

**CITY OF DAPHNE
ORDINANCE NO. 2014-14**

**AN ORDINANCE REGULATING
CONSTRUCTION BEST MANAGEMENT PRACTICES
FOR RESIDENTIAL DWELLINGS AND OTHER
LAND DISTURBANCE WITHIN THE CITY OF DAPHNE**

WHEREAS, the City Council of the City of Daphne, Alabama deems it to be in the best interest of public health, safety and the general welfare of its citizens to establish regulations for construction best management practices; and

WHEREAS, it is in the best interest of the citizens of the City of Daphne and the continued development of the area to implement satisfactory controls for construction best management practices including but not limited to erosion and sediment controls for residential dwellings and other land disturbance within the City of Daphne.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA AS FOLLOWS:

SECTION I: TITLE ORD. NO. 2014-14 CONSTRUCTION BEST MANAGEMENT PRACTICES FOR RESIDENTIAL DWELLINGS AND OTHER LAND DISTURBANCE WITHIN THE CITY OF DAPHNE.

SECTION II: JURISDICTION

The provisions of this Ordinance shall apply to all lands within the corporate limits of the City of Daphne.

SECTION III: PURPOSE

The intent of this Ordinance is to provide minimum standards to ensure effective storm water management, drainage management, and construction best management practices for individual residential dwellings and any other activity that results in more than one thousand (1000) square feet of land disturbance that will not reach Final Stabilization with a fourteen (14) calendar day period within the City of Daphne other than activities that would require the issuance of a site disturbance permit from the Community Development Department and the exceptions for land disturbances as noted in Section V. The fourteen (14) day period does not relieve the individual from implementing Best Management Practices to minimize onsite and offsite impacts to wetlands, streams, public and other private property.

SECTION IV: DEFINITIONS

For the purposes of this Ordinance, the following words and phrases shall have the meaning respectively ascribed to them by this section unless taken specific exception to elsewhere in this Ordinance:

1. "ADEM" means the Alabama Department of Environmental Management.
2. "Alabama Handbook" means the latest edition of the Alabama Handbook for Erosion Control, Sediment Control, and Stormwater Management on Construction Sites and Urban Areas. A copy of the

latest edition can be found on the Alabama Soil and Water Conservation Committee's (ASWCC) web page (www.swcc.state.al.us).

3. "Best Management Practices" or "BMPs" mean implementation and continued maintenance of appropriate structural and non-structural practices and management strategies to prevent and minimize the introduction of pollutants to Stormwater and to treat Stormwater to remove pollutants prior to discharge.

4. "Building Inspector" means a City employee who under general supervision, performs technical review of plans and building permit applications for completeness and general compliance to State regulations, model codes and local Ordinances. The building inspector conducts field inspections of building construction, reconstruction and alterations at various stages and at completion to assure compliance with approved plans and specifications.

5. "City" means the City of Daphne, Alabama.

6. "Clearing" means any activity that removes the vegetative surface cover.

7. "Code Enforcement Officer" means the City employee who carries out the City's code enforcement program whereby individuals in violation of City codes and related regulations are identified, investigated, and corrected utilizing appropriate enforcement measures.

8. "Common Plan of Development or Sale" means any announcement or piece of documentation (e.g., sign, public notice, or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (e.g., boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. Individual lots within a common plan of development are required to acquire ADEM NPDES General Permit coverage for Land Disturbing Activities since cumulatively, the lots have potential to disturb more than one acre at a time.

9. "Community Development Director" means the City employee who plans, organizes and reviews the activities and operations of the Community Development Department including planning and community and neighborhood enhancement.

10. "Construction Best Management Practices Plan" or "CBMP Plan" means a plan that includes research, planning considerations, systems, procedures, processes, activities and practices implemented for the prevention and/or minimization of pollutants in Stormwater to the maximum extent practicable, and collection, storage, treatment, handling, transport, distribution, land application or disposal of construction Stormwater and onsite management of construction waste generated by the Land Disturbing Activity, and to comply with the requirements of the City of Daphne.

11. "Erosion" means the process by which land surface is worn away by the action of wind, water, ice and/or gravity.

12. "Final Stabilization" means the application and establishment of the permanent ground cover (vegetative, erosion resistant hard or soft material or impervious structures) planned for the site to permanently eliminate soil erosion to the maximum extent practicable. Established vegetation will be considered final if 100% of the soil surface is uniformly covered in permanent vegetation with a density of 85% or greater. Permanent vegetation shall consist of: permanent grasses, planted trees, shrubs, landscaped flower beds, perennial vines; an agricultural or a perennial crop of vegetation appropriate for the region. Final stabilization applies to each phase of construction.

13. "Grading" means excavation or fill of material, including the resulting conditions thereof.
14. "Land Disturbing Activity" means any and all activities which results in more than one thousand (1000) square feet of land disturbance and/or change to the existing storm water drainage characteristics of land.
15. "Land Disturbance" means the disturbance of soils associated with clearing, grading, excavating, filling of land, or other similar activities which may result in soil erosion.
16. "NPDES" means National Pollutant Discharge Elimination System.
17. "Ordinance" means this ordinance regulating construction best management practices for residential dwellings and other land disturbance within the city of Daphne.
18. "Permittee" means any person who obtains a Land Disturbance Permit from the City of Daphne Building Department.
19. "Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; sediment, solid wastes and other residues that result from constructing a building or structure; and/or noxious or offensive matter of any kind.
20. "Priority Construction Site" means any site that discharges to a waterbody which is listed on the most recently EPA approved 303(d) list of impaired waters for turbidity, siltation, or sedimentation, any waterbody for which a TMDL has been finalized or approved by EPA for turbidity, siltation, or sedimentation, any waterbody assigned the Outstanding Alabama Water use classification in accordance with ADEM Admin. Code. 335-6-10-.09, and any waterbody assigned a special designation in accordance with ADEM Admin. Code. 335-6-10-.10.
21. "Qualified Credentialed Professional" or "QCP" means a professional engineer (PE), or a Certified Professional in Erosion and Sediment Control (CPESC) as determined by CPESC, Inc. Other registered or certified professionals such as a registered landscape architect, registered land surveyor, registered geologist, registered forester, Registered Environmental Manager as determined by the National Registry of Environmental Professionals (NREP), or Certified Professional and Soil Scientist (CPSS) as determined by ARCPACS, and other Department accepted professional designations, certifications, and/or accredited university programs that can document requirements regarding proven training, relevant experience, and continuing education, that enable recognized individuals to prepare CBMPPs, to make sound professional judgments regarding Alabama NPDES rules, the requirements of this chapter, planning, design, implementation, maintenance, and inspection of construction sites, receiving waters, BMPs, remediation/cleanup of accumulated offsite pollutants from the regulated site, and reclamation or effective Stormwater quality remediation of construction associated land disturbances, that meet or exceed recognized technical standards and guidelines, effective industry standard practices, and the requirements of this chapter. The QCP shall be in good standing with the authority granting the registration or designation. The design and implementation of certain structural BMPs may involve the practice of engineering and require the certification of a professional engineer pursuant to Alabama law.

22. "Sedimentation" means the process by which eroded material is transported and deposited by the action of wind, water, ice and/or gravity.

23. "Silviculture" means the care and cultivation of forest trees; forestry.

24. "Site Containment Inspector" means the City employee who under general supervision, performs technical review of CBMP Plans, Erosion and Sediment Control Plans and land disturbance permit applications for completeness and general compliance to Federal and State regulations, and local Ordinances. The Site Containment Inspector conducts field inspections of permitted land disturbance sites, during construction and at completion to assure compliance with approved plans and specifications.

25. "Stabilize" means the application and establishment of the ground cover (vegetative, erosion resistant hard or soft material or impervious structures) planned for the site to eliminate soil erosion to the maximum extent practicable.

26. "Stormwater" means runoff, accumulated precipitation, process water, and other wastewater generated directly or indirectly as a result of Land Disturbing Activity, the operation of a construction material management site, including but not limited to, precipitation, upgradient or offsite water that cannot be diverted away from the site, and wash down water associated with normal construction activities. Stormwater does not mean discharges authorized by the Department via other permits or regulations.

27. "Storm Water Management" means all natural and man-made elements used to convey storm water from the first point of impact within the construction site to a suitable outlet location.

28. "Temporary Stabilize" means the application and establishment of temporary ground cover (vegetative, erosion resistant hard or soft materials or impervious structures) for the purpose of temporarily reducing raindrop impact and sheet erosion in areas where final stabilization cannot be established due to project phasing, seasonal limitations or other project related restrictions.

29. "Wetland" means land where saturation with water is the dominant factor determining the nature of soil development and the types of plant and animal communities living in the soil and on its surface (Cowardin, December 1979).

30. "Wetland Delineation" means the act of establishing the boundary between wetlands and uplands (or non-wetlands).

SECTION V: APPLICABILITY & EXCEPTIONS

This Ordinance shall apply to residential dwellings and any other land disturbance activity which disturbs one thousand (1000) square feet or greater within the City of Daphne; and, undertaken by any person on any land within the City of Daphne's city limits except for the following:

1. Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
2. Any land disturbance which requires a Right-of-Way Permit from the Public Works Department of the City of Daphne.
3. Any nursery, agricultural and Silvicultural operations.

4. Any land disturbance activity which requires a Site Disturbance Permit from the City of Daphne's Community Development Director or his or her designee.
5. Any landfills or mining operations permitted by ADEM.
6. Any land zoned as Agricultural in the City of Daphne.

SECTION VI: PERMIT APPLICATION REQUIRED

1. A permit for residential dwellings and other land disturbance activity which disturbs one thousand (1000) square feet or greater within the City of Daphne shall be required. No person, firm, business or corporation shall engage in any Land Disturbing Activity prior to obtaining a land disturbance permit from the City of Daphne Building Department. Unless the land disturbance permit is issued prior to the building permit, for new construction and additions, the land disturbance permit is incorporated into the building permit and the building permit must be obtained prior to land disturbance.

2. All applications for land disturbance permits shall be accompanied by a Construction Best Management Practices Plan. It is not required that the CBMP Plan be prepared by a QCP, unless the site is required to have ADEM NPDES General Permit coverage. The plan shall meet all minimum requirements set out in the most current edition of the Alabama Handbook.

3. A permit shall be issued to either the titled owner of the said real property or the permittee charged with the contractual obligation of the Land Disturbing Activity. A fee of one hundred dollars (\$100.00) shall be charged and collected by the City of Daphne Building Department for the issuance of the land disturbance permit.

SECTION VII: CONSTRUCTION BEST MANAGEMENT PRACTICES PLAN MINIMUM REQUIREMENTS

For the purposes of this Ordinance, the following are the minimum requirements for the Construction Best Management Practices Plan:

1. Land disturbance that results in a total land disturbance of one acre or greater and sites less than one (1) acre but are part of a Common Plan of Development or Sale shall have permit coverage under the ADEM NPDES Construction General Permit prior to the issuance of the City of Daphne Land Disturbance Permit and/or Building Permit. At a minimum the site's CBMPP shall meet all conditions and qualifications of the General Permit and BMP design should be based on the guidance in the Alabama Handbook.

2. Best Management Practices (BMPs) shall be required for all land disturbing activities. It shall be the sole responsibility of the contractor/or permittee to promptly implement effective BMPs in accordance with the permittee's land disturbance permit and submitted Construction Best Management Practices Plan prior to commencing the Land Disturbing Activity. The permittee shall be solely responsible for ensuring that all BMPs are implemented and maintained for the entire duration of the Land Disturbing Activity. The permittee shall also be solely responsible for ensuring that the BMPs are in accordance with established industry standards, good engineering practices, and all standards as set out in the Alabama Handbook.

3. The permittee shall ensure proper onsite containment and disposal of all construction building materials, supplies, trash, debris, fertilizers, pesticides, herbicides, detergents sanitary waste and any other solid waste.

4. The permittee shall ensure proper onsite containment and disposal of any pollutants resulting from equipment and vehicle washing, concrete, paint and other washout water.
5. The permittee shall minimize the discharge of any pollutants resulting from a spill or leak from, including but not limited to vehicles, mechanical equipment, and chemical or fuel storage.
6. The permittee shall stabilize all construction entrances and exits to minimize off-site tracking of sediment from vehicles.
7. The permittee shall minimize the generation of dust during construction.
8. The permittee shall minimize the disturbance of steep slopes, unless infeasible.
9. The permittee shall minimize the amount of soil exposure and compaction during construction activity.
10. The permittee shall Temporarily Stabilize disturbed areas immediately whenever work toward project completion and Final Stabilization of any portion of the site has temporarily ceased on any portion of the site and will not resume for a period exceeding thirteen (13) calendar days.
11. The permittee shall provide the necessary measures to ensure that drainage structures important to overall Storm Water Management and control are not adversely affected by clearing, grading, or any other land disturbing activities and shall permanently stabilize any right-of-ways disturbed by during construction.
12. All onsite areas disturbed during construction shall be permanently stabilized prior to issuance of a Certificate of Occupancy. Any offsite disturbances shall with land owner permission be permanently stabilized prior to issuance of Certificate of Occupancy.
13. The permittee shall, with property owner permission, remove any offsite sediments from adjacent properties and stabilize any areas disturbed during the removal. If the removal involves streams or wetlands, proper Federal and State permits shall be required prior to removal.
14. Any permitted land disturbance site that has continued compliance issues and/or offsite impacts may be issued a Stop Work Order; ceasing all activity except BMP installation and maintenance. At that time the permittee may be required to submit an updated CBMP Plan prepared by a Qualified Credentialed Professional.

SECTION VIII: INSPECTION AND MAINTENANCEREQUIREMENTS

For the purposes of this Ordinance, the following are the minimum requirements for the CBMPP Inspections:

1. The permittee shall ensure proper implementation, daily observation, regular inspection and continual maintenance of effective Best Management Practices to prevent offsite impacts and impacts to downstream water quality.
2. In the event the Best Management Practices are found to be in need of maintenance or improvements, the permittee shall commence and implement all necessary maintenance and corrective measures to the Best Management Practices within forty-eight (48) hours of notice unless prevented by unsafe weather conditions.

SECTION IX: SENSITIVE AREA PROTECTION

Sensitive areas within the City that require enhanced environmental protection are listed below:

1. Priority Construction Site: Any Priority Construction Site that is less than an acre with continued compliance issues and/or offsite impacts may be issued a Stop Work Order; ceasing all activity except BMP maintenance. At that time, the permittee may be required to submit an updated CBMP Plan prepared by a Qualified Credentialed Professional.
2. Streams & Shorelines: During CBMP Plan review, if it is determined that the site may impact State waters or shore lines, the City may require that the permittee have the site evaluated by the state and federal permitting agency to determine whether a state or federal permit will be required to complete site work. If it is determined that a permit will be required, then the permit must be acquired by the prior to issuance of any City permit.
3. Wetlands: During CBMP Plan review, if it is determined that the site may impact potential wetlands, the City may require that the permittee have a Wetland Delineation performed at his or her cost. If a determination is made that the site will impact wetlands then all state and federal permits must be acquired by the prior to issuance of the City's permit.

SECTION X: ENFORCEMENT

Failure to comply with any section of this Ordinance is hereby deemed a violation and shall be sufficient cause for the City of Daphne, through either a Building Inspector, Site Containment Inspector or Code Enforcement Officer, to issue an order suspending all work (a "Stop Work Order") on the land disturbing site until satisfactory measures are taken to comply with this Ordinance.

SECTION XI: CRIMINAL PROSECUTION

1. Any person that has violated or continues to violate this Ordinance shall be liable to criminal prosecution to the fullest extent of the law, and be punished by a fine of not less than fifty dollars (\$50.00), but not more than five hundred dollars (\$500.00), or imprisonment not to exceed one-hundred and eighty days (180), or both.
2. The City may recover all attorneys' fees court costs and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

SECTION XII: MINIMUM PENALTIES

1. Penalty for Violation-Fines: The following schedule of fines is hereby established by the City pursuant to this Ordinance and the laws of the State of Alabama. In addition to the fines so established, the Defendant shall pay, in addition to such fine amount, any court costs which are in effect at the time of such violation occurs. If the Defendant elects to plead guilty before a magistrate to a violation of any of the municipal offenses contained herein for which there is a fine set forth in this section, the fine plus applicable court cost shall apply. In lieu of appearing before a magistrate, the Defendant may sign a guilty plea and waiver of trial provision on the municipal offense citation, and deliver the amount of the fine plus applicable court costs to the Clerk of the Municipal Court or mail such amount to the Clerk of the Municipal Court for the City of Daphne at 1502 Highway 98, Daphne, Alabama 36526.
2. Schedule of Fines: Any person found guilty of the provisions of this Ordinance as referenced herein, the minimum fines shall apply as follows:
 - a. First Offense \$100.00 Plus Court Cost
 - b. All Subsequent Offense Court Appearance, Fines and Court Cost

In addition to the other remedies so provided herein, the City retains the right to bring an action for injunctive relief to require the payment of damages to City properties, including but not limited to streets, and right of ways, resulting from the permittee's failure to implement and/or maintain construction site BMPs.

SECTION XIII: REPEALER

Ordinance No. 2008-54 is specifically repealed in its entirety and any other Ordinances or parts of Ordinances conflicting with the provisions of this Ordinance are hereby repealed in so far as they conflict.

SECTION XIV: SEVERABILITY

Should any section or provision of this article be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of any of the remaining provisions of this Ordinance.

SECTION XV: EFFECTIVE DATE.

This Ordinance shall take effect and be in force from and after the date of its approval by the City Council of the City of Daphne and publication as required by law.

**ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE,
ALABAMA, THIS 21st DAY OF April, 2014.**


DANE HAYGOOD, MAYOR

ATTEST:


REBECCA A. HAYES, CITY CLERK