

# CITY OF DAPHNE

## ORDINANCE 2014-09

### AN ORDINANCE FOR REGULATING ILLICIT DISCHARGES TO THE CITY OF DAPHNE'S MUNICIPAL STORM DRAIN SYSTEM

**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 illicit discharges to its municipal storm drain system; and

**WHEREAS**, this Ordinance for Regulating Illicit Discharges to the City of Daphne's Municipal Storm Drain System (this "Ordinance") establishes methods for controlling the introduction of pollutants into the City's municipal separate storm sewer system (the "MS4") in order to comply with requirements of the National Pollutant Discharge Elimination System (the "NPDES") MS4 Phase II permit process.

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

**SECTION I: TITLE ORDINANCE 2014-09 "ILLICIT DISCHARGE ORDINANCE"**

**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 purpose of this Ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Daphne through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This Ordinance establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the NPDES permit process. The objectives of this Ordinance are:

1. To regulate the introduction of pollutants to the MS4 by stormwater discharges by any user.
2. To prohibit illicit connections and discharges to the City's MS4.
3. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Ordinance.

**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. Authorized Enforcement Personnel: Environmental Programs Manager, Site Containment Inspector, and the Code Enforcement Officer or their designee from the City designated to enforce this Ordinance.

2. 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 stormwater, receiving waters, or stormwater 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.

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

4. City: The City of Daphne, Alabama.

5. Construction Activity: The disturbance of soils associated with clearing, grading, excavating, filling of land, or other similar activities which may result in soil erosion. Construction activity does not include agricultural and silvicultural (forestry) practices.

6. 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.

7. Illegal Discharge: Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Section VII, 1 (a-c) of this Ordinance.

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

9. Industrial Activity: Activities subject to NPDES Industrial Permits as defined in the Code of Federal Regulations, 40 CFR, Section 122.26 (b) (14).

10. National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit: A permit issued by the 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.

11. Non-Stormwater Discharge:  
Any discharge to the storm drain system that is not composed entirely of stormwater.

12. 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.

13. Pollutant: 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.

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

15. Storm Drainage System: Publicly-owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

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

17. Stormwater Pollution Prevention Plan or SWPPP: 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.

18. Wastewater: Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

#### **SECTION V:           APPLICABILITY**

This Ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City.

#### **SECTION VI:           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 VII:         DISCHARGE PROHIBITIONS & EXEMPTIONS**

##### **1. Prohibition of Illegal Discharges.**

No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater. The commencement, conduct or continuance of any illegal discharge to the storm drain system 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 in 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 wetland flows, firefighting activities, and any other water source not containing pollutants.

b. Discharges specified in writing by the City as being necessary to protect public health and safety.

c. Dye testing is an allowable discharge, but requires a verbal notification to the City prior to the time of the test.

## 2. Prohibition of Illicit Connections.

The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. 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 VIII: SUSPENSION OF MS4 ACCESS**

### 1. Suspension due to Illicit Discharges in Emergency Situations.

The City 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 City 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.

### 2. 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 City will notify a violator of the proposed termination of its MS4 access. 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 IX: INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES**

Any person subject to an industrial or construction activity NPDES stormwater 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 City prior to the allowing discharges to the MS4. If warranted, NPDES stormwater permitted sites, may be required to connect its non-stormwater discharges to the sanitary sewer for additional treatment to minimize the potential for pollutants entering the City's MS4.

**SECTION X: MONITORING OF DISCHARGES****1. Applicability**

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

**2. Access to Facilities**

a. The City's Authorized Enforcement 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 City's Authorized Enforcement 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 stormwater, and the performance of any additional duties as defined by state and federal law.

c. The City's Authorized Enforcement 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 stormwater discharge.

d. The City's Authorized Enforcement 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 stormwater 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 verbal request of the City. The costs of clearing such access shall be borne by the operator.

f. Unreasonable delay in allowing the City's Authorized Enforcement Personnel access to a permitted facility is a violation of a stormwater discharge permit and of this Ordinance. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the City reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.

g. If the City's Authorized Enforcement Personnel has been refused access to any part of the premises from which stormwater 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 the court of competent jurisdiction.

**SECTION XI: REQUIREMENTS TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES**

The City has requirements within the latest version of the *Construction Best Management Practices Ordinance* and *Article 18 of the Land Use and Development Ordinance* that identifies Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, 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 municipal storm drain system 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 municipal separate storm sewer system.

**SECTION XII: 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 XIII: 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 illegal discharges or pollutants discharging into stormwater, the storm drain system, 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 one of the City's Authorized Enforcement Personnel 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 same City Authorized Enforcement Personnel 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 at the facility for at least three years.

**SECTION XIV: ENFORCEMENT**

Whenever the City finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the City may mandate compliance by written notice of violation to the responsible person ("Notice of Violation"). Such Notice of Violation may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit connections or discharges;
3. That violating discharges, practices, or operations shall cease and desist;
4. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and
5. Payment of a fine to cover administrative and remediation costs; and
6. 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 work must be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

This Ordinance is also subject to enforcement by the issuance of a Municipal Offense Ticket or summons and complaint pursuant to the ordinance titled "Establish Penalties and Enforcement Procedures for Violation of Municipal Ordinances." Each day of documented non-compliance constitutes a separate violation of this Ordinance.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, then representatives of the City shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

**SECTION XV: COST OF ABATEMENT OF THE VIOLATION**

Within ten (10) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the city by reason of such violation. The liability shall be paid in not more than twelve (12) equal payments. Interest at the rate of percent per annum shall be assessed on the balance beginning on the first (1<sup>st</sup>) day following discovery of the violation.

**SECTION XVI: 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 XVII: ALTERNATE COMPENSATORY ACTION IN LIEU OF ENFORCEMENT**



**SECTION XXII: 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. All ordinances or parts of ordinances, in any manner conflicting herewith are hereby repealed.

**SECTION XXIII: 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 17<sup>TH</sup> DAY OF MARCH, 2014.**

  
\_\_\_\_\_  
DANE HAYGOOD, MAYOR

**ATTEST:**

  
\_\_\_\_\_  
REBECCA A. HAYES, CITY CLERK