

**AN ORDINANCE OF THE CITY OF SMITHS STATION TO IMPLEMENT AN ILLICIT DISCHARGE DETECTION, ELIMINATION, AND STORM WATER CONNECTIONS WITHIN THE MS4**

**SECTION 1. PURPOSE/INTENT.**

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Smiths Station, Alabama through the regulation of non-storm water related discharges to the MS4 to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The City does not intend for this ordinance to conflict with any existing federal or state law. The objectives of this ordinance are:

- (1) To regulate the contribution of pollutants to the MS4 by storm water discharges by any user.
- (2) To prohibit illicit connections and discharges to the MS4.
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance .

**SECTION 2. DEFINITIONS.**

For the purposes of this ordinance, the following shall mean:

**ADEM:** The Alabama Department of Environmental Management.

**Authorized Personnel:** Any employee or designee of the City designated by the Mayor to enforce this ordinance.

**Best Management Practices (BMPs):** Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

**City:** The City of Smiths Station, Alabama, a municipal corporation organized under the laws of the State of Alabama.

**Clean Water Act:** The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

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**Construction Activity:** Activities subject to NPDES Construction Permits. Currently these include construction projects resulting in land disturbance of one acre or more and sites less than one acre but are part of a common plan of development or sale. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

EPA: The Federal Environmental Protection Agency.

**Hazardous Materials:** Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

**Illicit Discharge:** Any discharge to the MS4 that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the MS4) and discharges from fire fighting and emergency management activities.

**Illicit Connections:** Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the MS4 including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the MS4 and any connections to the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by authorized personnel or, any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by authorized personnel.

**Industrial Activity:** Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14). National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

**Maximum Extent Practicable:** When used in reference to terms and conditions of NPDES permits (other than the NPDES permit issued to the City) and procedures and methods established by federal regulation, shall mean that the City's authorized personnel shall defer to these terms, conditions, procedures and methods so long as the City's compliance with its own NPDES permit, or federal or state law is not jeopardized in any manner.

**Municipal Separate Storm Sewer System (MS4):** A conveyance or system of conveyances (including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains), which is owned or operated by the city, designed or used for collecting or conveying storm water, and is neither a publicly owned treatment works nor a combined sewer.

**NPDES:** National Pollutant Discharge Elimination System means the national permitting program implemented under the "Clean Water Act".

**Non Storm Water Discharge:** Any discharge to the MS4 that is not composed entirely of storm water.

**Person:** Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

**Person Responsible or Responsible Person:** A person who has or represents having; (1) an ownership interest in or financial or operation control of a source or potential source of a discharge or a discharge regulated by this article; (2) possession or control of a source or potential source of a discharge regulated by this article who directly or indirectly allowed, either by act or omission, a discharge regulated by this article; or (3) benefited from a source or potential source of a discharge or a discharge regulated by this article. There may be one or more "persons responsible" or "responsible persons".

**Pollutant:** Any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

**Premises:** Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

**Storm Water:** Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

**Storm Water Pollution Prevention Plan:** A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

**Wastewater:** Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

### **SECTION 3. APPLICABILITY.**

This ordinance shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by authorized personnel.

### **SECTION 4: RESPONSIBILITY FOR ADMINISTRATION.**

The authorized personnel shall administer, implement, and enforce the provisions of this ordinance to the maximum extent practicable through the City. Any powers granted or duties imposed upon the authorized personnel may be delegated in writing by the Mayor of Smiths Station, Alabama to persons or entities acting in the beneficial interest of or in the employ of the agency.

**SECTION 5. SEVERABILITY.**

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

**SECTION 6. ULTIMATE RESPONSIBILITY.**

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

**SECTION 7. DISCHARGE PROHIBITIONS.****Prohibition of Illicit Discharges**

The illicit discharge of pollutants to the MS4 is prohibited. The discharge of pollutants to the MS4 by discharging storm water associated with industrial activity is prohibited except as authorized by a NPDES permit. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this article which relate to such discharge. The spilling, dumping, or disposal of materials other than storm water to the MS4 is prohibited. The commencement, conduct or continuance of any illicit discharge to the MS4 is prohibited except as described as follows:

- (a) The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools, fire fighting activities, and any other water source not containing pollutants.
- (b) Discharges specified in writing by the authorized personnel as being necessary to protect public health and safety.
- (c) Dye testing is an allowable discharge, but requires a verbal notification to the authorized personnel prior to the time of the test.
- (d) The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.

**Prohibition of Illicit Connections**

- (a) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.
- (b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(c) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

### **SECTION 8. SUSPENSION OF MS4 ACCESS.**

#### **Suspension due to Illicit Discharges in Emergency Situations**

The authorized personnel may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized personnel may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

#### **Suspension due to the Detection of Illicit Discharge**

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized personnel will verbally notify a violator of the proposed termination of its MS4 access. The violator may petition the City for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City.

### **SECTION 9. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.**

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

### **SECTION 10. MONITORING OF DISCHARGES.**

#### **A. Applicability.**

This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

#### **B. Access to Facilities.**

(a) The authorized personnel shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the City.

(b) Facility operators shall allow the authorized personnel ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

(c) The authorized personnel shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City to conduct monitoring and/or sampling of the facility's storm water discharge.

(d) The authorized personnel has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

(e) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the authorized personnel and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(f) Unreasonable delays in allowing the authorized personnel access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the authorized personnel reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

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

#### **SECTION 11. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.**

The City will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the MS4, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a storm water pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

#### **SECTION 12. WATERCOURSE PROTECTION.**

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing

privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

### **SECTION 13. NOTIFICATION OF SPILLS.**

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants discharging into storm water, the MS4, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

### **SECTION 14. ENFORCEMENT.**

#### **A. Notice of Violation.**

Whenever the City finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the authorized personnel may order compliance by verbal warning, then to be followed by written notice of violation to the responsible person. Such notice may require without limitation:

- (a) The performance of monitoring, analyses, and reporting;
- (b) The elimination of illicit connections or discharges;
- (c) That violating discharges, practices, or operations shall cease and desist;
- (d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
- (e) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the violator will be issued with an arrest warrant as provided by this ordinance.

### **SECTION 15. METHOD OF ENFORCEMENT**

The authorized personnel are authorized to issue notices of violation to appear in circuit court to answer charges of violation of any of the provisions of this article. In no event shall any enforcement action under this article be taken for an alleged violation of this article if any of the following conditions exist:

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

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

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

However, enforcement action under this article may be pursued for continued or continuing violations, and each day that a violation of this article continues shall be considered a separate violation.

#### **SECTION 16 APPEAL OF NOTICE OF VIOLATION.**

Any person receiving a Notice of Violation may appeal the determination of the authorized personnel. The notice of appeal must be received within fifteen (15) days from the date of the notice of violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within 30 days from the date of receipt of the notice of appeal. The decision of the City or their authorized personnel shall be final.

#### **SECTION 17. ENFORCEMENT MEASURES AFTER APPEAL.**

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within fifteen (15) days of the decision of the authorized personnel upholding the decision of the City, then the City Clerk shall cause an arrest warrant to be issued as provided by law which shall be heard by a court of competent jurisdiction.

#### **SECTION 18. INJUNCTIVE RELIEF.**

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

#### **SECTION 19. COMPENSATORY ACTION.**

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

#### **SECTION 20. VIOLATIONS DEEMED A PUBLIC NUISANCE.**

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be subject to a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

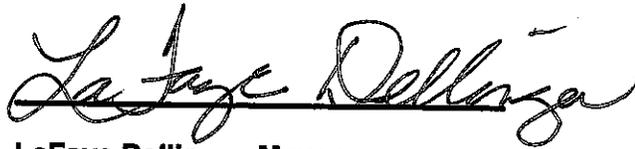
**SECTION 21. CRIMINAL PROSECUTION.**

Any person who violates any provision of this article or provision of a BMP plan issued under this article shall be guilty of a violation and upon conviction, shall be punished as provided by law, including those penalties set forth in Code of Alabama 1975 Section 11-45 9.

**SECTION 22. REMEDIES NOT EXCLUSIVE.**

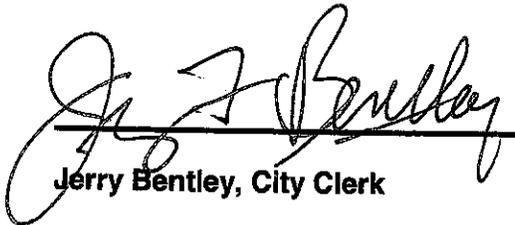
The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law. The City may pursue, by appropriate action or proceedings any or all additional other remedies.

Approved and adopted this the 26<sup>th</sup> day of August 2014.



LaFaye Dellinger, Mayor

ATTEST:

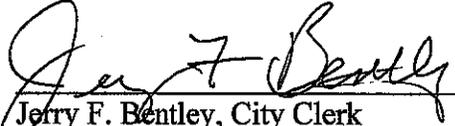
  
Jerry Bentley, City Clerk

## ORDINANCE 2014-103

### CERTIFICATION

I, Jerry F. Bentley, City Clerk of the City of Smiths Station, Alabama hereby certify the attached to be a true and correct copy of the ordinance adopted by the City Council of Smiths Station, Alabama at the regular meeting held on **August 26, 2014** as same appears in minutes of record of said meeting, and published by posting copies thereof on **August 28, 2014** at the public places listed below, which copies remained posted for five business days (through **September 04, 2014**). The ordinance will remain posted for a minimum of thirty days.

City Hall	2336 Lee Road 430	Smiths Station, AL 36877
Rainbow Foods	2461 Lee Road 430	Smiths Station, AL 36877
Terry's Grocery,	9309 Lee Road 246	Smiths Station, AL 36877
U.S. Post Office,	2720 Lee Road 430	Smiths Station, AL 36877

  
Jerry F. Bentley, City Clerk

(SEAL)

