

## ARTICLE 13

### EROSION AND SEDIMENTATION

#### 13.10 General.

All persons engaged in any land-disturbing activities shall take all reasonable measures to protect all public and private property, including roadways and waterways, from damage by such activities. However, that notwithstanding, there are certain specific measures that must be taken any time there is significant disturbance of the land; and the following provisions set forth the requirements that shall accordingly be imposed on persons engaged in land disturbing activities which necessitate planning and implementation of effective erosion and sedimentation controls for development sites.

The following provisions and requirements will not apply to activities listed as being exempt in Section 13.22 of this Article.

#### 13.11 Authority and Jurisdiction Specific to this Article.

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 County to obtain a NPDES permit for storm water discharges from the MS4, effective March 1, 1995, the County 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. 95775 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 counties.

#### 13.12 Definitions.

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

**Accidental Discharge** - a discharge prohibited by this Article into the MS4 or community water which occurs by chance and without planning or consideration prior to occurrence.

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

**Agriculture** - activities undertaken on land for the production of plants, crops, and animals which are useful to man.

**Alabama Department of Environmental Management** (herein abbreviated as "**ADEM**") - the State of Alabama regulatory agency, created under Code of 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 or agency who executes the necessary forms to procure approval of an erosion and sedimentation control plan from the County.

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

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

**Clearing** - the removal from the land of trees, shrubs, grass, brush and/or other varied ground cover and vegetation which, in its undisturbed state, is useful for windbreaks, water retention and the maintenance of topsoil (but not including the ordinary mowing of grass or the maintenance of cleared areas).

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

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

**Contour Line** - a line joining points having or representing equal elevations.

**Department, The** – the Department of Inspection Services of Jefferson County, Alabama.

**Director, The** – the Director of the Department of Inspection Services of Jefferson County, Alabama.

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

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

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

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

**Erosion** - wearing away of land surfaces as a result of the movement of wind or water.

**Erosion Control** - the application of measures to reduce erosion of land surfaces.

**Erosion and Sedimentation Control Plan** - documentation prepared by an applicant, usually submitted in conjunction with construction plans, depicting the manner in which the requirements of this Article – to address issues associated with storm water for purposes such as preventing pollution, improving water quality, keeping pollutants out of runoff, and implementing Best Management Practices – will be met.

**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 and discharges which are specifically excepted from this Article.

**Land Disturbing Activity** - any change to a property that may result in soil erosion or the movement of sediment, or cause an increase or change of direction in water run-off or drainage, including but not limited to the clearing, dredging, grading, compaction, excavating, transporting or filling of land.

**Maximum Extent Practicable** – full implementation and regular maintenance of available industry-standard technology and effective management practices – such as those contained in the latest edition of the *Alabama Handbook for Erosion Control, Sediment Control, and Stormwater Management on Construction Sites and Urban Areas*, Alabama Soil and Water Conservation Committee (ASWCC), being used by ADEM – designed to prevent and/or minimize discharges of pollutants and ensure protection of groundwater and surface water quality.

**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.

**MS3 - Municipal Separate Storm Sewer** - 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.

**MS4 - Municipal Separate Storm Sewer System** - a system of municipal separate storm sewers, each meeting the definition of MS3 above.

**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.

**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 entering the MS4.

**Qualified Credentialed Professional** - a Professional Engineer, an Alabama Natural Resources Conservation Service professional designated by the State Conservationist, or a Certified Professional In Erosion And Sediment Control (CPESC). A QCP includes a registered landscape architect, a registered land surveyor, a Professional Geologist, a registered forester, a Registered Environmental Manager as determined by the National Registry of Environmental Professionals (NREP), and a Certified Professional Soil Scientist (CPSSc) as determined by ARCPACS, and other ADEM-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 Article, 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 Article. The QCP shall be in good standing with the authority granting the registration or designation.

**Registration** - filing, with the Jefferson County Department of Inspection Services, of any approved plan(s) issued pursuant to, or otherwise in association or conjunction with, this Article.

**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 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; i.e., that portion of the rainfall and resulting surface flow that is in excess of what 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 (the erosion and sedimentation control plan) to address concerns associated with storm water for the purpose of preventing pollution, improving water quality, keeping pollutants out of runoff, and the implementation of Best Management Practices.

**Stream** - areas where surface waters produce a defined channel or bed that demonstrates clear evidence of the passage of water and includes, but is not limited to, bedrock, channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water year-round. This definition is not meant to include artificially-created irrigation ditches, canals, storm or surface water runoff devices, or other artificial water courses unless they are used by salmonid or created for the purposes of stream mitigation.

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

**Turbidity** - a measure of fine suspended matter in liquids assessing the condition of water or wastewater wherein the presence of suspended matter results in the scattering and absorption of light rays, and/or causes substantial visible contrast with the natural appearance of waters or interferes with any beneficial uses which they serve.

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

**Variance** - any reduction or relaxation of the minimum requirements of this Article in situations where, owing to exceptional circumstances or conditions peculiar to a specific site, strict adherence to the provisions of this Article would be unnecessary or result in undue hardship; provided, however, that the granting of such variance shall not result in any condition, or in any other way be, contrary to the spirit and intent of this Article.

**Wetland** - areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

### **13.20 Administration.**

The Department of Inspection Services (The Department) shall be responsible for the enforcement of the provisions of this Article throughout the territorial jurisdiction of the County, under the oversight of its Director and/or Chief Civil Engineer.

### **13.21 Registration Required.**

Before the commencement of any land-disturbing activity that is not exempted from the requirements of this Article, the owner of the land on which such activity shall be conducted – or his/her duly authorized agent – must register an erosion and sedimentation control plan with the Jefferson County Department of Inspection Services.

### **13.22 Exceptions.**

Land-disturbing activities that shall be exempt from the registration requirements of this Article include those that follow below. However, the persons conducting these activities shall nevertheless remain responsible for compliance with any other applicable law.

1. Agriculture.
2. Silviculture.
3. Gardens, landscaping, home repairs, home maintenance work, minor house additions, and other related or similar activities which result in only minor soil erosion, including the construction, maintenance or repair of accessory structures, on individual residential lots containing an existing, established residence.
4. Minor activities on single- or two-family residential properties, such as individual connections for utility services and sewer services, and minor grading for driveways, yard areas and sidewalks.
5. Minor maintenance, minor repair, and the minor extension of any existing underground public utility lines; provided, that the utility company which owns such lines has received approval of a general erosion and sedimentation control plan for such maintenance, repair, and extension; and provided further, that any utility company making a minor extension (as defined in Section 13.12 of this Article) disturbing more than 1,000 linear feet of land must give the Department written notice of such prior to the commencement of the activity.
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.

### **13.30 Application and Registration Procedures.**

- a. All erosion and sedimentation control plans shall be prepared by a Qualified Credentialed Professional, except those plans related to the construction of individual single-family residences. The erosion and sedimentation control plan shall be a part of all construction plans filed with the Department prior to the commencement of any land-disturbing activity on the site. The plan will be reviewed by the Department, in conjunction with the County's review of the construction plan set as a whole, for compliance with the latest edition of the *Alabama Handbook for Erosion Control, Sediment Control, and Stormwater Management on Construction Sites and Urban Areas*, Alabama Soil and Water Conservation Committee (ASWCC), being used by ADEM (as well as with the provisions of this Article); the review will be conducted in accordance with the fee and time schedules established for construction plan review by the Jefferson County

Commission and the Department respectively; and any subsequent approval of such construction plans shall be understood to include and constitute acceptance of the erosion and sedimentation plan as well.

- b.** For erosion and sedimentation control plans not submitted as part of a complete construction plan set, each application for registration of a land disturbing activity shall be accompanied by a nonrefundable fee in accordance with the Fee Schedule adopted by the Jefferson County Commission.

In those cases, the Department shall review the plan as described in Item a. above, and either accept or reject the erosion and sedimentation control plan within fourteen (14) days of filing. If the erosion and sedimentation control plan is rejected, the Department shall provide the applicant with written notice of the reasons for its rejection. Any resubmissions shall be processed in the same manner.

- c.** If the Department determines, either upon review of such plan or on inspection of the site, that a significant risk of off-site sedimentation or erosion exists, it will require a revised plan be considered by the preparing Qualified Credentialed Professional.
- d.** Erosion and sedimentation control plans shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to describe adequately the proposed development of the site and the measures planned to meet the Basic Control Objectives set forth in Section 13.31. Plan content may vary to meet the needs of specific site conditions.
- e.** In no case shall any proposed land-disturbing activity be commenced prior to the acceptance of an erosion and sedimentation plan by the Department, and its registration with same. Neither shall such registration excuse the owner from the responsibility for obtaining any other required permits or licenses.
- f.** All applications for registration of an erosion and sedimentation control plan shall include the property owner's or owners' written consent for Jefferson County, or the designated agent of Jefferson County, to enter upon the property or properties in order to abate any and all violations of this Article, or of the registered erosion and sedimentation control plan, as provided for in Sections 13.51 and 13.60 of this Article.
- g.** The Department must be notified immediately upon any change in ownership of property for which an erosion and sedimentation control plan has been registered, and/or any change in the person or persons responsible for ensuring compliance with the provisions of this Article.
- h.** Whenever there is a conflict between federal, state, or local laws, ordinances, rules and regulations, orders or decrees, the more restrictive provision shall apply.

### 13.31 Basic Control Objectives.

The basic control objectives which should be considered in developing and implementing an erosion and sedimentation control plan are to:

- a. **Identify Critical Areas.** On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation caused from increased run-off are to be identified and receive special attention.
- b. **Limit Exposed Areas.** All land-disturbing activities should be planned and conducted to minimize the size of the area to be exposed at any one time.
- c. **Limit Time of Exposure.** To the maximum extent practicable, all land-disturbing activities should be planned and conducted to limit exposure to the shortest feasible time.
- d. **Control Surface Water.** Surface water runoff originating upgrate of exposed areas should be controlled to reduce erosion and sediment loss, to the maximum extent practicable, during the period of exposure.
- e. **Control Sedimentation.** All land-disturbing activities should be planned and conducted so as to prevent offsite sedimentation damage.
- f. **Manage Storm Water Runoff.** When the increase in storm water volumes, peak rates and/or velocity of storm water runoff resulting from a land-disturbing activity is sufficient to cause damaging accelerated erosion of the receiving ditch or channel stream, plans should include measures to help control the velocity and/or rate of release so as to minimize accelerated erosion and increased sedimentation of the ditch or stream channel. This may include the use of outlet energy dissipaters, detention methods, ditch or in-stream channel measures or engineered controls.
- g. **Low Impact Development Techniques.** Erosion and sedimentation control plans should seek to incorporate low impact development and environmental site design techniques, such as infiltration and capture/re-use of storm water, to the maximum extent practicable.

### 13.32 Mandatory Standards for the Erosion and Sedimentation Control Plan.

All erosion and sedimentation control plans shall include, incorporate or otherwise account for or address the elements listed below.

- a. No land-disturbing activity shall be permitted in proximity to a lake, natural watercourse, or adjacent property where applicable unless a buffer zone is provided along the boundary of sufficient width to confine siltation and/or prevent erosion, to the maximum extent practicable, provided that the land-disturbing activity is not in connection with the construction of facilities to be located on, over, or under a lake, natural watercourse, or adjacent property.
- b. 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. In any event, slopes left exposed will, within the shortest feasible time of final grading



(though not to exceed 14 days, per Section 13.40(d)), be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.

**c. Design and Performance Standards.**

1. Structural erosion and sedimentation control measures shall be so planned, designed, and constructed as to provide control from the calculated peak rates of runoff from a ten-year frequency storm. Runoff rates may be calculated using the procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures. Runoff computations shall be based on rainfall data published by the National Weather Service for the area.
2. Structural controls shall be designed and maintained as required so as to minimize erosion and pollution to the maximum extent practicable. All surface water flowing toward the construction area shall, to the maximum extent practicable, either be passed through the site in a protected channel or diverted by using berms, channels, pipes or sediment traps, as necessary.
3. Erosion and sediment control measures shall be designed, based on the size and slope of the disturbed areas or drainage areas, to minimize erosion and to control sediment to the maximum extent practicable. Sediment in runoff water must be minimized by using the appropriate BMPs.
4. Discharges from sediment basins and traps must be conducted in a manner consistent with good engineering practices. Sediment-laden or otherwise polluted water discharged to the MS4 must be addressed in a manner consistent with good engineering practices and the requirements of this ordinance.
5. The erosion and sedimentation control plan shall include measures to reduce erosion and other adverse impacts to MS4 drainage system which would result from an increase in the volume of water and the rate of runoff of water during land-disturbing activities.

**d. Additional Standards Regarding Lakes and Natural Watercourses, Stream Banks and Channels.**

1. Land-disturbing activity in connection with construction in, on, over, or under a lake or natural water course shall be planned and conducted, to the maximum extent practicable, in such a manner as to minimize the extent and duration of disturbance of the stream channel.
2. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided. Furthermore, the U.S. Army Corps of Engineers must approve the relocation of any stream or waterway prior to acceptance of such plan by the Department, and documentation of such approval provided to the Department as part of the plan submission.

3. Provision may be required for the permanent protection of on-site or adjacent stream banks and channels from the erosive effects of increased velocity and volume of storm water runoff resulting from certain land-disturbing activities.
  - (a) A combination of storage and controlled release of storm water runoff may be required.
  - (b) Detention storage and controlled release will not be required in those instances where the person planning to conduct the activity can demonstrate that the storm water release will not cause an increase in accelerated erosion or sedimentation of the receiving ditch, stream channel, or other drainage facility, taking into consideration any anticipated development of the watershed in question.

**e. Standards Pertaining to Related Off-Site Activities.**

1. **Borrow and Waste Areas.** When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated, and must be included in the erosion and sedimentation control plan. When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.
2. **Access and Haul Roads.** Temporary access and haul roads (other than public roads) constructed or used in connection with land-disturbing activity shall be considered a part of such activity.

**13.33 Application Requirements.**

All applications for registration of an erosion and sedimentation control plan must include the following information:

- a. Name of applicant, with telephone numbers, email address, facsimile machine number, and/or other information by which the applicant can be contacted.
- b. Address where applicant, or other local contact person who can furnish information about the land-disturbing activity, can be reached.
- c. Names, addresses, telephone numbers, email addresses, facsimile machine numbers, etc., of:
  1. the owner of the project;
  2. the owner of the property on which the project is to be located; and,

3. the ground lessee of the property, if any, on which the land-disturbing activity is to be conducted if the applicant is not the owner of the project and such property.
- d. Legal description and address, if any, of the property upon which the land-disturbing activity is to be conducted.
- e. Names, addresses, telephone numbers, email addresses, facsimile machine numbers, etc., of all contractors and subcontractors who shall implement any portion of the erosion and sedimentation control plan; provided, however, that if the contractor and the subcontractors have not been selected when the application for registration is filed, the applicant shall furnish such information to the Department within five (5) days of the day or days on which the contractor and/or subcontractors are selected.
- f. Name of the Qualified Credentialed Professional who has prepared/approved the erosion and sedimentation control plan, with telephone number, email address, facsimile machine number, and/or other information by which said Professional can be contacted (except for land-disturbing activities related solely to the construction of individual single-family residences).
- g. A written description of the BMPs which are shown on the plan, details of said BMPs, and a schedule of their implementation during land-disturbing activities and construction; a projected time schedule for the commencement and completion of the land-disturbing activity itself; and specifications for BMP maintenance both during and after completion of the project.
- h. A description of the existing site conditions and adjacent topographical features; the information necessary to determine the erosion qualities of the soil on the site; potential problem areas of soil and erosion and sedimentation; soil stabilization specifications and storm water management considerations;
- i. 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.
- j. A vicinity map.
- k. A scaled drawing or drawings, as required by Articles 9, 10 and 11 of the Jefferson County Subdivision & Construction Regulations, prepared by a Qualified Credentialed Professional and clearly depicting the methods, manner, activities, equipment, and any and all other elements to be used in the accomplishment of the erosion and sedimentation control plan, at a sufficient size and in sufficient detail as to be commensurate with the size of the project; the severity of the site condition and its potential for off-site damage; and to sufficiently document satisfaction of the standards set forth hereinabove, as well as achievement of the Basic Control Objectives of Section 13.31.

- l.** Signature of the applicant, property owner, project manager or other responsible party attesting to the following: “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.”
- m.** The property owner’s or owners’ written consent for Jefferson County, or the designated agent of Jefferson County, to enter upon the property or properties in accordance with Section 13.30(f) of this Article.

#### **13.40 Commencement of Land-Disturbing Activities: Responsibilities of the Property Owner/Developer.**

No land-disturbing activity subject to the provisions and requirements of this Article shall be undertaken except in accordance with the following mandatory processes and procedures.

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

- a.** A copy of the accepted erosion and sedimentation control plan shall be on file at the job site. Copies of all monthly reports and all accidental discharge reports submitted to ADEM must also be kept on-site and available for inspection by the Director or his/her designee.
- b.** The person(s) proposing to conduct any land-disturbing activity or an agent, contractor or other representative of such person must contact the Department at least five (5) business days before commencement of the land-disturbing activity to advise the Director or his/her designee of the commencement of such land-disturbing activity; unless, for good cause shown, the Director or his/her designee permits such person, contractor, agent or other representative to contact him nearer to the date of the commencement of such land-disturbing activity.
- c.** Other than land-clearing activities required to install the appropriate BMPs, all measures required by the erosion and sedimentation control plan shall be in place and functional before any clearing or earthmoving operations begin, and shall be constructed and maintained throughout the construction period. Temporary measures may be removed at the beginning of the workday, but shall be replaced at the end of the workday (unless conditions, such as a rain event, require them to be replaced earlier.)
- d.** 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 erosion and sedimentation control plan until the graded slope or fill is stabilized.

- e. 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.
- f. The person engaged in or conducting the land-disturbing activity shall be responsible for maintaining all temporary and permanent erosion and sedimentation measures and facilities during the development of a site. The responsibility for maintaining all permanent erosion and sedimentation control measures and facilities after site development is completed shall lie with the landowner, until such time as adequate vegetative cover and site stabilization is achieved as determined by the Director or his/her designee.
- g. Control measures shall be maintained as an effective barrier to sedimentation and erosion in accordance with the provisions of this ordinance. All control measures shall be checked, and repaired as necessary, monthly in dry periods and within twenty-four (24) hours after any precipitation at the site of 0.75 inches or greater in any 24-hour period. During prolonged rainfalls, daily checking and, if necessary, repairing shall be done. The registrant of the erosion and sedimentation control plan shall maintain written records of such checks and repairs, which records shall be subject to inspection by Department personnel at any reasonable time.
- 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 any 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 that does not occur naturally from normal ecological or biological processes in the environment. 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. A ground cover sufficient to restrain erosion shall be planted or otherwise provided within fourteen (14) days on that portion of any tract upon which further active construction is not being undertaken; provided, that this activity shall not apply to cleared land forming the basin of a reservoir later to be inundated.
- j. When the land-disturbing activity is finished and stable vegetation or other permanent controls have been established on all remaining exposed soil, the owner of the land where the land-disturbing activity was conducted, or his authorized agent, shall notify the Department of these facts, and request a final inspection.

**k. Accidental Discharges.**

1. In the event of any discharge of a hazardous substance or a significant spill of a hazardous substance to the MS4 which could constitute a threat to human health or the environment, the owner or operator of the site shall give notice to the Department and the Jefferson County Emergency Management Authority in the same manner, and within the same time, as is required by State regulations for notice to ADEM.
2. 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.

**13.50 Monitoring and Inspection of Land-Disturbing Activities:  
Authority of the Department of Inspection Services**

- a. The Director or his/her designee, bearing proper identification, may enter and inspect all land-disturbing activities for regular periodic inspections, investigations, monitoring, observations, measurements, enforcement, sampling and/or testing to verify compliance with the provisions of this ordinance, and to confirm the implementation and maintenance of any erosion and sedimentation control plan approved for such land-disturbing activities.
- b. It is hereby further provided that any site undergoing land-disturbing activity shall be inspected when the Director or his/her designee 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; or if the Director or his/her designee has reasonable cause to believe that discharges from a land-disturbing activity to the MS4 may cause an imminent threat to human health or the environment. Such inspections may take place at any time and without notice.
- c. Whenever the Department determines that significant sedimentation is occurring as a result of a land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity or the person responsible for maintenance will be required to take additional protective action, and to furnish this information to the Department.
- d. The Director or his/her designee shall inspect the site within five (5) working days after receipt of notice that the land-disturbing activity is finished, and stable vegetation or other permanent controls have been established on all remaining exposed soil, and may require additional measures to stabilize the soil and control erosion and sedimentation. If additional measures are so required, written notice of the requirement for such additional

measures shall be delivered to the owner, and the owner shall continue to be covered by the original registration issued until a final inspection approves the project as having been satisfactorily completed. The Director or his/her designee shall provide to the owner, within ten (10) days of the date of such approval, a certification of completion showing that the requirements of the erosion and sedimentation control plan registration have been fulfilled.

### **13.51 Surety Requirements.**

- a. Prior to commencement of land disturbing activities.** In order for the Department to issue a Zoning Approval allowing land disturbing and/or construction activities to begin, and except as noted in Section 13.51(c) below, the registrant/property owner must submit an irrevocable letter of credit or other form of surety acceptable to the Director, styled in favor of the Jefferson County Treasurer, in such amount as specified herein to assure that the work – if not completed or if not done in accordance with the approved plans and specifications – will be corrected in order to eliminate and/or prevent hazardous conditions, or erosion and/or sedimentation problems, to the maximum extent practicable, pending final approval of the work as set forth in Section 13.50(d) above.

The surety shall:

1. contain, or have attached to it as an exhibit, a legal description of the site and/or a valid 911 address;
2. remain in effect for such reasonable period of time as may be required by the Director or his/her designee (pending final inspection and approval of the work as set forth in Section 13.50(d) above);
3. be set to \$3,000.00 per acre, or portion thereof;
4. be set to double the amount determined by Item 3 above where clearing or earthwork is performed in areas designated as floodways, floodplains or areas susceptible to landslides; and,
5. must be issued by a bank having a branch in Jefferson County.

- b. Following completion of land disturbing activities.** In the event a Certificate of Occupancy is requested prior to complete stabilization of a property, the Director or his/her designee shall require a surety – in accordance with the terms and conditions set forth in Section 13.51(a) above, but to be separate and apart from any surety required prior to the land disturbing activity – in order to assure the necessary work to properly stabilize the property is accomplished.

- c. Exceptions to the surety requirements of this Article.** In cases where an erosion and sedimentation control plan is related to the construction of an individual single-family residence, the requirement for a surety prior to the commencement of the land disturbing activity (Section 13.51(a)) may be waived as follows:

1. Registrants who possess current certification as a Qualified Credentialed Inspector through the Homebuilders Association of Alabama, or is otherwise certified through a Department-sponsored or Department-approved training program, shall not be required to post the surety of Section 13.51(a) above (i.e., prior to the commencement of the accepted land disturbing activities).
2. Provided, however, that the Director shall have the right to require any registrant/owner who was initially not required to post a surety under this Section, but who subsequently has had any action taken against him/her by the Department for failure to comply with the requirements of this Article and/or an accepted erosion and sedimentation control plan, to post the surety of Section 13.51(a) above prior to the Department's issuance of any further Zoning Approvals to said individual.

### **13.60 Enforcement and Abatement**

- a. **Unauthorized Discharges.** Any discharge of storm water made in violation of this ordinance, or of any condition of an erosion and sedimentation control plan registered pursuant to this ordinance, shall be subject to correction and/or abatement in accordance with applicable law; provided, however, that the following direct or indirect discharges into the MS4 are allowable under the terms of this ordinance (unless determined by the Director or his/her designee 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.
- b. **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 Director may take any and all appropriate measures to remove or alleviate such threat.
- c. **Enforcement Authority.** The Director or his/her designee shall have the authority to issue notices of violation and citations, and to designate those persons who have enforcement authority. In exercising that authority, the persons enforcing the requirements of this Article shall follow the policies and procedures outlined herein below.
  1. **Written Notice.** Whenever an authorized employee of the Department finds that a registrant, or any other person discharging storm water, has violated or is violating this Article or the erosion and sedimentation control plan registered hereunder, the Department shall serve upon such person written notice of the violation. Within ten (10) days of such notice, the permit registrant/property owner shall submit to the Department a written explanation of the violation and a plan for the satisfactory correction and prevention thereof, including the specific action(s) to be taken. However, submission of said plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the notice of violation.



2. **Consent Orders.** The Director or his/her designee is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the person to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as administrative orders issued pursuant to Items 4 and 5 below.
3. **Show Cause Hearing.** The Director or his/her designee may order any person who violates this Article, or any erosion and sedimentation control plan registered hereunder, to show cause why a proposed enforcement action should not be taken. Notice shall be served on the person, specifying the time and place for the meeting; the proposed enforcement action and the reasons for such action; and a request that the violator show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally, or by registered or certified mail (return receipt requested), at least ten (10) days prior to the hearing.
4. **Compliance Order.** When an authorized employee of the Department finds that any person has violated or continues to violate this Article, or any erosion and sedimentation control plan registered hereunder, the Director or his/her designee may issue an order to the violator directing that, following a specified time period, there must be adequate structures, devices, and/or procedures installed and/or implemented, and properly operated thereafter. Orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the construction of appropriate structures, installation of devices, self-monitoring, and management practices.
5. **Elimination of Illicit Discharges.** Any illicit discharge (as defined in this Article) shall be eliminated as expeditiously as possible, and any improper disposal practices ceased immediately upon identification of, and notice to, the responsible parties. Where elimination of an illicit discharge within ten (10) working days is not possible, the responsible party shall submit an expeditious schedule for removal of the discharge; and in the interim, shall take all reasonable and prudent measures to minimize the discharge of pollutants to the MS4.
6. **Cease and Desist Orders.** When an authorized employee of the Department finds that any person has violated or continues to violate this Article, or any erosion and sedimentation control plan registered hereunder, the Director or his/her designee may issue an order to cease and desist all activity declared to be in violation of this Article, and direct those persons in noncompliance to:
  - (a) comply forthwith with all requirements of this Article, and any erosion and sedimentation control plan registered pursuant hereto; and/or
  - (b) take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.

7. **Stop Work Orders.** Failure to promptly undertake and complete, in a timely manner, whatever remedial and/or preventive actions are necessary, ordered or otherwise required in order for a work site to be brought into full compliance with this Article, or with the relevant erosion and sedimentation control plan, shall subject the registrant, property owner and/or developer to issuance of an order requiring all work on the site – land disturbing activities, demolition, construction, etc. – to be immediately halted pending the necessary corrective action.
8. **Further Action.** The Jefferson County Department of Inspection Services shall monitor all land-disturbing activities, including those approved under an ADEM NPDES permit, for compliance with the BMP/erosion and sedimentation control plan, and with all other applicable conditions or requirements as may have been made a part of said permit. The Department shall also be authorized to take whatever enforcement action may be necessary to bring a work site into compliance with said permit, as well as with all applicable requirements of this Article, to the fullest extent allowed by law. And, in any case where the Director determines that a non-compliant condition cannot or will not be satisfactorily addressed by the responsible parties, that enforcement action shall include the right for Jefferson County, or a designated agent of said County, to enter upon such non-compliant property (as provided in Section 13.30(f)); to carry out the work necessary to eliminate and/or prevent hazardous conditions, or erosion and/or sedimentation problems (as provided in Section 13.51); and to assess whatever penalties as may be deemed appropriate (under Section 13.61) by a court of law.

### 13.61 Penalties.

- a. Any person who shall commit any act declared unlawful under this Article; who violates any provision of this Article; who violates the provisions of any erosion and sedimentation control plan registered pursuant to this Article; or who fails or refuses to comply with any lawful communication or notice from the County to abate or take corrective action, shall be guilty of a criminal offense.
- b. Notwithstanding the foregoing, the owner(s) of any property upon which a violation of this Article, or of a registered erosion and sedimentation control plan, has been cited by the Department shall be deemed ultimately responsible for the condition of, or the conditions being caused by, the land disturbing activity taking place on their property. And as such, said property owner(s) shall accordingly be subject to the penalties of this Section in the event such penalties cannot be levied against the person(s) actually committing the offense.
- c. Under the authority provided in Alabama Code § 11-45-9, Jefferson County declares that any person violating the provisions of this Article may be fined an amount not less than \$50.00 and not more than \$500.00 per day, and may be imprisoned or sentenced to hard

labor for a period not to exceed six months, for each day of each violation. Each day of violation shall constitute a separate violation.

- d. The County shall have the right and authority to recover:
  - 1. all damages proximately caused by the violator to the County, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this Article, or any other actual damages caused by the violation; and,
  - 2. the costs of the County's maintenance of storm water facilities when the user of such facilities fails to maintain them as required by this Article.
- e. The County may bring legal action to enjoin the continuing violation of this Article. The existence of any other remedy, at law or equity, shall be no defense to any such actions.
- f. The remedies set forth in this section shall be cumulative, not exclusive. It shall not be a defense to any action, civil or criminal, that one or more of the remedies set forth herein has been sought or granted.

### **13.62 Appeals of Penalties.**

Any person aggrieved by the imposition of a civil penalty or damage assessment, as provided by this Article, may appeal said penalty or damage assessment to the Flood Hazard Appeal Board, as so authorized in Section 13.70 of this Article. Appeals of the penalties set forth herein above shall be processed as follows

- a. The appeal shall be in writing and filed with the Department within 15 days after the civil penalty and/or damage assessment is served in any manner authorized by law.
- b. Upon receipt of an appeal, the Flood Hazard Appeal Board shall hold a public hearing within 30 days, giving ten (10) days prior notice of the time, date, and location of said hearing by publication in a daily newspaper of general circulation. Ten (10) days prior notice by registered mail shall also be provided to the aggrieved party, such notice to be sent to the address provided by the aggrieved party at the time of appeal.
- c. The decision of the Flood Hazard Appeal Board shall be final.

### **13.70 Establishment and Authority of the Flood Hazard Appeal Board.**

The Jefferson County Commission established a board of five (5) members known as the Flood Hazard Appeal Board in conjunction with the adoption of the Floodplain Management Ordinance on September 19, 2006. The composition of the Board, and the powers and duties of the members of the Board with respect to the Floodplain Management Ordinance, are set forth in Article 5 of said Ordinance. However, having already established said Board in order to review and hold hearings in consideration of variances to Jefferson County's floodplain regulations; and

having determined that matters of erosion and sedimentation control are very closely related to matters addressed by the floodplain regulations; the Jefferson County Commission hereby, upon adoption of this Article, establishes and empowers the Flood Hazard Appeal Board to also review and hold hearings in the consideration of variances to the regulations and requirements of this Article as well, as provided herein below.

### **13.71 Appeals of the Requirements of this Article.**

The Flood Hazard Appeal Board (“Board”), as established by the Jefferson County Commission in conjunction with the adoption of the Floodplain Management Ordinance on September 19, 2006, shall have the following powers and duties with respect to this Article 13 of the Jefferson County Subdivision and Construction Regulations:

- a. Administrative Review.** The Board shall hear and decide the following:
  - 1. appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the Director of Inspection Services/Chief Civil Engineer in the enforcement or administration of this Article; or,
  - 2. requests for the interpretation of the provisions of this Article.
  
- b. Variances.** The Board shall issue variances from the terms, provisions or requirements of this Article only in accordance with the following criteria:
  - 1. Variances may be issued for development necessary for the conduct of a functionally dependent use, provided the intent of this Article is met; no reasonable alternative exists; and that development on and around the affected property is protected by methods that minimize erosion, sedimentation and storm water run-off, creating no threats to public safety, private property, the MS4 or the environment.
  - 2. In reviewing such requests, the Board shall consider all technical evaluations, relevant factors, and all standards specified in this and other Articles and Sections of the Jefferson County Subdivision and Construction Regulations.
  - 3. A variance shall be issued only when there is a finding of good and sufficient cause, and either:
    - (a) a determination that failure to grant the variance would result in exceptional hardship; or
    - (b) a determination that strict adherence to certain requirements of this Article is unnecessary due to the location, topography or other circumstances or factors pertaining to the proposed site.

In evaluating both (a) and (b) above, the granting of a variance must not result in increased erosion, sedimentation, storm water run-off, or any other aspects of drainage beyond the parameters established by this Article; nor will such variance pose any threats to public safety, cause extraordinary public expense, create a

nuisance, cause fraud on or victimization of the public, or conflict with any existing local laws or ordinances.

4. Any deviation from the standards of this Article must be weighed carefully. Variances shall only be issued upon a determination that the variance is the minimum necessary to afford appropriate relief.
- c. In exercising the above mentioned powers, the Board may reverse or affirm, wholly or in part; may modify the order, requirement, decision, or determination appealed from; and/or may make such order, requirement, decision, or determination as ought to be made; and, to that end, shall have all the powers of the Director of Inspection Services/Chief Civil Engineer, from whom the appeal is taken.
- d. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Director of Inspection Services/Chief Civil Engineer certifies to the Board that such action could cause imminent peril to life or property, or substantial damage to the environment. However, this provision shall not be construed as authorizing the approval or registration of any erosion and sedimentation control plan, nor any construction plans based thereon, which do not fully comply with the requirements of this Article prior to the hearing and granting of relief from the Board.

#### **13.72 Appointments, Meetings and Procedures of the Flood Hazard Appeal Board.**

- a. The appointments to and composition of the Board, and its meeting format, rules and procedures shall be in accordance with the relevant Section(s) of the Floodplain Management Ordinance for Jefferson County, Alabama.
- b. The Department shall maintain the records of all appeal actions, including justification for any variances granted.
- c. Any person aggrieved by an order issued by the Director or his/her designee under the authority of this Article; by an interpretation of the provisions of this Article made by the Director; or by the strict application of any requirements or provisions of this Article; may appeal such to the Flood Hazard Appeal Board for hearing and review. A written notice of any such appeal must be filed with the Board through the Department, said notice to set forth, with particularity, the order complained of and/or relief sought
- d. The Board shall meet at calls of the chairman, or in any event the Board shall meet within thirty (30) days after the filing of a written notice of appeal.
- e. All hearings of the Board shall be open to the public. Written notice of the public hearing shall be given to all owners of properties adjoining the affected site.
- f. The Board shall render a decision on an appeal within thirty (30) calendar days after hearing the petition, except a decision may be postponed where additional information is required by the Board – whether of the appellant or County staff – provided that a

decision may be postponed no more than sixty (60) calendar days. The Board shall reconvene to consider the additional information and render a final decision.

- g.** All decisions of the Board shall state the basis and conditions upon which the decision was made and the reason therefore.

### **13.80 Repeal of Existing or Prior Ordinances, Regulations and Requirements.**

Upon adoption of this Article, these regulations shall immediately and thereafter govern land-disturbing activities, and all matters pertaining to erosion and sedimentation control, within the unincorporated limits of Jefferson County, Alabama, as now or hereafter established; and within such territory as shall now or hereafter be within its jurisdiction; with the exceptions as specified herein. Any and all ordinances previously adopted, and associations established in conjunction therewith, are hereby repealed.

(Entire Article Amended and Adopted 12/8/2009)