State the estimated cost of work involved, including any temporary and/or permanent erosion and sediment control measures drainage systems and revegetation;(this is required for all land-disturbing activities except those related to the construction of individual single-family residences)

- (8) State the schedule of the projecting starting and completion dates of the land-disturbing activity;
- (9) Be signed by the owner, or his authorized representative as provided in Section 212, who may be required to submit evidence to indicate such authority; and
- (10) Give such other information as reasonably may be required by the city engineer to comply with the purposes and intent of this Code.

Section 205 Plans required.

(a) Each application for a soil erosion and sediment control permit shall be accompanied by three (3) sets of BMP plans and specifications and, if required, supporting data and affidavits prepared and signed by a registered architect, landscape architect, civil engineer, geologist, geotechnical engineer or environmental manager.

(b) Each application for a soil erosion and sediment control permit, except applications related to the construction of an individual single family residence, shall require a soil erosion and sediment control plan ("Control Plan").

(c) A drainage plan shall be required as set out in section 207.

(d) Soil engineering and engineering geology reports will be required if deemed necessary by the City Engineer, owner's architect, landscape architect or civil engineer and/or may also be required by the City Engineer in fragile, complex or hazardous areas as provided in section 208.

Section 206 Plan Standards

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

(b) All plans and specifications required to be submitted, including BMP plans for an individual single family residence, should be prepared in a manner which will assure the following standards are met:

- (1) Protect and preserve existing natural drainage channels.
- (2) Include design provisions to retain off-site natural drainage patterns.
- (3) Assure that waters drained from the development are free of point and nonpoint sources of pollutants, including eroded soil and sediment, and do not cause water problems on adjacent properties to any greater extent than occurs in the absence of development.
- (4) Assure that waters are drained from the development in such a manner that will not cause erosion to any greater extent than would occur in the absence of development.
- (5) Provide that all roof and foundation drains shall be discharged to natural drainage, engineered detention ponds, curb face outlets, or to a public or approved private storm drain.

(6) All drainage facilities shall be designed to carry waters to the nearest practicable drainage way as provided by the City Engineer and/or other appropriate jurisdiction designated as a safe place to discharge such waters. If drainage facilities discharge other than into an approved drainage way, riprap or other erosion protection may required.

(7) 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.

(8) Cut-fill operations shall be kept to a minimum.

(9) Adequate provisions shall be provided to minimize drainage of surface water from the cut face of excavations or the sloping surfaces of fills.

(10) Slopes shall be no steeper than are safe for the intended use and shall not endanger adjoining property. The slope stability design shall be within normally accepted engineering practice and shall be provided with surface and subsurface drainage 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.

(11) Fills shall not encroach upon natural watercourses or constructed channels in a manner so as to impede water flow or adversely affect other property owners.

(12) Grading equipment shall cross natural drainage ways by the means of bridges or culverts except when such methods are not feasible and provided, in any case, that such crossings are kept to a minimum.

(13) To the maximum extent practicable, sediment in runoff water must be minimized by using appropriate BMPs. Structural controls shall be designed and maintained as required to minimize erosion and pollution to the maximum extent practicable.

(14) Discharges from sediment basins and traps must be conducted in a manner consistent with good engineering practices. Sediment-laden, or otherwise polluted, water discharged from the site must be addressed in a manner consistent with good engineering practices and the requirements of this Ordinance.

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

(c) Plans and specifications for all land-disturbing activity which are not for an individual single family residence shall also meet the following standards:

(1) Assure that if drainage levees or flow rates currently impact or will temporarily or permanently increase onto adjacent properties, detention facilities or other acceptable remedies or conservation measures will be installed which shall include the plan and responsibility for the permanent maintenance of such facilities.

(2) When a lake or pond, either new or existing, is incorporated in a development, the developer shall note on his plans if the lake or pond is to be used for sediment control and/or retention during or after construction.

(a) All applications for a Permit, except those related to the construction of individual single-family residences, must contain, or 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:

(1) 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 twenty-five (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.

(2) 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.

(3) The proposed contours in the map or plot shall be depicted in contour intervals of two (2) 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 twenty-four (24) inches by thirty-six (36) inches and drawn to a scale of not less than one inch equals 100 feet. Contour intervals of more than two (2) feet and maps, plots or plans which are smaller than the required size may be approved by the City Engineer, 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 erosion and sedimentation, soil stabilization specifications, provision for saving topsoil for later revegetation, provision for saving trees and other vegetation and any retention of a buffer, intended means of revegetation and any provision of a buffer, proposed protective measures for controlling erosion and sediment, both temporary and permanent, storm water 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

Section 208 Drainage Plans.

(a) A drainage plan shall be required if a project:

(1) Involves land-disturbing activity on a site which changes the natural course of storm water; or

(2) Involves a site which is subject to flash flooding or local ponding as a result of soil conditions and lack of identified drainage channels; or

(3) Is located wholly or partially within a 100-year floodplain, a landslide susceptible

area, or other fragile lands as may be designated for environmental protection; or

(4) Involves hillside development on slopes steeper than 10 percent.

(b) A required drainage plan may be submitted as part of the soil erosion and sediment control plan but must be clearly marked as a "drainage plan." Plans are to be neatly and accurately drawn, at an appropriate scale that will enable ready identification and recognition of submitted information. A drainage plan shall include:

(1) Flow lines of surface waters onto and off the site;

(2) Building pad and existing and proposed finished floor and street elevations if building construction is proposed;

(3) Existing and proposed drainage channels, including drainage swales, wetlands, ditches and berms;

(4) Location and design of any proposed facilities for storage or for conveyance of runoff into indicated drainage channels, including sumps, basins, channels, culverts, ponds, storm drains and drop inlets;

(5) Estimated of exiting and increased runoff resulting from the proposed improvements and a statement of the proposed effects on the existing drainage system and adjacent property.

Section 209 Affidavits.

(a) When determined to be necessary, the City Engineer may require affidavits on forms furnished by the city to be executed by the owner and his consultants as to any or all of the following:

(1) A compaction report where a site is proposed to be filled to be used for a building pad;

(2) A soil engineering report, including data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for earthwork procedures and criteria for corrective measures when necessary, and opinions and recommendation covering adequacy of sites for various types of development facilitated by the proposed earthwork;

(3) An engineering geology report, including a description of site geology, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and opinions and recommendations covering the adequacy of sites for various types of development facilitated by the proposed earthwork;

(4) Other affidavits and reports deemed necessary by the City Engineer.

(b) The affidavits as required herein shall be submitted prior to issuance of a permit. Affidavits will be furnished for execution by the owner and his consultants after completion of construction covered by this permit, affirming that appropriate measures were taken and that the completed construction conforms to the requirements of this Ordinance.

Section 210 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 City Engineer; provided, that if such records are maintained without the State of Alabama and, because of their size, cannot be transmitted to the City Engineer by telecopier, such records must be delivered to the City Engineer (at no expense to the City or the City Engineer) within forty-eight (48) hours of the earliest of the receipt by the owner, applicant or Contact Person of a request by the City Engineer for such records.

Section 211 Amended Application; Transfer of Permit.

(a) A Permit may be amended upon the filing with the City Engineer 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 City Engineer that there are no proposed changes which may affect the quantity and/or quality of storm water runoff. If an amended or restated application is filed with the City Engineer 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 City Engineer of an application for transfer; provided, that the holder and proposed transferee of the Permit (1) submit the bonds required in Section 400 and (2) show to the reasonable satisfaction of the City Engineer that, upon or following the transfer, there will be no proposed changes which may affect the quantity and/or quality of storm water 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 storm water 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.

Section 212 Signatory Requirements.

(a) All applications and correspondence required by this ordinance to be submitted to the City Engineer 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 City Engineer, 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, county, 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 ordinance 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 213 Issuance of permit; expiration, suspension or revocation.

(a) The purpose of permitting plans and specifications is to assure compliance with this Ordinance. The City Engineer's review and permitting of plans and specifications is not intended as approval of the overall layout, structural design, grading procedures, situation control, engineer's reports or construction procedures. These responsibilities shall remain with and be those of the owner or his consultants.

(b) The application, plans and specifications, reports, affidavits and other required documents shall be filed with the City Engineer as required by this Ordinance. Such plans may be reviewed by other departments to check compliance with the laws and ordinances under their jurisdiction. If the City Engineer is satisfied that the work described in an application for permit and the plans and specifications filed therewith conform to the requirements of this Code and other pertinent laws and ordinances, that the fees specified in section 203 have been paid and necessary bonds and other surety obtained, he shall issue a permit therefor to the owner.

When the City Engineer issues the permit, he shall endorse in writing or stamp "PERMIT ISSUED" on the original set of plans and specifications. The City Engineer shall be furnished with two (2) sets of permitted plans. Permitted plans and specifications shall not be changed, modified or altered without authorization from the City Engineer; and all work shall be done in accordance with the permitted plans.

(c) One (1) set permitted plans, specifications and other required documents shall be retained by the City Engineer for a period of not less than one (1) year from date of

completion of the work covered therein. It shall be the responsibility of the owner to maintain one of the sets of permitted plans and specifications on the site at all times during which the work authorized thereby is in progress.

(d) The issuance or granting of a permit shall not permit or be construed as approval for violation of any of the provisions of this Ordinance or any other laws or regulations; and such permit shall not be valid, except insofar as the work or use which it authorizes is lawful.

(e) The issuance of a permit shall not prevent the City Engineer from thereafter requiring the correction of errors or changes due to unforeseen problems in permitted plans and specifications. The City Engineer may require that earthwork operations and project design be modified if significant problems occur which were not considered at the time the permit was issued.

(f) Every permit issued by the City Engineer under the provisions of this Code shall expire by limitation and become null and void, if the work authorized by such permit is not commenced within 90 days from the date of issuance of such permit, provided that consecutive renewal of such permit may be granted, at no additional cost, upon written request to the City Engineer with good cause shown. The work authorized by such permit shall not be suspended or abandoned at any time after the work is commenced and shall be carried to completion or the permit shall be void. If work is suspended or abandoned, required bonds may be used to correct or eliminate erosion, drainage problem or hazardous conditions as provided herein.

(g) The City Engineer may suspend or revoke a permit or waiver issued under provisions of this Code by giving notice in writing to the owner whenever the permit or waiver is issued in error, on the basis of incorrect information supplied, or in violation of any ordinance, regulation or any of the provisions of this Code.

CHAPTER 3 - LAND-DISTURBING ACTIVITY RESPONSIBILITIES

Section 300 Land-disturbing activity responsibilities.

(a) The person(s) proposing to conduct any land-disturbing activity, or an agent, contractor or other representative of such person, must contact the City Engineer at least five (5) business days before commencement of the land-disturbing activity to advise the City Engineer of the commencement of such land-disturbing activity, unless, for good cause shown, the City Engineer permits such person, contractor, agent or other representative to contact him nearer to the date of the commencement of such land-disturbing activity.

(b) 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 earthwork begins, 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.

(c) 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 fourteen (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.

(d) Adequate protective measures shall be provided for the containment of hazardous substances and any other materials which may pollute the MS4, including petroleum products, lubricants and paint.

(e) All control measures shall be checked, and repaired as necessary, every two weeks in dry periods and within twenty-four (24) hours after any rainfall at the site of .75 inch within a twenty-four (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 City Engineer at any reasonable time.

(f) 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 City Engineer prior to the commencement of any land-disturbing activities.

(g) 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, shall be furnished to the City Engineer prior to the commencement of any land-disturbing activities.

(h) There shall be no distinctly visible floating scum, oil or other matter contained in the storm water discharge. The storm water 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 storm water 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.

(i) The owner shall be responsible for the ongoing observation, review and field issuance of reports in the actual land-disturbing activity. This responsibility shall include, but need not be limited to, testing, inspection and issuing of field reports as to the establishment of line, grade and drainage of the project area. Civil engineering record documents shall be preserved in accord with state law.

(j) The City Engineer may require inspection and testing by an approved testing agency if he determines that such inspection and testing is necessary because unusual, complex or hazardous conditions exist on or adjacent to the site. The cost of such inspection and testing shall be the responsibility of the owner. The testing agency's responsibility shall include, but is not limited to, inspection and issuance of affidavits concerning the inspection of cleared areas and benches to receive fill, and the compaction

of fills.

Section 301 Notification of noncompliance.

If the owner, his contractor or his consultants finds that the work is not being done in conformance with this Ordinance or the permitted plans, the discrepancies, if not corrected in a timely manner, shall be reported immediately in writing to the City Engineer, Plans for corrective measures shall be submitted to the City Engineer along with an appropriate schedule for completion of such corrections.

Section 302 Replacement of contractors or consultants.

If the owner's contact person, contractor, civil engineer, soil engineer, engineering geologist or the testing agency of record are changed during the course of the work, the work shall be stopped until the owner has notified the City Engineer in writing and properly replaced the contractor or consultants of records to the satisfaction of the City Engineer.

CHAPTER 4 - BONDS, LETTERS OF CREDIT

Section 400 Bonds, letters of credit.

Each Control Plan must be accompanied by a letter of credit or, a surety bond with the City having the right to approve the security which shall be furnished. A letter of credit, or a surety bond (collectively referred to as "Security") shall be furnished to the City in accordance with the following provisions:

- (a) The City Engineer shall require Security 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.
- (b) The Security shall contain, or have attached to it as an exhibit, a legal description of the site. The Security shall remain in effect until it has been released in writing by the City Engineer as provided in Section 401. A bond with a specific expiration date shall not be acceptable.
- (c) The Security for clearing operations only shall be in the amount of \$1,000 per acre for each acre, or fraction of an acre, disturbed or affected by such operations.
- (d) The Security for earthwork or clearing and earthwork operations shall be in the amount of \$3,000 per acre for each acre, or fraction of an acre, disturbed or affected by such operations.
- (e) 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.
- (f) Each letter of credit must be issued by a bank which has a principal office in Alabama.
- (g) Each letter of credit must be issued by a bank which is satisfactory to the City and each surety bond must be issued by a surety company which is qualified to do business in Alabama and which is otherwise satisfactory to the City.

Section 401 Release of surety bonds.

One (1) year following the completion of vegetation and upon receipt of the as-built plans, the city will release the surety bonds or other form of security to the owner; provided however, that if vegetation has not been established for an entire growing season, the bonds or other surety shall not be released for one (1) year plus one (1) growing season after the vegetation becomes established with standing growth.

CHAPTER 5 - INSPECTION, OBSERVATION, COMPLETION

Section 500 Observation of construction.

(a) All land-disturbing activity for which a permit is required shall be subject to observation, inspection and review by the City Engineer.

(b) It will be the responsibility of the owner to notify the City Engineer in writing of the completion of the following:

- (1) Temporary erosion control measures.
- (2) Clearing.
- (3) Rough grading work.
- (4) Final grading work.
- (5) All work, including completion of vegetation.

(d) Conditions may reveal the need for additional erosion control measures which shall, if directed by the City Engineer, be promptly acquired and installed by the owner.

Section 501 Inspections.

(a) The City Engineer, or an authorized agent of the City Engineer, 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 ordinance and the specific BMP Plans and Control Plans for such land-disturbing activities. The inspections shall be conducted at reasonable times. The City Engineer shall inspect the construction site to confirm the implementation and the maintenance of BMP Plans. Such site shall also be inspected when the City Engineer, or his authorized agent, 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.

(b) Upon the refusal by any property owner to allow the City Engineer to enter, or to continue an inspection on, a site on which land-disturbing activities or construction work is being done, the City Engineer may issue a stop work order.

(c) If the City Engineer or his authorized agent has reasonable cause to believe that discharges from the land-disturbing activities to the MS4 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 City Engineer or his authorized agent shall present proper identification upon request of the owner or his representative.

Section 502 Notification of completion.

The owner shall notify the City Engineer when the project has been completed, including installation of all drainage facilities and their protective devices and all the provisions of the sediment and erosion control plan in accordance with the final permitted plans and that all the required reports have been submitted.

CHAPTER 6 - MONITORING, ENFORCEMENT AND ABATEMENT

Section 600 Monitoring.

The City Engineer, or his authorized agent, may periodically monitor the quality of storm water and the concentration of pollutants, including eroded soil and sediment, in storm water discharges from land-disturbing activities pursuant to this ordinance.

Section 601 Detection of Illicit Connections, Improper Disposal and/or Discharges.

The City Engineer, or his authorized agent, shall take appropriate steps to detect and eliminate illicit connections and eliminate improper disposal and/or discharge to the City's MS4, 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.

Section 602 Unauthorized Discharge a Public Nuisance.

Any discharge of storm water made 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 subject to correction and/or abatement in accordance with applicable law, provided however, the following direct or indirect discharges into the MS4 are allowable under the terms of this ordinance unless determined by the City Engineer 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 fire fighting activities.

Section 603 Accidental Discharges.

(a) In the event of any discharge of a hazardous substance or a significant spill of a hazardous substance which could constitute a threat to human health or the environment, the owner or operator of the site shall give notice to the City Engineer, the Birmingham Fire and Rescue Service 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, 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.

Section 604 Immediate Threats to Public Health or Welfare.

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

Section 605 Notification; Enforcement Remedies.

(a) Notification of Violation: Whenever the City Engineer finds that any person is in violation of any provision of this Ordinance, or any order issued hereunder, the City Engineer or his authorized agent may serve upon such person written notice of the violation. Within ten (10) 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 City Engineer. Submission of such plan shall in no way relieve such person in violation of this ordinance of liability for any violations occurring before or after receipt of the notice of violation.

(b) Compliance Order: When the City Engineer finds that any person has violated, or continues to violate, this ordinance, 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 City Engineer finds that any person has violated, or continues to violate, this ordinance or any order issued under this ordinance, the City Engineer may issue an order to such person to cease and desist all such violations immediately, and direct such person in violation of this ordinance 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 ordinance, including halting operations and terminating the discharge.

Section 706 Violation, Penalties.

It shall be unlawful for any person to:

- (a) violate any provision of this Ordinance or fail to comply therewith;
- (b) violate the provisions of any Permit issued pursuant to this Ordinance;
- (c) fail or refuse to comply with any lawful notice to abate issued by the City Engineer which has not been appealed to the Storm Water Appeal Board of the Authority ("Board") 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 Ordinance 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.

CHAPTER 8
STORM WATER APPEAL BOARD
OF STORM WATER MANAGEMENT AUTHORITY

Section 800 Storm Water Appeal Board of Storm Water Management Authority, established.

The Authority, a public corporation established by Act No 95-755, Acts of Alabama, and consisting of Jefferson County and 23 member municipalities, established a board of five (5) members known as the Storm Water Appeal Board of Storm Water Management Authority ("Board"). The composition of the Board, the duties of the members of the Board, the power of the Board to grant variances, the hearing and review procedures of the Board and other matters with respect to the Board are set forth in a resolution adopted by the Authority on May 25, 1999, which resolution is on file in the office the City Clerk and in the office of the Authority at the Jefferson County Courthouse.

Section 801 Appeals

Appeal to Board of an Order of the City Engineer: Any person aggrieved by an order of the City Engineer may appeal said order to the Board and have such order reviewed by the Board. A written notice of appeal shall be filed with the City Engineer and with the Board within fifteen (15) days of the issuance of such order, 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 City Engineer and the person who filed the appeal by personal delivery or by certified or registered mail, return receipt requested.

Section 802 Variances.

(a) The Board may grant variances from the requirements of this ordinance; provided, that to do so would not be contrary to the public interest, would not violate the spirit of this Ordinance, and would not result in the violation of the NPDES permit ALS000001 or any state or federal law or regulation. A variance shall not be granted unless exceptional circumstances, applicable to the site with respect to which the variance is requested, exist so that strict adherence to the provisions of this ordinance would result in unnecessary hardship and the granting of such variance would not result in a condition contrary to the intent of this ordinance.

(b) A party seeking a variance must submit a written petition for a variance, which sets forth the specific variance sought and the reasons therefor, 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 City Engineer.

(c) The City Engineer shall conduct a review of the petition for a variance within ten (10) working days after his receipt of such petition and may either support, or object to, the petition. The City Engineer 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 City Engineer has issued such statement or such ten (10)-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.

CHAPTER 9 MISCELLANEOUS

Section 901 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.

Section 902 References.

Whenever a Chapter or Section is referred to in this Ordinance, unless the context clearly indicates the contrary, such reference shall be to a Chapter or Section of this ordinance.

Section 903 Minimum Requirements

(a) In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of public health, safety, convenience, comfort, and the general welfare.

(b) Where this Ordinance imposes greater restrictions than are imposed or required by other ordinances, rules, regulations or permits, or by easements, covenants or agreements, the provisions of this Ordinance shall apply.

(c) Where any other laws, ordinances or rules, regulations or permits or restrictive conditions of other governmental or city agencies charged with land or Clean Water regulation impose greater restrictions than are required under the regulations of this Ordinance, such provisions shall govern.”

SECTION 2: Severability.

The provisions of this ordinance are severable. If any part of this ordinance is determined by a court of competent jurisdiction to be invalid, unenforceable or unconstitutional, such determination shall not affect any other part of this ordinance.

SECTION 3: Captions.

The captions of articles and sections are for the purpose of reference only, and such captions shall not affect the meaning of any provision of this ordinance.

SECTION 4: Repeal of conflicting sections and Ordinances

All city code sections and ordinances or parts thereof in conflict with the provisions of this Ordinance, insofar as they conflict, are repealed as of the the effective date of this Ordinance, and specifically Ordinance 88-148 known as the Soil Erosion and Sediment Code of the City of Birmingham, shall be repealed as of the date and time this Ordinance becomes effective, provided however, that neither any cause of action nor any fine, forfeiture, judgment, penalty, right, bond, remedy, obligation, duty or defense accrued or in place at said date, nor any prosecution, permit, bond or complaint pending at said date shall be in any manner released, affected, abated or impaired by this Ordinance.

SECTION 5: Effective Date.

This ordinance shall be published as required by law and shall become effective at 12:01 A.M. on October 1, 1999.

ADOPTED BY THE
CITY COUNCIL OF
BIRMINGHAM ON

July 13, 1999

APPROVED BY THE
MAYOR
ON

July 15, 1999


CITY CLERK