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JUN - 7 2017

Certified Mail # 91 7108 2133 3936 7155 3641

Honorable Loxcil B. Tuck
Mayor, City of Tarrant
1604 Pinson Valley Parkway
Tarrant, Alabama 35217

RE: Municipal Separate Storm Sewer System (MS4) Individual Phase I Permit
NPDES Number ALS000020
City of Tarrant MS4
Jefferson County (073)

Dear Mayor Tuck:

The Department has made a final determination to issue NPDES Permit No. ALS000020 to the City of Tarrant for discharges from its MS4. The NPDES Permit Number ALS000020 will be effective July 1, 2017 and expire on June 30, 2022.

The Department notified the public of its tentative determination to issue NPDES Permit No. ALS000020 on January 27, 2017. Interested persons were provided the opportunity to submit comments on the Department's tentative decision through February 27, 2017. In accordance with ADEM Admin Code r. 335-6-6-.21(7), a response to all comments received during the public comment period are provided with the enclosed permit.

The City of Tarrant is responsible for compliance with all provisions of the permit including, but not limited to, the performance of any monitoring, the submittal of any reports, and the preparation and implementation of any plans required by the permit.

Please note that On October 22, 2015, EPA finalized the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (Federal Register Vol. 80 No. 24). As required by this rule, the Department has included, in this permit, a requirement that on and after December 21, 2020, annual reports shall be submitted to the Department electronically in a prescribed manner acceptable to the Department.

If you have questions concerning this permit, please contact Marla Smith either by email at mssmith@adem.alabama.gov or by phone at 334-270-5616.

Sincerely,

Jeffery W. Kitchens, Chief
Stormwater Management Branch
Water Division

JWK/mss

File: FPER/41217

Enclosures: Permit and Response to Comments

cc: Ms. Kacy Sable /Environmental Protection Agency

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
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Decatur, AL 35603-1333
(256) 353-1713
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Mobile, AL 36608
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ADEM
Alabama Department of Environmental Management

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

PERMITTEE:	CITY OF TARRANT
AREA OF COVERAGE:	CORPORATE BOUNDARIES OF THE CITY OF TARRANT
PERMIT NUMBER:	ALS000020
RECEIVING WATERS:	WATERBODIES WITHIN THE CORPORATE BOUNDARIES OF CITY OF TARRANT

In accordance with and subject to the provisions of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251-1378 (the "FWPCA"), the Alabama Water Pollution Control Act, as amended, ***Code of Alabama 1975****, §§ 22-22-1 to 22-22-14 (the "AWPCA"), the Alabama Environmental Management Act, as amended,* ***Code of Alabama 1975****, §§22-22A-1 to 22-22A-15, and rules and regulations adopted thereunder, and subject further to the terms and conditions set forth in this permit, the Permittee is hereby authorized to discharge into the above-named receiving waters.*

ISSUANCE DATE:	JUNE 7, 2017
EFFECTIVE DATE:	JULY 1, 2017
EXPIRATION DATE:	JUNE 30, 2022

Glenda L. Dean

Alabama Department of Environmental Management

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PART I Applicability

A. Permit Area

This permit applies to the corporate boundaries of the City of Tarrant that are regulated by the Permittee and discharge to the Permittee's Municipal Separate Storm Sewer System (MS4).

B. Authorized Discharges

1. This permit authorizes all existing or new storm water point source discharges to waters of the State of Alabama from those portions of the (MS4s) owned or operated by the Permittee. Discharge of pollutants shall be reduced to the Maximum Extent Practicable (MEP), shall not cause, nor contribute to, violations of Alabama Water Quality Standards, and shall be in compliance with Total Maximum Daily Loads (TMDLs) where applicable.

2. This permit authorizes the following non-storm water discharges provided that they do not cause or contribute to a violation of water quality standards and provided that they have been determined not to be substantial contributor pollutants by the Permittee or the Department:
    a. Water line flushing
    b. Landscape irrigation (not consisting of treated, or untreated wastewater unless authorized by the Department)
    c. Diverted stream flows
    d. Uncontaminated ground water infiltration
    e. Uncontaminated pumped groundwater
    f. Discharges from potable water sources
    g. Foundation and footing drains
    h. Air conditioning drains
    i. Irrigation water (not consisting of treated, or untreated, wastewater unless authorized by the Department
    j. Rising ground water
    k. Springs
    l. Water from crawl space pumps
    m. Lawn watering runoff
    n. Individual residential car washing, to include charitable carwashes
    o. Residual street wash water
    p. Discharge or flows from firefighting activities (including fire hydrant flushing)
    q. Flows from riparian habitats and wetlands
    r. Dechlorinated swimming pool discharges

C. Prohibited Discharges

The following discharges are not authorized by this permit:

1. Discharges that are mixed with sources of non-storm water, unless such non-storm water discharges are in compliance with a separate NPDES permit or where those dischargers have been determined not to represent significant sources of pollution, as identified by, and in compliance with, Part I.B.2;

2. Discharges of materials resulting from a spill, except emergency discharges required to prevent imminent threat to human health or to prevent severe property damage, provided reasonable and prudent measures have been taken to minimize the impact of the discharges; and

3. The discharge of sanitary wastewater through cross connections or other illicit discharges through the MS4 is prohibited.

PART II Storm Water Pollution Prevention and Management Programs

A. Storm Water Management Program (SWMP)

1. The Permittee is required to develop, revise, implement, maintain and enforce a storm water management program (SWMP) which shall include controls necessary to reduce the discharge of pollutants from its MS4 consistent with Section 402(p)(3)(B) of the Clean Water Act and 40 CFR Part 122.26. These requirements shall be met by the development and implementation of a storm water management program plan (SWMPP) which addresses the best management practices (BMPs), control techniques and systems, design and engineering methods, public participation and education, monitoring, and other appropriate provisions designed to reduce the discharge of pollutants from the MS4 to the MEP.

2. The Permittee shall provide and maintain adequate finance, staff, equipment, and support capabilities necessary to implement the SWMPP and comply with the requirements of this permit.

3. The SWMPP must address the minimum program elements referenced in Part II.B. to include the following:

    a. A map of the Permittee's MS4 corporate boundaries;
    b. The BMPs that will be implemented for each control measure. Low impact development (LID)/green infrastructure (GI) shall be considered where feasible. Information on LID/GI is available on the following websites: http://www.adem.alabama.gov/programs/water/waterforms/LIDHandbook.pdf and http://epa.gov/polwaste/green/index.cfm.;
    c. The measureable goals for each of the program elements outlined in Part II.B.;
    d. The proposed schedule – including interim milestones, as appropriate, inspections, and the frequency of actions needed to fully implement each program element; and,
    e. The person and/or persons responsible for implementing or coordinating the BMPs for each separate program element.

4. Once the SWMPP is acknowledged by ADEM, activities and associated schedules outlined by the SWMPP or updates to the SWMPP are conditions of this permit.

5. Unless otherwise specified in this permit, the Permittee shall be in compliance with the conditions of this permit by the effective date.

B. Storm Water Program Elements and Requirements

1. **Storm Water Collection System Operations**

    a. Structural Controls

        i. For Permittee owned/maintained structural controls, the structural controls shall be operated in a manner to reduce the discharge of pollutants, to the MEP;

        ii. For Permittee owned/maintained structural controls, the Permittee shall include in the SWMPP and implement the following:

            1. Maintain a map of the structural controls;

2. Inspect existing and newly constructed structural controls on a semi- annual basis, at a minimum;
3. Develop a standard operating procedure (SOP) or inspection checklist for structural control inspection and maintenance procedures;
4. Stabilization and re-vegetation of eroded areas as needed; and
5. Floatables, litter, sediment and debris, in structural controls, shall be removed as needed.

iii. The Permittee shall maintain an inventory of structural controls, and maintain a tracking system for inspections and maintenance of the control structures; and

iv. The Permittee shall report each year in the annual report the following structural control information:

1. The number of inspections performed on structural controls, to include follow-up inspections. The inspection documentation (i.e. checklist) shall be made available upon request;
2. A summarization of the maintenance activities performed on structural controls;
3. The estimated amount of floatable, litter, sediment and debris that was removed, if applicable;
4. Copies of any contractual agreements for maintenance activities if not performed by the Permittee, if requested by the Department. The contractual agreement should specify maintenance activities performed and schedule; and
5. Updated structural controls map of Permittee-owned structural controls added during the preceding year with geographic coordinates.

2. **Public Education and Public Involvement on Storm Water Impacts**

a. The Permittee must further develop and implement a public education and outreach program to inform the community about the impacts from storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff to the MEP. The Permittee shall continuously implement this program in the areas served by the MS4.

b. The Permittee shall include within the SWMPP the methods for how it will:

1. Seek and consider public input in the development, revision and implementation of the SWMPP;
2. Identify targeted pollutant sources the Permittee's public education program is intended to address;
3. Plans to specifically address the reduction of litter, floatables and debris from entering the MS4, that may include, but is not limited to:
    a. Labeling storm drain inlets and catch basins with "no dumping" message; and
    b. Posting signs referencing local codes that prohibit littering and illegal dumping at designated public access points to open channels, creeks, and other relevant waterbodies
4. Inform and involve individuals and households about the steps they can take to reduce storm water pollution; and
5. Inform individuals and groups on how to become involved in the storm water program (with activities such as local stream and lake restoration activities). The target audiences and subject areas for the education program that are likely to have

significant storm water impacts should include, but is not limited to, the following:

i. General Public
   a. General impacts litter has on water bodies, how trash is delivered to streams via the MS4 and ways to reduce the litter;
   b. General impacts of storm water flows into surface water from impervious surface; and
   c. Source control BMPs in areas of pet waste, vehicle maintenance, landscaping and rain water reuse.
   d. Impacts of illicit discharges and how to report them.

ii. General Public and Businesses to include Home-Based and Mobile Businesses
   a. BMPs for use and storage of automotive chemicals, hazardous cleaning supplies, carwash soaps and other hazardous materials;
   b. Impacts of illicit discharges and how to report them.

iii. Homeowners, Landscapers, Property Managers and City Personnel
   a. Landscape techniques that protect water quality;
   b. BMPs for use and storage of pesticides, herbicides and fertilizers;
   c. BMPs for carpet cleaning and auto repair and maintenance; and
   d. Storm water pond maintenance.

iv. Engineers, City Personnel, Land Use Planners, Contractors and Developers
   a. Impacts of increased storm water flows into receiving water bodies;
   b. Technical standards for construction site sediment and erosion control;
   c. Storm water treatment and flow control BMPs; and
   d. Run-off reduction techniques and low impact development (LID)/green infrastructure (GI) practices that may include, but not limited to, site design, pervious pavement, alternative parking lot design, retention of forests and mature trees to assist in storm water treatment and flow control BMPS.

6. Evaluate the effectiveness of the public education and public involvement program; and
7. Organize and participate in activities that target the removal of litter, floatables, and debris from area waterways. The minimum number and the waterways these activities will target will be addressed in the SWMPP.

c. The Permittee shall report each year in the annual report the following information:

1) A description of the activities used to involve groups and/or individuals in the development and implementation of the SWMPP;
2) A description of the individuals and groups targeted and how many groups and/or individuals participated. If exact participation is not readily quantifiable, an estimation will be sufficient;
3) A description of the communication mechanisms or advertisements used to inform the public and the number of applications that were distributed (i.e. number of printed brochures, copies of newspapers, workshops, public service announcements, etc);
4) Results of the evaluation as required in Part II.B.2.b.6.; and
5) A list of the activities required in Part II.B.2.b.7 and the estimated amount of litter, floatables and debris removed during each activity.

d. The current SWMPP and latest annual report should be posted on the Permittee's website.

3. **Illicit Discharge Detection and Elimination (IDDE)**

a. The Permittee shall implement an ongoing program to detect and eliminate illicit discharges into the MS4, to the maximum extent practicable. The program shall include, at a minimum, the following:

1) The development and annual update of an MS4 map. An initial map shall be provided in the SWMPP with updates provided each year in the annual report. The map shall include, at a minimum:

a. The latitude/longitude of all known major outfalls;
b. The names of all waters of the State within the MS4 area that receive discharges from these major outfalls; and,

2) To the extent allowable under State law, an ordinance or other regulatory mechanism that prohibits non-storm water discharges to the MS4. The ordinance or other regulatory mechanism shall:

a. Include escalating enforcement procedures and actions;
b. Require the removal of illicit discharges and the immediate cessation of improper disposal practices upon identification of responsible parties. Where the removal of illicit discharge within ten (10) working days is not possible, the ordinance shall require the operator of the illicit discharge to take all reasonable and prudent measures to minimize the discharge of pollutants to the MS4; and
c. Provide for the review of the IDDE ordinance and update as necessary.

3) A dry weather screening program designed to detect and address non-storm water discharges to the MS4. This program must address, at a minimum, dry weather screening of twenty (20) percent of the major outfalls at least once per year with all (100 percent) major outfalls screened at least once per five years. Also, priority areas, as described by the Permittee in the SWMPP, will be dry weather screened on a more frequent schedule as outlined in the SWMPP. If any flow, from an unidentified source, is observed during the dry weather screening of an outfall, then the Permittee shall follow the sampling protocol as outlined in the SWMPP and developed in accordance with EPA's guidance manual, *Illicit Discharge Detection and Elimination, A Guidance Manual for Program Development and Technical Assessments*, Center for Watershed Protection, October, 2004.

4) Procedures for tracing the source of a suspect illicit discharge as outlined in the SWMPP. At a minimum, these procedures will be followed to investigate portions of the MS4 that, based on the results of the field screening or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water.

5) Procedures for eliminating an illicit discharge as outlined in the SWMPP;

6) Procedures to notify ADEM of a suspect illicit discharge entering the Permittee's MS4 from an adjacent MS4 as outlined in the SWMPP;

7) A mechanism for the public to report illicit discharges discovered within the Permittee's MS4 and procedures for appropriate investigation of such reports;

8) A training program for appropriate personnel on identification, reporting, and corrective action of illicit discharges; and

9) The Permittee shall post on its website the ordinance or other regulatory mechanism as required by Part II.B.3.a.2 of this Permit.

b. The Permittee shall report each year in the annual report the following information:

1) List of outfalls observed during the dry weather screening of the current year and a list of the outfalls to be dry weather screened during the upcoming year;
2) Updated MS4 map(s), if necessary;
3) Copies of the IDDE ordinance or other regulatory mechanism or provide a hyperlink for the ordinance or regulatory mechanism location on the Permittee's website; and,
4) The number of illicit discharges investigated, any associated sampling results, and the summary of corrective actions taken to include dates and timeframe of response.

4. **Construction Site Storm Water Runoff Control**

a. The Permittee shall further develop/revise, implement and enforce an ongoing program to reduce, to the maximum extent practicable, the pollutants in any storm water runoff to the MS4 from qualifying construction sites. The program shall include the following, at a minimum:

1) Procedures to require all applicable construction sites to obtain coverage under ADEM NPDES General Permit ALR10000 or other applicable NPDES permits;
2) To the extent allowed under State law, an ordinance or other regulatory mechanism to require effective erosion and sediment controls on qualifying construction sites, as well as sanctions to ensure compliance;
3) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;
4) Procedures for site plan review to ensure the selection of effective erosion and sediment controls are consistent with the Alabama Handbook for Erosion Control, Sediment Control, and Stormwater Management on Construction Sites and Urban Areas published by the Alabama Soil and Water Conservation Committee (hereinafter the "Alabama Handbook") and are appropriate for site conditions. Site plan review may be prioritized based on criteria outlined in the Permittee's SWMPP and may include, but is not limited to, size and location within priority watersheds. The plan review process will also consider potential water quality impacts;
5) A mechanism for the public to report complaints regarding pollution discharges from construction sites;
6) Inspection of sites to verify use and proper maintenance of appropriate BMPs. Inspections of construction sites shall be performed in accordance with the frequency specified in the table below:

Site	Inspection Frequency
Priority Constructions Sites (Defined in Part V.Y.)	At a minimum, inspections must occur monthly
Other sites determined by the Permittee or Permitting Authority to be a significant threat to water quality*	
All construction sites not meeting the criteria specified above.	At a minimum, inspections must occur every two months

*In evaluating the threat to water quality, the following factors must be considered: soil erosion potential; site slope; project size and type; sensitivity of receiving waterbodies; proximity to receiving waterbodies; non-storm water discharges; past record of non-compliance by the operators of the construction site; and other factors deemed relevant to the MS4.

7) Training for the Permittee's construction site inspection staff in the identification of appropriate construction best management practices (Example: QCI training in accordance with ADEM Admin Code. r. 335-6-12 or the Alabama Construction Site General Permit);
8) Development of a construction site inspection checklist;
9) Implementation of an enforcement response plan (ERP), which sets out the Permittee's potential responses to violations through progressively stricter actions as needed to achieve compliance. The ERP must include a system for tracking formal actions and ADEM referrals. Types of enforcement actions may include, but not limited to the following:

    a. Verbal Warnings—Verbal warnings are primarily consultative in nature and must specify the nature of the violation and required corrective action;
    b. Written Notices—Written Notices must stipulate the nature of the violation and the required corrective action, with deadlines for taking such action; and
    c. Escalated Enforcement Measures—Citations, stop work orders, withholding plan approvals/authorizations, monetary penalties, or additional measures to address persistent non-compliance, repeat or escalating violations or incidents of major environmental harm.

10) A program to make available a list of education and training materials and resources to construction site operators in the appropriate application and maintenance of erosion and sediment controls; and
11) The Permittee shall post on its website the ordinance or other regulatory mechanism required by Part II.B.4.a.2.

b. The Permittee shall include within the SWMPP the following information:

    1) Procedures for site plan reviews required by Part II.B.4.a.4;
    2) A site inspection plan meeting the requirements of Part II.B.4.a.6;
    3) Plans for the training of MS4 site inspection staff as required by Part II.B.4.a.7;
    4) A copy of the construction site inspection checklist as required by Part II.B.4.a.8;
    5) The ERP as required by Part II.B.4.a.9;
    6) Procedures and schedule for making available a list of education and training materials and resources to construction site operators in the appropriate application and maintenance of erosion and sediment controls required by Part II.B.4.a.10.

c. The Permittee shall report each year in the annual report the following information:

    1) A copy or a hyperlink to the ordinance or regulatory mechanism location on the Permittee's website;
    2) List of all active qualifying construction sites within the MS4 to include the inspections as required by Part II.B.4.a.6; and
    3) A summary of the following:

a. Number of construction site inspections;
b. Number of formal enforcement actions and description of violations;
c. Number of construction site runoff complaints received.
d. Number of new staff trained and follow-up training provided to existing staff.

d. The Permittee shall maintain the following information and make it available upon request:

1) Documentation of all inspections conducted of construction sites. The inspection documentation shall include, at a minimum, the following:

a. Facility type;
b. Inspection date;
c. Name and signature of inspector;
d. Location of construction project;
e. Owner/operator information (name, address, phone number, fax, and email);
f. Description of the storm water BMP condition that may include, but not limited to, the quality of: vegetation and soils, inlet and outlet channels and structures, embankments, slopes, and safety benches; spillways, weirs, and other control structures; and sediment and debris accumulation in storage and forebay areas as well as in and around inlet and outlet structures; and
g. Photographic documentation of any issues and/or concerns.

2) Documentation of enforcement actions taken at construction sites to include, at a minimum, the following:

a. Name of owner/operator;
b. Location of construction project;
c. Description of violation;
d. Required schedule for returning to compliance;
e. Description of enforcement response used, including escalated responses if repeat violations occur;
f. Accompanying documentation of enforcement responses (e.g. notices of non-compliance, notices of violations, etc.); and
g. Any referrals to different Departments or Agencies.

3) Records of public complaints including:

a. Date, time and description of the complaint;
b. Location of subject construction sites; and
c. Identification of any actions taken (e.g. inspections, enforcement, corrections). Identifying information must be sufficient to cross-reference inspection and enforcement records.

4) Educational and Training Documentation for Construction Site Operators

a. List of education and training materials and resources

5. **Post-Construction Stormwater Management in Qualifying New Development and Re-Development**

The Permittee must develop/revise and implement a program, within 365 days from the effective date of this permit, to address the discharge of pollutants in post-construction storm water runoff to the MS4 from new development and re-development. Post-Construction Stormwater Management refers to the activities that take place after construction occurs, and includes structural and non-structural controls including low-impact development and green infrastructure practices to obtain permanent stormwater management over the life of the property's use. These post construction controls should be considered during the initial site development planning phase.

a. The Permittee shall develop/revise and implement project review and enforcement procedures for qualifying new development and redevelopment projects, to the maximum extent practicable. Specifically, the Permittee shall:

1) Require landowners and developers to, the MEP, implement systems of appropriate structural and/or non-structural BMPs designed to reduce the discharge of pollutants, which may include, but is not limited to, the following:

a. Minimize the amount of impervious surfaces;
b. Preserve and protect ecologically sensitive areas that provide water quality benefits;
c. Provide vegetated buffers along waterways, and reduce discharges to surface waters from impervious surfaces such as parking lots;
d. Implement policies to protect trees, native soils and other vegetation; and
e. Minimize topsoil stripping and compacted soils where feasible.

2) Require landowners and developers to develop and maintain best management practices to ensure, to the maximum extent practicable, that post-construction runoff mimics pre-construction hydrology of the site. A 1.1 inch rainfall over a 24-hour period preceded by a 72-hour antecedent dry period shall be the basis for the design and implementation of post construction BMPs;
3) Encourage landowners and developers to incorporate the use of low impact development (LID)/green infrastructure where feasible. Information on low impact development (LID)/green infrastructure is available on the following website:http://www.adem.alabama.gov/programs/water/waterforms/LIDHandbook.pdf and http://epa.gov/nps/lid;
4) To the extent allowed under State law, adopt or amend an ordinance or other regulatory mechanism to ensure the applicability and enforceability of post-construction BMPs at all new qualifying development and redevelopment projects;
5) Require the submittal of a post-construction BMP plan, for review, as outlined in the SWMPP. The post-construction BMP plan review process may be integrated with the construction plan review process under Section II.B.4.a.4;
6) Require the submittal of an 'as built' certification of the post-construction BMPs within 120 days of completion;
7) Perform and/or require the performance of, at a minimum, an annual post-construction inspection to ensure that design standards are being met and require corrective actions to poorly functioning or inadequately maintained post-construction BMPs. The Permittee shall document its post-construction inspection. Such documentation shall include, at a minimum:

a. Facility type
b. Inspection date

c. Name and signature of inspector
d. Site location
e. Owner information (name, address, phone number, fax, and email)
f. Description of the storm water BMP condition that may include the quality of: vegetation and soils, inlet and outlet channels and structures, embankments, slopes, and safety benches; spillways, weirs, and other control structures; and sediment and debris accumulation in storage and forebay areas as well as in and around inlet and outlet structures;
g. Photographic documentation of all critical storm water BMP components;
h. Specific maintenance items or violations that need to be corrected by the owner/operator of the storm water control or BMP; and
i. Maintenance agreements for long-term BMP operations and maintenance.

8) The Permittee shall maintain or require the developer/ owner/operator to keep records of post-construction inspections, maintenance activities and make them available to the Department upon request;
9) Require and/or perform adequate long-term operation and maintenance of post-construction BMPs, including one or more of the following, as applicable:

a. The developer's signed statement accepting responsibility for maintenance until the maintenance responsibility is legally transferred to another party; and/or
b. Written conditions in the sales or lease agreement that require the recipient to assume responsibility for maintenance; and/or
c. Written conditions in project conditions, covenants and restrictions for residential properties assigning maintenance responsibilities to a home owner's association, or other appropriate group, for maintenance of structural and treatment control management practices; and/or
d. Any other legally enforceable agreement that assigns permanent responsibility for maintenance of structural or treatment control management practices.

b. The Permittee shall include within the SWMPP the following information:

1) Procedures to develop, implement and enforce systems of appropriate structural and/or non-structural BMPs;
2) Procedures to develop, implement and enforce performance standards;
3) Procedures for encouragement of the utilization of LID/green infrastructure practices;
4) Procedures to ensure compliance with the ordinance or regulatory mechanism, including the sanctions and enforcement mechanisms the Permittee will use to ensure compliance. If an ordinance or regulatory mechanism needs to be developed, then the Permittee must provide a timeline for the development of the ordinance and/or regulatory mechanism;
5) Procedures for post-construction inspections, to include tracking and enforcement;
6) Procedures to ensure adequate long-term operation and maintenance of BMPs; and,
7) Development of an inventory of post-construction structural controls.

c. The Permittee shall report each year in the annual report the following information:

1) Provide a hyperlink for the ordinance or regulatory mechanism location on the Permittee's website;
2) A list of the post-construction structural controls installed and inspected during the permit year;
3) Updated inventory of post-construction structural controls including those owned by the Permittee;
4) Number of inspections performed on post-construction structural controls; and,
5) Summary of enforcement actions.

6. **Spill Prevention and Response**

a. The Permittee shall further develop/revise and implement a program to prevent, contain, and respond to spills that may discharge into the MS4. The Permittee must, at a minimum:

1) Investigate, respond, and conduct response actions or coordinate w/other agencies that may provide response actions as outlined in the SWMPP;
2) Develop a mechanism to track spills, response, and cleanup activities for all spills;
3) Use GIS or acceptable mapping scheme to identify spill locations, locations for inspections, and chronic problem areas;
4) Implement a spill prevention/spill response plan;
5) Provide training of appropriate personnel in spill and response procedures and techniques to mitigate pollutant discharges from spills to the MS4; and
6) Establish procedures to ensure that all spills are able to be promptly reported to appropriate authority.

b. The Permittee shall include within the SWMPP the following information:

1) The spill prevention/spill response plan; and
2) Procedures to provide training of personnel in spill prevention and response.

c. The Permittee shall report each year in the annual report the following information:

1) Summary of spills occurring during the reporting year, to include the following, at a minimum:
    a. Location;
    b. Spill Substance (i.e. fuel, oil, etc);
    c. Photographs (Spill and After clean-up) to be made available upon request; and
    d. Incident dates and time to resolution, including any enforcement actions taken and their result.
2) Documentation of employee training as required by Part II.B.6.b.2
    a. Title of Training Presentations; and
    b. Dated Attendance Sheets.

7. **Pollution Prevention/Good Housekeeping for Municipal Operations**

a. The Permittee shall further develop/revise, implement, and maintain a program that will prevent or reduce the discharge of pollutants in storm water run-off from municipal operations to the MEP. The program elements shall include, at a minimum, the following:

1) An inventory of all municipal facilities, including municipal facilities that have the potential to discharge pollutants via storm water runoff;
2) Develop and implement a short and long term strategy and program for the removal of trash from the waterways and tributaries in the permitted area in such a manner to quantify the removal of trash per year, which shall be included in the annual report. These strategies shall be included in the Permittee's SWMPP and shall be updated as necessary. This program shall address the following, at a minimum:

    a. Direct removal of trash from waterbodies;
    b. Direct removal of trash from the MS4;
    c. Direct removal of trash prior to entry to the MS4;
    d. Prevention through disposal alternatives; and
    e. Prevention through waste reduction practices, additional enforcement, and/or initiatives.

3) Require the following measures to be implemented in the public right of way for any event or wherever it is anticipated that substantial quantities of trash or litter may generated:

    a. Arrangement for temporary protection of preventative measures to the catch basins, where feasible, and
    b. Provide proper disposal of trash receptacles, clean up of catch basins, as needed, and grounds of the event area within one business day subsequent to the event.

4) Ensure that trash receptacles, or similar trash capturing devices are provided and maintained in areas identified as high trash generated areas;
5) A Standard Operating Procedures (SOP) detailing good housekeeping practices to be employed at appropriate municipal facilities and during municipal operations that may include, but not limited to, the following:

    a. Equipment washing;
    b. Street sweeping;
    c. Maintenance of municipal roads owned, operated, or under the responsibility of the Permittee;
    d. Storage and disposal of chemicals and waste materials;
    e. Vegetation control, cutting, removal, and disposal of the cuttings;
    f. Vehicle fleets/equipment maintenance and repair;
    g. External Building maintenance; and
    h. Materials storage facilities and storage yards.

6) A program for inspecting municipal facilities, to include municipal maintenance shops and equipment yards, for good housekeeping practices, including BMPs. The program shall include checklists and procedures for correcting noted deficiencies;
7) A training program for municipal facility staff in good housekeeping practices as outlined in the SOP developed pursuant to Part II.B.7.a.(5); and
8) The Permittee shall assess the water quality impacts for those flood management projects owned, operated, or the responsibility of the Permittee. The feasibility of retro-fitting existing structural control devised to provide additional pollutant removal from the storm water shall be evaluated.

b. The Permittee shall include within the SWMPP the following information:

1) The inventory of municipal facilities required by Part II.B.7.a.(1);
2) Schedule for developing the SOP of good housekeeping practices required by Part II.B.7.a.(5);
3) An inspection plan and schedule, including checklists and any other materials needed to comply with Part II.B.7.a.(6); and
4) A description of the training program and training schedule required by Part II.B.7.a.(7).

c. The Permittee shall report each year in the annual report the following information:

1) Any updates to the municipal facility inventory;
2) An estimated amount of floatable material collected from the MS4 as required by Part II.B.7.a.(2-4);
3) Any updates to the inspection plan;
4) Any updates to the SOP of good housekeeping practices; and
5) Summary of inspection reports of municipal facilities

d. The Permittee shall maintain the following information and make it available upon request:

1) Records of inspections and corrective actions, if any; and
2) Training records including the dates of each training activities and names of personnel in attendance.

8. **Application of Pesticide, Herbicide, and Fertilizers (PHFs)**

a. For the *Application of Pesticide, Herbicide, and Fertilizers* (PHFs), the Permittee shall implement controls to reduce, to the *MEP*, the discharge of pollutants related to the storage and application of PHFs applied by employees or contractors, to public rights of way, parks, and other public property. The Permittee shall implement programs to encourage the reduction of the discharge of pollutants related to application and distribution of PHFs. For those controls implemented, the Permittee will obtain coverage and maintain compliance with ADEM NPDES Pesticide General Permit ALG870000, if applicable, or other applicable NPDES permits. In addition, the Permittee shall address priorities to include the following:

1) Identify all areas known to receive high applications of PHFs, develop a program to detect improper usage, and prioritize problem areas;
2) Require evidence of proper certification and licensing for all applicators contracted to apply pesticides or herbicides on municipal property; require that applicators contracted to apply fertilizer are qualified in utilizing proper nutrient management practices;
3) Maintain an inventory of on-hand PHFs with information about the formulations of various products, including how to recognize the chemical constituents from the label, their respective uses, directions and precautions for applicators that explain if products should be diluted, mixed or only used alone, and, proper storage of products;
4) Equipment use and maintenance;
5) Training in safe use, storage and disposal of PHFs;
6) Inspection and monitoring of facilities where PHFs are stored; and
7) Record keeping.

9. **Oils, Toxics, and Household Hazardous Waste Control**

a. The Permittee shall prohibit to the MEP the discharge or disposal of used motor vehicle fluids and household hazardous wastes into the MS4. Specific activities to be completed under this item are:

1) Make available material educating the public about used oil facility locations, hotline numbers, and alternatives to toxic materials;
2) Advertise the location of used oil collection facilities; and
3) Provide employee training on spill prevention at all municipal facilities where oils or toxic materials are used.

b. The Permittee shall include within the SWMPP the following information:

1) Procedures to develop, implement, and enforce a program for oils, toxics, and household hazardous waste control to include educational information and employee training.

c. The Permittee shall report each year in the annual report the following information:

1) Quantities of Household Hazardous Waste and used oil collected; and
2) Oils, Toxics, and Household Hazardous Waste Control training workshops
    a. Dated attendance sheet; and
    b. Titles of presentations.

10. **Industrial Storm Water Runoff**

a. The Permittee shall implement a program to inspect, monitor and control pollutants in storm water runoff to the MS4 from municipal waste landfills, hazardous waste treatment, storage, disposal and recovery facilities, and industrial facilities and high risk commercial facilities. Facilities to be addressed under this program include: facilities that have reported under the requirements of the Emergency Planning and Community Right to Know Act (EPCRA) Title III, Section 313; and any other industrial or commercial discharge that the Permittee determines is contributing substantial pollutants loading to the MS4 ("high risk facilities"). The program must provide for, at a minimum:

1) Annual inspections of municipal waste landfills, hazardous waste treatment, storage, disposal (TSD) and recovery facilities;
2) Annual inspections, at a minimum, of industrial facilities and high-risk commercial facilities that do not have an NPDES permit issued by the Department as outlined in the SWMPP, and
3) Data collected by a NPDES permitted facility to satisfy the monitoring requirements of an NPDES, State, land application or local pretreatment discharge permit may be used to satisfy Part II.B.10.a of the Permit. The Permittee may require the facility to conduct self-monitoring to satisfy this requirement, if necessary.

b. The Permittee shall include in the SWMPP a list of all municipal waste landfills, hazardous waste treatment, storage, disposal and recovery facilities, high risk commercial facilities, and industrial facilities, both NPDES permitted and non-NPDES permitted, within the MS4.

c. The Permittee shall include in the annual report a summary of inspections performed for the year and enforcement, if applicable.

C. *Legal Authority*

To the extent allowed under State law, the Permittee must review and revise its relevant ordinances or other regulatory mechanisms, or adopt any new ordinances that provide it with adequate legal authority to control pollutant discharges into and from its MS4, and to implement and enforce its SWMPP. To be considered adequate, this legal authority must, at a minimum, authorize the Permittee to:

1. Prohibit non-storm water discharges unless such storm water discharges are in compliance with a separate NPDES permit, or determined by the Department not to be a significant contributor of pollutants to waters of the State;
2. Prohibit and eliminate illicit connections to the MS4. Illicit connections include pipes, drains, open channels, or other conveyances that have the potential to allow an illicit discharge to enter the MS4;
3. Control the discharge of spills, and prohibit dumping or disposal of materials other than storm water into the MS4;
4. Require operators of construction sites and industrial and commercial facilities to minimize the discharge of pollutants to the MS4 to the maximum extent practicable through the installation, implementation, and maintenance of appropriate controls, including installation, implementation and long-term maintenance of post construction controls;
5. Request information to determine compliance with ordinances or other regulatory mechanism;
6. Inspect and monitor at reasonable times any facilities, equipment, practices, or operations for active or potential polluted storm water discharges to the MS4;
7. Promptly require that dischargers cease and desist discharging and/or clean-up and abate a discharge;
8. Levy citations or administrative fines against responsible parties to include but not limited to non-compliant construction sites;
9. Require recovery and remediation costs from responsible parties; and
10. Provide the authority to enter into interagency agreements with other entities for the purpose of controlling the contribution of pollutants to the maximum extent practicable from one MS4 to another MS4.

D. *SWMPP Plan Review and Modification*

1. The Permittee shall submit to the Department within nine months of the effective date of this permit a SWMPP. The Permittee shall implement plans to seek and consider public input in the development, revision and implementation of this SWMPP, as required by Part II.B.2.b.1. Thereafter, the Permittee shall perform an annual review of the current SWMPP and must modify the SWMPP, as necessary, to maintain compliance with the permit. Any modifications to the SWMPP shall be submitted to the Department at the time a modification is made. Modifications made to the SWMPP may include, but are not limited to, the replacement of ineffective or infeasible BMPs or the addition of components, controls and requirements.
2. The Permittee shall implement the SWMPP on all new areas added to their municipal separate storm sewer system (or for which they become responsible for implementation of storm water quality controls) as soon as practicable. Implementation of the program in any new area shall consider the plans of the SWMPP of the previous MS4 ownership, if any.

E. Impaired Waters and Total Maximum Daily Loads (TMDLs)

1. The Permittee must determine whether the discharge from any part of the MS4 contributes directly or indirectly to a waterbody that is included on the latest §303(d) list or designated by the Department as impaired;

2. If the Permittee's MS4 discharges to a waterbody included on the latest §303(d) or designated by the Department as impaired, it must demonstrate the discharges, as controlled by the Permittee, do not cause or contribute to the impairment. The SWMPP must detail the BMPs that are being utilized to control discharges of pollutants associated with the impairment. If existing BMPs are not sufficient to achieve this demonstration, the Permittee must, within six (6) months following the publication of the latest final §303(d) list, Department designation, or the effective date of this permit, submit a revised SWMPP detailing new or modified BMPs. The SWMPP must be revised as directed by the Department and the new or modified BMPs must be implemented within one year from the publication of the latest final §303(d) list or Department designation.

3. Permittees discharging from MS4s into waters with EPA-Approved TMDLs and/or EPA-Established TMDLs

    a. The Permittee must determine whether its MS4 discharges to a waterbody for which a total maximum daily load (TMDL) has been established or approved by EPA. If an MS4 discharges into a water body with an EPA approved or established TMDL, then the SWMPP must include BMPs targeted to meet the assumptions and requirements of the TMDL. If additional BMPs will be necessary to meet the requirements of the TMDL, the SWMPP must include a schedule for installation and/or implementation of such BMPs. A monitoring component to assess the effectiveness of the BMPs in achieving the TMDL requirements must also be included in the SWMPP. Monitoring can entail a number of activities including, but not limited to: outfall monitoring, in-stream monitoring, and/or modeling. Monitoring data, along with an analysis of this data, shall be included in the Annual Report.

    b. If, during this permit cycle, a TMDL is approved by EPA or a TMDL is established by EPA for any waterbody into which an MS4 discharges, the Permittee must review the applicable TMDL to see if it includes requirements for control of storm water discharges from the MS4.

        a. If it is found that the Permittee must implement specific allocations of the TMDL, it must assess whether the assumptions and requirements of the TMDL are being met through implementation of existing BMPs or if additional BMPs are necessary. The SWMPP must include BMPs targeted to meet the assumptions and requirements of the TMDL. If existing BMPs are not sufficient, the Permittee must, within six (6) months following the approval or establishment of the TMDL by EPA, submit a revised SWMPP detailing new or modified BMPs to be utilized along with a schedule of installation and/or implementation of such BMPs. Any new or modified BMPs must be implemented within one year, unless an alternate date is approved by the Department, from the establishment or approval of the TMDL by EPA. A monitoring component to assess the effectiveness of the BMPs in achieving the

TMDL requirements must also be included in the SWMPP. Monitoring can entail a number of activities including, but not limited to: outfall monitoring, in-stream monitoring, and/or modeling. Monitoring data, along with an analysis of this data, shall be included in the Annual Report.

F. Responsibilities of Permittee

If the Permittee is relying on another entity to satisfy one or more requirements of this permit, then the Permittee must note that fact in the SWMPP. The Permittee remains responsible for compliance with the permit and reliance on another entity will not be a defense or justification for non-compliance if the entity fails to implement the permit requirements.

PART III Monitoring and Reporting

The Permittee shall implement a monitoring program to provide data necessary to assess the effectiveness and adequacy of BMPs implemented under the SWMPP. The quality of the streams receiving MS4 discharges shall continue to be monitored to assess the water quality of the streams and to identify potential water quality impairments. This shall be accomplished by the following:

A. Monitoring Locations

1. Proposed monitoring locations and descriptions of their respective characteristics shall be described in the SWPPP with actual locations described in the annual report;

Waterbody	Frequency
Fivemile Creek	Annual (Grab) Sample

2. In addition to the requirements in Part III.A.1., if a waterbody (not listed in Part III.A.1) within the MS4 jurisdiction is listed on the latest final §303(d) list, or otherwise designated impaired by the Department, or for which a TMDL is approved or established by EPA, during this permit cycle, then the Permittee must revise its monitoring program to include monitoring that addresses the impairment or TMDL. Any revisions to the monitoring program shall be documented in the SWMPP and Annual Report. In addition, the permit may be modified by the Department to establish the additional or revised monitoring locations.

B. Monitoring Parameters and Frequency

1. Grab samples shall be collected on Fivemile Creek at each instream monitoring station and analyzed for the following parameters:

    a. E.Coli;
    b. Total Nitrogen (TN) (mg/l);
    c. Total Phosphorus (mg/l);
    d. Total Suspended Solids (TSS) (mg/l);
    e. Temperature;
    f. pH/ORP;
    g. Turbidity (NTU);
    h. Conductivity;
    i. Dissolved Oxygen (mg/l);
    j. Ammonia Nitrogen (NH_3-N) (mg/l);
    k. Biochemical Oxygen Demand (BOD) (mg/l);

l. Chemical Oxygen Demand (COD) (mg/l);
m. Hardness as $CaCO_3$ (mg/l);
n. Nitrate plus Nitrite Nitrogen (NO_3+NO_2-N) (mg/l);
o. Oil and Grease (mg/l);
p. Total Dissolved Solids (TDS) (mg/l);
q. Total Kjeldahl Nitrogen (TKN) (mg/l); and

2. The Permittee must include in the instream monitoring program any additional parameters attributed with the latest final §303(d) list or otherwise designated by the Department as impaired or are included in an EPA-approved or EPA-established TMDL.

C. Sample Type, Collection and Analysis

1. Grab samples taken within the first two hours of discharge shall be used for the analysis;
2. Grab samples shall be collected resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event;
3. Analysis and collection of grab samples shall be done in accordance with the methods specified at 40 CFR Part 136. Where an approved 40 CFR Part 136 does not exist, then a Department approved alternative method may be used;
4. If the Permittee is unable to collect grab samples due to adverse conditions, the Permittee must submit a description of why samples could not be collected, including available documentation of the event. An adverse climatic condition which may prohibit the collection of samples includes weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

PART IV Annual Reporting Requirements

1. The Permittee shall submit to the Department an annual report (1 hardcopy and 1 electronic copy) no later than January 31 of each year. The annual report shall cover the previous fiscal year beginning October 1 through September 30.

2. On or after December 21, 2020, all annual reports shall be submitted to the Department electronically in a prescribed manner acceptable to the Department.

3. The Permittee shall sign and certify the annual report in accordance with Part V.K.

4. The annual report shall include the following information, at a minimum, and in addition to those requirements referenced in Part II.B and Part III:

   a. A list of contacts and responsible parties (e.g.: agency, name, phone number, address, & email address) who had input to and are responsible for the preparation of the annual report.

   b. An overall evaluation of the storm water management program developments and progress for the following:
      1) Major findings such as water quality improvements or degradation;
      2) Major accomplishments;
      3) Overall program strengths/weaknesses;
      4) Future direction of the program;
      5) The Permittee(s) will make an overall determination of the effectiveness of the SWMPP taking into account water quality/watershed improvements; and

6) Required actions that were not performed, and reasons why the actions were not accomplished.

c. The annual report will include a narrative report of all program elements referenced in Part II.B of this permit. The activities concerning a program element shall be discussed as follows:

1) Program element activities completed and in progress;
2) General discussion of element. Explanation for all element activities that have not been fully implemented or competed. Results of activities shall be summarized and discussed (e.g.: maintenance caused by inspection, pollutants detected by monitoring, investigations as a result of dry and wet weather screening, number and nature of enforcement item, education activities/participation);
3) Status of program element with compliance, implementation, and augmentation schedules in Part II of the permit;
4) Assessment of controls; and
5) Discussion of proposed element revisions.

d. The annual report shall contain a monitoring section which discusses the progress and results of the monitoring programs required under Part III of the permit and shall include, at a minimum, the following information.

1) Status of implementation of the monitoring program;
2) Map(s) showing the monitoring station locations, latitude/longitude, and narrative site descriptions, including watershed size;
3) Raw data, results, methods of evaluating the data, graphical summaries of the data, and an explanation/discussion of the data for each component of the monitoring program;
4) An analysis of the results of each monitoring program component;
5) A comparison of the reporting year's data to the previous five years of data to establish a trend analysis to determine the relative health of the receiving water;
6) All monitoring reports and supporting data shall be submitted in hardcopy and/or electronically in a format deemed acceptable to the Department concurrently with the submission of the Annual Report; Failure to provide this data in a format appropriate to the Department for review shall be a violation of this permit; and
7) The interpretation of the analytical data, required by Part III.B.1-2 of the Permit, for determinacy of meeting water quality standards.

e. Provide the status of the implementation and proposed changes to the SWMPP to include assessment of controls and specific improvements or degradation to water quality;

f. Provide a summary of inspections and enforcement actions for regulatory program. Enforcement actions should include a corrective actions summary;

g. Implementation status of the public education programs; and

h. Status of expenditures and budget for the past fiscal year and the next fiscal year for the Permittee's program. The analysis shall indicate budgets and funding sources.

PART V Standard and General Permit Conditions

A. Certification and Signature of Reports

All reports required by the permit and other information requested by the Director shall be signed and certified in accordance with Part V.K. of this permit.

B. Submittals

All documents required to be submitted to the Department by this permit, shall be addressed to:

Alabama Department of Environmental Management
Stormwater Management Branch, Water Division
Post Office Box 301463
Montgomery, Alabama 36130-1463

Certified and Registered Mail shall be addressed to:

Alabama Department of Environmental Management
Stormwater Management Branch, Water Division
1400 Coliseum Blvd
Montgomery, Alabama 36110-2059

C. Retention of Records

The Permittee shall retain the storm water quality management program developed in accordance with Part II of this permit until at least five years after coverage under this permit terminates. The Permittee shall retain all records of all monitoring information, copies of all reports required by this permit, and records required by this permit, and records of all other data required by or used to demonstrate compliance with this permit, until at least three years after coverage under this permit terminates. This period may be explicitly modified by alternative provisions of this permit or extended by request of the Director at any time.

D. Duty to Comply

The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

E. Civil and Criminal Liability

1. Tampering

   Any person, who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained or performed under this permit shall, upon conviction, be subject to penalties as provided by AWPCA.

2. False Statements

   Any person knowingly makes any false statement, representation, or certification in any record or other documentation submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance, shall, upon conviction, be punished as provided by AWPCA

3. Relief from Liability

Nothing in this permit shall be construed to relieve the Permittee(s) of civil and criminal liability under AWPCA or FWPCA for non-compliance with any term or condition of this permit.

F. Duty to Reapply

1. If the Permittee intends to continue an activity regulated by this permit beyond the expiration of this permit, the Permittee must apply for and obtain a new permit. The application shall be submitted at least 180 days prior to expiration of this permit.

2. Failure of the Permittee to apply for re-issuance at least 180 days prior to permit expiration will void the automatic continuation of the expiring permit provided by ADEM Administrative Code, Rule 335-6-6.-06, and should the permit not be re-issued for any reason any discharge after expiration of this permit will be an unpermitted discharge.

G. Need to Halt or Reduce an Activity Not a Defense

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

H. Duty to Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human or the environment.

I. Duty to Provide Information

The Permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, suspending, or revoking this permit in whole or in part, or to determine compliance with this permit. The Permittee shall also furnish to the Director upon request copies of records required to be kept by this permit.

J. Other Information

If the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information with a written explanation for the mistake and/or omission.

K. Signatory Requirements

All reports and forms to be submitted by this permit, AWPCA and the Department's rules and regulations, shall be signed by a "responsible official" of the Permittee, as defined in ADEM Administrative Code, Rule 335-6-6-.09, or a "duly authorized representative" of such official, as defined by ADEM Administrative Code, Rule 335-6-6-.09, and shall bear the following certification:

"I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the persons who manage the system, or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties to which the Permittee is or may be subject under Section 311 of FWPCA.

M. Property and Other Rights

This permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, or any infringement of Federal, State, or local laws or regulations, nor does it authorize or approve the construction of any physical structures or facilities or the undertaking of any work in any waters of the State of Alabama.

N. Severability

The provision of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of the permit shall not be affected thereby.

O. Compliance with Statutes and Rules

This permit is issued under ADEM Administrative Code, Chapter 335-6-6. All provisions of this chapter that are applicable to this permit are hereby made a part of this permit.
This permit does not authorize the non-compliance with or violation of any laws of the State of Alabama or the United States of America or any regulations or rules implementing such laws.

P. Proper Operations and Maintenance

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a Permittee only when necessary to achieve compliance with conditions of the permit.

Q. Monitoring Records

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The Permittee shall retain records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of reports required by this permit, and records of all data used to complete the application of this permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended at the request of the Director at any time.

R. Monitoring Methods

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

S. Right of Entry and Inspection

The Permittee shall allow the Director or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon any of the permittee's premises where a regulated facility or activity or point source is located or in which any records must be maintained under conditions of this permit;

2. Have access to and copy, at reasonable times, any records required to be maintained by the terms and conditions of this permit;

3. Inspect, at reasonable times, any point source, any monitoring equipment or practices being maintained to comply with this permit, or any treatment or control or systems being maintained to comply with this permit; and

4. Sample or monitor, at reasonable times, for the purposes of determining permit compliance or as otherwise authorized by AWPCA, any substances or parameters at any location.

T. Additional Monitoring by the Permittee

If the Permittee monitors more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the monitoring report. Such increased monitoring frequency shall also be indicated on the monitoring report.

U. Permit Modification and Revocation

1. This permit may be modified or revoked or reissued, in whole or in part, during its term for cause including but not limited to, the following:

    a. If cause for termination under Part V.A.3., of this permit exists, the Director may choose to revoke or re-issue this permit instead of terminating the permit;

    b. If a request to transfer this permit has been received, the Director may decide to revoke and re-issue or to modify the permit; or

    c. If modification or revocation and re-issuance is requested by the Permittee and cause exists, the Director may grant the request.

2. This permit may be modified during its term for cause, including but not limited to:

    a. If cause for termination under Part V.A.3., of this permit exists, the Director may choose to modify this permit instead of terminating this permit;

    b. The Director has received new information that was not available at the time of permit issuance and that would have justified the application of different permit conditions at the time of issuance;

    c. Errors in calculation of discharge limitation or typographical or clerical errors were made;

    d. To the extent allowed by ADEM Administrative Code, Rule 335-6-6-.17, when the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or judicial decision after the permit was issued;

    e. To the extent allowed by ADEM Administrative Code, Rule 335-6-6-.17, permit may be modified to change compliance schedules;

    f. To incorporate an applicable Section 307(a) of FWPCA toxic effluent standard or prohibition;

    g. When required by the re-opener conditions in this permit;

h. Upon failure of the State to notify, as required by Section 402(b)(3) of FWPCA, another State whose water may be affected by a discharge permitted by this permit;

i. When required to correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions;

j. When requested by the Permittee and the Director determines that the modification has cause and will not result in a violation of federal or State law, rules, or regulations;

k. To add a new Permittee who is the owner or operator of a portion of the Municipal Separate Storm Sewer System; or

l. To change portions of the Storm Water Quality Management Program that is considered permit conditions.

3. This permit may be terminated during its term for cause, including but not limited to, the following:

a. Violation of any term or condition of this permit;

b. The permittee's misrepresentation or failure to disclose fully all relevant facts in the permit application or during the permit issuance or the permittee's misrepresentation of any relevant facts at any time;

c. Materially false or inaccurate statements or information in the permit application or the permit;

d. The permittee's discharge threatens human life or welfare or the maintenance or water quality standards; or

e. Any other cause allowed by ADEM Administrative Code, Rule 335-6-6.

4. This permit may be suspended during its term for cause, including but not limited to, the reasons for termination listed above.

5. The filing of a request by the Permittee for modification, suspension or revocation of this permit, in whole or in part, does not stay any permit term condition.

V. Termination of Coverage for a Single Permittee

Permit Coverage may be terminated, in accordance with the provision of 30 CFR 122.64 and 124.5, for a single Permittee without terminating coverage for other permittees.

W. Modification of Storm Water Management Program

Only those portions of the Storm Water Management Program specifically required as permit conditions shall be subject to modification requirements of 40 CFR 124.5. Replacement of an ineffective or infeasible BMP implementing a required component of the Storm Water Management Program with an alternate BMP expected to achieve the goals of the ineffective or infeasible BMP shall be considered a minor modification to the SWMPP and not modification to the Permit.

X. Changes in Monitoring Outfalls

This permit is issued on a system-wide basis in accordance with CWA §402(p)(3)(i) and authorizes discharges from all portions of the MS4. Since all outfalls are authorized, changes

in monitoring outfalls, other than those with specific numeric effluent limitations, shall be considered minor modifications to the permit and will be made in accordance with the procedures at 40 CFR 122.63.

Y. Definitions

1. "Alabama Handbook" means the September 2014 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) published at the time permit is effective.

2. "Arithmetic Mean" means the summation of the individual values of any set values divided by the number of individual values.

3. "AWPCA" means Code of Alabama 1975, Title 22, the Alabama Water Pollution Control Act, as amended.

4. "Best Management Practices" (BMPs) means activities, prohibitions of practices, maintenance procedures, and other management practices implemented to prevent or reduce the discharge of pollutants to waters of the State. BMPs also include treatment systems, operating procedures, and practices to control facility runoff, spillage or leaks, sludge or water disposal, or drainage from raw material storage.

5. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

6. "Control Measure" as used in this permit, refers to any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to waters of the State.

7. "CWA" or "The Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483 and Pub. L. 97-117, 33 U.S.C. 1251 et.seq.

8. "Department" means the Alabama Department of Environmental Management or an authorized representative.

9. "Discharge", when used without a qualifier, refers to "discharge of a pollutant" as defined as ADEM Administrative Code 335-6-6-.02(m).

10. "Flood Management Project" means a project that will alter, modify or change the base flood elevation of a 1% annual chance flood event.

11. "Flow-weighted composite sample" means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge at the time of sampling.

12. "Green Infrastructure" refers to systems and practices that use or mimic natural processes to infiltrate, evapotranspirate (the return of water to the atmosphere either through evaporation or by plants), or reuse stormwater or runoff on the site where it is generated.

13. "Hydrology" refers to the physical characteristics of storm water discharge, including the magnitude, duration, frequency, and timing of discharge.

14. "Illicit connection" means any man-made conveyance connecting a non-storm water discharge directly to a municipal separate storm sewer system.

15. "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit.

16. "Industrial Land Use" means land utilized in connection with manufacturing, processing, or raw materials storage at facilities identified under Alabama State Law.

17. "Infiltration" means water other than wastewater that enters a sewer system, including foundation drains, from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

18. "Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

19. "Large" municipal separate storm sewer system means all municipal separate storm sewers that are either: (i) located in an incorporated place (city) with a population of 250,000 or more as determined by the latest decennial census.

20. "Low Impact Development" (LID) is an approach to land development (or re-development) that works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treat stormwater as a resource rather than a waste product.

21. "Major outfall" is the point(s) where the MS4 discharges to a water of the State from (1) a pipe (or closed conveyance) system with a cross-sectional area equal to or greater than 7.07 square feet (e.g., if a single circular pipe system, an inside diameter of 36 inches or greater),(2) a single conveyance other than a pipe, such as an open channel ditch, which is associated with a drainage area of more than 50 acres,(3) a pipe (or closed conveyance) system draining "industrial land use" with a cross-sectional area equal to or greater than 0.79 square feet (e.g., if a single circular pipe system, an inside diameter of 12 inches or greater),(4) or a single conveyance other than a pipe, such as an open channel ditch, which is associated with an "industrial land use" drainage area of more than 2 acres;For the purpose of this permit, outfalls of the "double barrel" type, whose combined cross-sectional area is greater than 7.07 square feet, equivalent to a single circular pipe outfall with an inside diameter of 36 inches or greater, are also considered major outfalls.

22. "MEP" is an acronym for "Maximum Extent Practicable," the technology-based discharge standards and controls necessary for municipal separate storm sewer systems to reduce pollutants in storm water discharges that was established by CWA Section 402(p). These standards and controls may consist of a combination of best management practices, control techniques, system design and engineering methods, and such other provisions for the reduction of pollutants discharged from a MS4 as described in the storm water management system.

23. "Medium" municipal separate storm sewer system means all municipal separate storm sewers that are either: (i) located in an incorporated place (city) with a population of 100,000 or more but less than 250,000 as determined by the latest decennial census.

24. "MS4" is an acronym for "Municipal Separate Storm Sewer System" and is used to refer to either a large, medium, or small municipal separate storm sewer system. The term is used to refer to either the system operated by a single entity or a group of systems within an area that are operated by multiple entities.

25. "Municipal Separate Storm System" is defined at 40 CFR Part 122.26(b)(8) and means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) Designed or used for collecting or conveying storm water; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined in ADEM Administrative Code335-6-6-.02(nn).

26. "Permittee" means each individual co-applicant for an NPDES permit who is only responsible for permit conditions relating to the discharge that they own or operate.

27. "Point Source" means 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. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

28. "Priority Construction Site" means any qualifying construction site in an area where the MS4 discharges to a waterbody which is listed on the most recently 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 r. 335-6-10-.09, and any waterbody assigned a special designation in accordance with 335-6-10-.10.

29. "Qualifying Construction Site" means any construction activity that results in a total land disturbance of one or more acres and activities that disturb less than one acre but are part of a larger common plan of development or sale that would disturb one or more acres. Qualifying construction sites do not include land disturbance conducted by entities under the jurisdiction and supervision of the Alabama Public Service Commission.

30. "Qualifying New Development and Redevelopment" means any site that results from the disturbance of one acre or more of land or the disturbance of less than one acre of land if part of a larger common plan of development or sale that is greater than one acre. Qualifying new development and redevelopment does not include land disturbances conducted by entities under the jurisdiction and supervision of the Alabama Public Service Commission.

31. "Storm water" is defined at 40 CFR Part 122.26(b)(13) and means storm water runoff, snow melt runoff, and surface runoff and drainage.

32. "Structural Controls" means an engineered BMP constructed with rigid walls and/or weirs and piped drainage that utilize active or passive treatment and/or mechanical systems for the purpose of treating storm water runoff.

33. "Structural Flood Control" means structural measures that control the 1% annual chance floodwaters by construction of barriers, storage areas or by modifying / redirecting channels.

ALABAMA STORMWATER PARTNERSHIP RESPONSE TO COMMENTS

Comment (1): *Storm Water Collection System Operations* – Like the other structural controls in this section, roadside ditches should be operated, inspected and maintained. Under federal regulations, "ditches" are "used for collecting or conveying stormwater" and the MS4 is responsible for these ditches. 40 CFR Part 122.26(b)(8). Roadside ditches are an integral component of the MS4 that may have significant potential for improving or degrading the water quality of the MS4 discharge. For example, efforts by the municipality to reduce channel erosion within roadside ditches will reduce sediment loading from the MS4 discharge. Structural controls are defined under Part V. Section Y. as "...an engineered BMP constructed with rigid walls and/or weirs and piped drainage that utilize active or passive treatment and/or mechanical systems for the purpose of treating storm water runoff." This definition would exclude roadside ditches as those are not 'constructed with rigid walls'. However, such conveyances are integral for stormwater conveyance and to some degree the infiltration of stormwater. Minimizing erosion in those conveyances is crucial for protecting water quality of storm water discharges by the municipality.

We urge ADEM to either modify the definition of what constitutes a 'structural control' or include an additional section in these permits that addresses the integrity and erosion potential of conveyances, whether those are constructed of concrete or are earthen or grass-lined conveyances.

Response (1): A municipal separate storm sewer is defined in 40 CFR 122.26(b)(8) as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) which is owned or operated by a public body designed or used for collecting or conveying storm water. The intent of the draft permit is to require the Permittee to implement, maintain and enforce a comprehensive stormwater management program which involves using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate to reduce the **discharge of pollutants** from its municipal separate storm sewer system (MS4) consistent with Section 402(p)(3)(B) of the Clean Water Act and 40 CFR Part 122.26. Since "ditches" is included as part of the definition of MS4s then they are considered conveyances, not structural controls, unless they are designed to infiltrate stormwater. The Department believes that the Draft Permit addresses the commenter's concerns and no changes were made based on this comment.

Comment (2): Additionally, we have previously requested that at least the number of inspections of the structural controls be reported in the annual report. We believe this was ADEM's intention since in its response to the Alabama Stormwater Partnership comments on Trussville's draft permit, ADEM wrote, "The Permittee is required to include in the annual report the number of inspections performed on the structural controls to include follow-up inspections. (Part II.B.1.a.iv.1)." ADEM Response 1 to the ASP Comments. However, Trussville's permit and these new draft permits are still written in a way to allow

the number of inspections to "be made available upon request". II.B.1.a.iv.1. These permits currently state that the number of inspections AND the inspection documentation shall be made available upon request. We recommend deleting the "and" so that just the inspection documentation shall be made available upon request consistent with ADEM's intent.

Response (2): The Department believes that the language in Part II.B.1.a.iv.1 of the Draft Permit is clear; however, to provide additional clarity, Part II. B.1.a.iv.1 language has been revised to state: "The number of inspections performed on structural controls, to include follow-up inspections. The inspection documentation (i.e. checklist) shall be made available upon request."

Comment (3): *Public Education and Public Involvement on Storm Water Impacts* - The SWMPP is required to provide a mechanism to "Seek and consider public input in the development, revision and implementation of the SWMP." Of the Public Education and Public Involvement programs available for review on various MS4 websites, there is proportionately much more emphasis on education than on seeking input and public involvement to guide stormwater programs. Most programs have good information to share, but none that we have reviewed have a formal avenue for input from the public beyond reporting potential stormwater problems. This aspect of this program element needs greater emphasis. For example, none of these municipalities have invited input on the development of their SWMPP on their websites or have a process in place to inform known stakeholders of the opportunity for involvement. It is very difficult for the public to be aware these opportunities are available unless the MS4s make some effort to notify the public that such an effort is underway.

Recently, the City of Oxford passed an ordinance to establish a Citizen Advisory Committee for their Stormwater Program. We understand this was done in part due to ADEM's encouragement. We hope you will also encourage the MS4s that are the focus of these permits to establish a similar stormwater Citizen Advisory Committee

Response (3): With regards to several of the entities referenced in your comments (Homewood, Irondale, Mountain Brook, Vestavia Hills), their permits are still draft permits, and this requirement within the draft permits (Part II.D.1) will not take effect until the permits are effective. Also, **JCHD** is not a MS4 Permittee. Regarding the remainder of the entities mentioned in your comments, your comment stated that none of these municipalities have invited input on the development of their SWMPP on their websites or have a process in place to inform known stakeholders of the opportunity for involvement. While Part II.B.2.b.1 of the Draft Permit requires the Permittee to seek and consider public input in the development, revision and implementation of the SWMPP, it does not specify the mechanism the Permittee must implement to accomplish this requirement. This allows flexibility for each Permittee to determine what practice(s) to utilize in notifying its stakeholders regarding input and participation in the development of the stormwater program. For example, one Phase II MS4 Permittee sent a letter to its citizens, notifying them of the SWMPP and instructions on how to become involved in the stormwater program. This letter was included in the City's SWMPP submitted to the Department.

As required by Part II.D.1 of the Draft Permit, the Permittee is required to submit a SWMPP to the Department, and the Permittee shall implement plans to seek and consider public input in the development, revision and implementation of **this** SWMPP. Therefore, the Department believes that the Permittee will be seeking and accepting public input on its SWMPP if you have any concerns you would like to relay to the Permittee.

With regard to Oxford, please note that a Citizen Advisory Committee was one of the possible public involvement options listed in the 2011 Phase II MS4 General Permit (ALR040000 Part III.B.2.(b)iv).

Comment (4): *Illicit Discharge Detection and Elimination (IDDE)* – We encourage these MS4s to develop the investigation protocols for IDDE efforts as required by these permits. While this capacity is a requirement of this draft permit and of the previous applicable permits, some MS4s are still weak in this area. For example, fecal coliforms (probably from an illicit discharge) have contaminated Shades Creek near Elder Street in Birmingham for many years. We and Alabama Water Watch Volunteers have reported this problem only to be told by the City of Birmingham that this is Jefferson County's and told by Jefferson County Environmental Services Department that Birmingham is responsible. Similarly, where Valley Creek emerges from under downtown Birmingham, significant fecal contamination has been documented for many years. We understand that such problems are very difficult to resolve; however, this emphasizes the need for ADEM to set a deadline for the resolution of IDDE problems. For example, ADEM could model the deadline that Tennessee includes in its Phase II permit: illicit discharges should be removed as "soon as practicable, but not longer than xx days, unless an appropriate deadline is approved". Also, the way these draft permits are currently written give the MS4s an out. Immediate cessation is only required until after "identification of the responsible party" which as we have seen, takes years. II.B.3.a.2.b

None of the SWMPs we have reviewed have or describe an explicit protocol for tracing the source of such problems nor is there any reference to following the sampling / detection protocol outlined in the EPA Guidance Manual by the Center for Watershed Protection as is required by the draft permit. (II.B.3.a.3.-4). This highlights a potential general weakness in the implementation of IDDE programs by even the more sophisticated MS4 programs. We understand that identifying illicit discharges beneath downtown Birmingham is a daunting prospect, but more progress toward that goal is urgently needed to protect public health.

Response (4): As defined in 40 CFR 122.26(b)(8), MS4s are a **conveyance or system of conveyances** and therefore, MS4s are not considered to create most illicit discharges. Part II.B.3.a.2.b of the Draft Permit requires the Permittee to remove illicit discharges and requires the immediate cessation of improper disposal practices upon identification of responsible parties. It would be difficult, if not impossible, to remove an illicit discharge without having identified the party responsible for the illicit discharge. Please note that the Draft Permit states that immediate cessation of the discharge is required; however, this may not always be feasible, which is why the Draft Permit states where the removal of

illicit discharges within ten (10) working days is not possible, the ordinance shall require the operator of the illicit discharge to take all reasonable and prudent measures to minimize the discharge of pollutants to the MS4. This language is consistent with previously issued Phase I MS4 permits, and no changes were made to the Draft Permit based on this comment.

Please note that Part I.C.3 of the Draft Permit also prohibits the discharge of sanitary wastewater through cross connections or other illicit discharges through the MS4.

Regarding your comment highlighting a potential general weakness in the implementation of the IDDE programs, several of the entities mentioned in your comments have only recently received a **draft** permit, which included the requirement in Part II.B.3.a.3-4 that references EPA's Illicit Discharge Detection and Elimination, A Guidance Manual for Program Development and Technical Assessments, Center for Watershed Protection, October, 2004. This is not a requirement within their current administratively extended 2001 MS4 Phase I ALS000001 permit. However, based on MS4 audits performed by the Department in 2015 and 2016 on ALS000001 Permittees, it is the Department's understanding that these Permittees have adopted JCDH Guidelines and Standard Operating procedures to include an IDDE program for identifying, tracing and eliminating illicit discharges (2010 Guidelines and Standard Operating Procedures, JCDH website). Since Part II.D. of the Draft Permit requires the Permittee to seek public input in the development, implementation and revision of the SWMPP, you may also voice any concerns regarding components of the IDDE program with the Permittee.

Comment (5): *Construction Site Storm Water Runoff Control* – We note that the stormwater programs with the best construction site compliance are those with an ordinance that allow their city inspectors to issue 'stop work' orders. We urge ADEM to strongly encourage MS4s to establish and implement 'stop work' authority when violations are evident on construction sites as a way of controlling pollutants to the Maximum Extent Practicable (MEP).

These draft permits require that the MS4 inspect construction sites every two months, at a minimum, unless consideration of various listed factors dictates that monthly inspections are appropriate. However, most of these listed factors are relevant to the sites in these MS4s, and therefore ADEM should require monthly inspections to avoid ambiguity. For example, four of these MS4s eventually drain to the Cahaba River, the focus of a watershed siltation TMDL. Additionally, most of the area within these MS4s has been developed, leaving almost exclusively marginal development sites located on steep, difficult locations. One of those factors listed is 'proximity to receiving waterbodies'. We agree that the question of whether a discharge to receiving waters occurs is relevant, however, it should not be the determining factor. Eventually, any pollutant discharge that does not assimilate will be delivered to the waters of the US and be carried downstream. From our perspective, it would be very unlikely to impossible to identify a construction site in these MS4s that does not qualify as being a significant threats to water quality or one that is not a 'Priority Construction Site'. We suggest ADEM require monthly inspections of construction sites

by the MS4s in the upper Cahaba River to avoid any possible confusion about the appropriate inspection regime.

Response (5): The Draft Permit requires, in Part II.B.4.a.9, for the Permittee to implement an enforcement response plan (ERP), which sets out the Permittee's potential responses to violations through progressively stricter actions. This may include, but not be limited to: verbal warnings, written notices, and escalated enforcement measures (i.e. citations, stop work orders, etc).

Regarding your inspection comment, Part II.B.4.a.6 of the Draft Permit requires sites that are located within a priority areas to be inspected monthly, at a minimum. Also, other sites that are determined by the Permittee or the Permitting Authority to be a significant threat to water quality shall be monitoring monthly, at a minimum. Part II.B.4.b.2 of the Draft Permit requires the Permittee to submit within the SWMPP a site inspection plan meeting the requirements of Part II.B.4.a.6. The Department reviews all SWMPPs and provides comments as deemed appropriate. Also, please note that the public has an opportunity to engage in the development and implementation of the Permittee's SWMPP as detailed in Part II.D.1. of the Draft Permit, so any concerns you may have regarding construction site inspections may also be addressed with the individual Permittee.

Comment (6): *Post-Construction Stormwater Management in Qualifying New Development and Re-Development* –We encourage ADEM to specifically note in Part II, B.) 5.) a.) 2.) that the maximum extent practicable standard includes adoption of BMPs that minimize the magnitude of stormwater runoff volume. An engineer might assume that the definition of magnitude provided at ***Y. Definitions 12. "Hydrology"*** only addresses the magnitude of the 'runoff rate' and fail to include a consideration of the magnitude of the volume of stormwater runoff. In fact, the training many engineers have received focused exclusively on management of runoff *rates* and not on management of runoff volume. Alternatively, the definition of "Hydrology" in ***Y. Definitions 12. "Hydrology"*** should be amended to make that clarification.

Response (6): The Department believes that the definition of hydrology provides the Permittee with an understanding of what must be performed to comply with Part II.B.5 of the Draft Permit. Additionally, the definition used in the Draft Permit is consistent with the other recently-issued MS4 Phase I Permits. No changes were made to the Draft Permit in response to this comment.

Comment (7): ADEM is aware that we believe the post-construction standard included in AL MS4 permits (1.1" value as the basis for the design and implementation of post-construction BMPs) is inadequate to mimic, to the maximum extent practicable, the pre-construction hydrology of a development project to the extent required to reduce instream erosion and pollutant loading to our streams.

ADEM has indicated they do not have the authority to regulate stormwater volume. The Clean Water Act is a minimum standard that must be addressed by the State program. State regulations must be adequate to enforce the federal standard. If Alabama's statutes remain

as a hurdle for adoption of maximum extent practical (MEP) standards, then those fall short of what the federal laws require. There is a clear mandate for ADEM to minimize pollutant discharge to the maximum extent practicable. ADEM has a broad responsibility to manage and regulate discharge of pollutants. Reduction of stormwater runoff volume ***will reduce the discharge of pollutants***.

As the Alabama Stormwater Partnership pointed out in their previous comments on Trussville's DRAFT MS4 permit, "The Clean Water Act states and EPA reiterates that 'The statute requires the inclusion of *any* control measures determined to be necessary to reduce the pollutants to the maximum extent practicable. This ***compels*** the inclusion of controls to reduce the discharge of pollutants to the maximum extent practicable (emphasis added).' We believe that using the 2.2" rain event as the basis for BMP design for the Birmingham area is an essential 'maximum extent practicable' standard justifiable on the basis that it would reduce downstream sediment loading to river segments with a siltation TMDL.

There is a clear mandate for ADEM to minimize pollutant discharge to the maximum extent practicable. ADEM has a broad responsibility to manage and regulate discharge of pollutants. Reduction of stormwater runoff volume ***will reduce the discharge of pollutants***.

Response (7): Regarding the 1.1 inch rainfall over a 24-hour period preceded by a 72-hour antecedent dry period, this requirement is the basis for the design of the BMPs. Once the BMPs are installed, the landowners/developers will be expected to operate and maintain the BMPs as designed, to the MEP. Importantly, what constitutes MEP is not a "one size fits all," but is determined on a case-by-case basis, which means that provisions may be different for each Permittee.

Regarding your comment for the need to reduce the discharge of pollutants, the intent of the draft Permit is to require the Permittee to implement, maintain and enforce a comprehensive stormwater management program. This involves using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate to reduce the discharge of pollutants **from the MS4** consistent with Section 402(p)(3)(B) of the Clean Water Act and 40 CFR Part 122.26. 40 CFR 122.26(d)(2)(iv)(A)(2) is clear that the Permittee is responsible for controlling the **discharge of pollutants** in stormwater runoff from new developments and significant redevelopments. Please note that flow is not a pollutant under the Clean Water Act. The Department finds that the language in the Draft Permit regarding post construction controls is appropriate, and the design storm specified in the Draft Permit meets the statutory and regulatory requirements.

In addition, the Permittee shall not cause or contribute to violations of Alabama Water Quality Standards, and shall be in compliance with applicable TMDLs. Part II.E of the Draft Permit contains requirements regarding discharges into a water body with an EPA-approved or established TMDL, including BMPs targeted to meet the assumptions and requirements of the TMDL, schedules for installation and/or implementation of such

BMPs, and monitoring to assess the effectiveness of the BMPs in achieving the TMDL requirements.

Comment (8): *Spill Prevention and Response* – Our review of on-line SWMPs reveals that MS4s rarely have vigorous spill prevention programs. The SWMPs generally say 'We rely on the Fire Department for Spill Response'. The available SWMPs rarely address the spill 'prevention' component of the program.

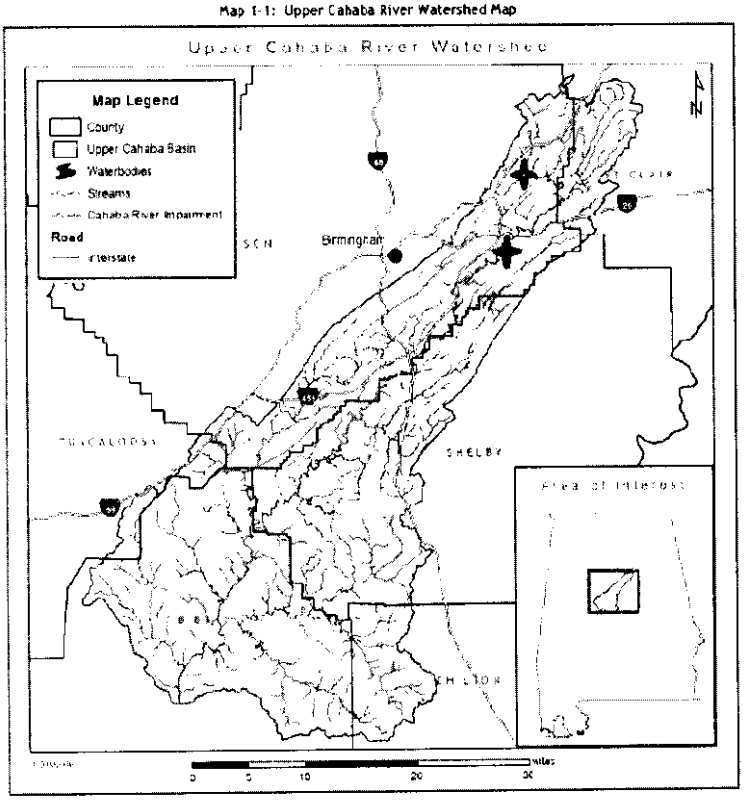
Their 'response' component of Spill Prevention and Response programs available on-line are often limited to reliance on whatever response the local fire department may undertake. The adequacy of that response is not clear. The MS4's SWMP should spell out greater details about the resources and capabilities of what their fire departments can do per the requirements in the permits, especially if the MS4 is relying on those departments. Hoover's Program is an exception that sets a good standard in this regard. We urge ADEM to encourage other MS4s to emulate Hoover's Spill Prevention and Response Program.

Response (8): Part II.B.6.a.1 of the Draft Permit requires the Permittee to investigate, respond and conduct, but does allow a Permittee to coordinate with other agencies that may provide response actions as outlined in the SWMPP. The Department reviews all SWMPPs and provides comments as deemed appropriate. Also, please note that the public has an opportunity to engage in the development and implementation of the Permittees SWMPP as detailed in Part II.D.1. of the Draft Permit, so any concerns you may have regarding the spill prevention and response programs may also be addressed with the individual Permittee.

Comment (9): Evaluating the efficacy of these MS4 programs relies entirely on adequate water quality monitoring. ADEM places emphasis on monitoring 303(d) and TMDL waters. Based on the distribution of Sonde monitoring locations and the statistical inadequacy of 'annual grab' sampling (described in detail below), the proposed monitoring by MS4s, when pooled together, will not be adequate to make a statistically valid assessment of water quality conditions in the Cahaba River. The proposed collective monitoring approach will be inadequate as a basis to require MS4s to adopt enhanced BMPs should their current programs fail to achieve water quality and biological improvements. We renew our request that ADEM facilitate a joint monitoring plan for the upper Cahaba River basin that will provide the data necessary to meet MS4 expectations and allow shared costs and shared data. We understand that ADEM's implementation of the MS4 program tries to balance the requirements of the MS4 regulations with the MEP capabilities of the permittees. It is also important to ensure that the MS4 investments in monitoring will be cost effective, that these investments will yield actionable data and are coordinated with all monitoring in the basin to address gaps and overlaps. CRS would like to be a stakeholder and resource towards development of that program. In the meantime,

the monitoring requirements of the MS4 permits must be enhanced.

Map 1-1: Upper Cahaba River Watershed Map



Possible locations for MS4 Sonde monitoring on the Cahaba River mainstem.

We believe that collecting hourly Sonde data will be very helpful. Unfortunately, it appears that no MS4 downstream of Vestavia Hills will be collecting this type of information for the Cahaba River mainstem. The overall health of the basin would be served if ADEM required one of the downstream MS4s to locate a Sonde in the Cahaba River mainstem. A comparison of such data with that collected by Trussville and the City of Vestavia would be very informative.

The map above, modified from the Cahaba Siltation (Habitat Alteration) TMDL, shows the approximate deployment locations of proposed monitoring Sondes in the Upper Cahaba basin. While data from these locations will be valuable, a considerable portion of the upper Cahaba subject to the Siltation TMDL, and still within an MS4 jurisdiction, will not be monitored. The table below arranges MS4 Monitoring activity in roughly an upstream to downstream order within the Cahaba River basin:

MS4	Hourly Sonde Monitoring†	Grab Sample Location (frequency)
Trussville	Cahaba River	Cahaba (semi-annual*) Pinchgut Cr (semi-annual) Dry Cr (semi-annual)
Irondale		Cahaba (annual) Shades Cr (annual)
Vestavia	Cahaba River	Cahaba (annual) Patton Cr (annual)
Homewood	Shades Creek	Shades Cr (annual) Tributaries of Shades (annual)
Mountain Brook		Shades Cr (annual) Tributaries of Shades (annual)
Hoover	Patton Creek (two locations) Lee Branch	
Alabaster		Buck Creek, multiple locations (quarterly**)
Pelham		Buck Creek (quarterly) Cahaba Valley Cr (quarterly) Pea Vine Cr (biannually***)
Helena		Cahaba (semi-annual) Buck Creek (semi-annual)
Shelby County	Cahaba Valley Creek	Cahaba Valley Cr (semi-annual) Lee Branch (semi-annual)

† Hoover's Sonde measurements are collected at 15 minute intervals.

* Semi-annual means two times per year.

** Quarterly means four times per year.

*** Biannual means once per two years.

These draft permits direct some MS4s to collect 'turbidity' data using Sonde technology. However, the Cahaba Siltation (Habitat alteration) TMDL focuses on Total Suspended Solids (TSS). If the TMDL is framed in terms of TSS, then MS4s should be monitoring TSS. TSS data from annual grab samples will be of limited help, as described in the following paragraph. TSS is important because without that data, it will be difficult to impossible to assess the progress toward achieving the TMDL goals. Since it is difficult to estimate TSS from turbidity, we question whether it is helpful to require turbidity to be the parameter monitored. TSS can be estimated by acoustic Doppler meter backscatter methodology. Evaluation of the Cahaba's Siltation (Habitat Alteration) TMDL progress would be facilitated if the MS4s were required to collect hourly TSS data.

The use of annual grab samples as a water quality monitoring approach is statistically inadequate. The temporal variability of water quality data is typically quite large. There are so many factors that influence water quality parameter values that it can be difficult to obtain an accurate estimate of actual parameter values. Such variability necessitates sampling more often so as to obtain a sufficient sample size to provide reasonable margins of error.

'Power analysis' is an approach that allows an investigator to determine the magnitude of a statistically valid sample size if the following three values are known:

1) The magnitude of the difference you would like to be able to detect between two parameter estimates. For this context, we chose 8 mg/l.
2) The variance of the variable.
3) The desired power of the test. Power is the probability that, if the difference in means is real, it will be detected as statistically "significant" in any one test. Usually, you want power to be relatively high; e.g., around 80% or more.

As an example, we used the EPA's STORET system to examine TSS data from the Cahaba at Highway 52 Bridge from 2012 to 2016. The average TSS value for this data was about 14 mg/l with a variance of about 493 (mg/l). If we want an 80% probability of detecting a change of 8 mg/l (an 8 mg/l change is a reasonable difference we would wish to be able to detect) then a sample size of 61 is needed. Using an annual grab sample regimen, these MS4s would not have enough data to make a valid assessment of the adequacy of their stormwater program for a very, very long time.

Data collection with an automated Sonde will provide valuable water quality information. We hope this monitoring technology will be more widely adopted by the MS4s. We appreciate that ADEM has encouraged some MS4s to adopt this technology. However, Sonde probes are not available for all water quality parameters. For those important parameters that may not be acquired with automated Sonde technology, where grab samples are essential (such as for TSS determination), we recommend collecting and analyzing quarterly or monthly grab samples. Quarterly sampling is a bare minimum to have any statistically reasonable level of accuracy. Even at that compromised sample collection rate, the MS4s may not have a statistically valid assessment of the required parameters for over a decade.

As for the variability of data for other parameters, we have not yet done those analyses. However, TSS information is the basis for the Siltation (Habitat alteration) TMDL for the Cahaba River and therefore should be considered when establishing monitoring requirements for the MS4s to assess whether or not progress is being made toward the goals of that TMDL.

As these draft permits are currently written, ADEM will be unable to determine whether these MS4s are holding steady or making progress toward achieving the Cahaba's Siltation (Habitat Alteration) TMDL goals or even if they are losing ground. More frequent/intensive and more accurate assessments are needed to provide the necessary data to allow sound environmental management decisions to be made in a timely manner.

Response (9): Regarding your comment on requiring the use of sondes within the Draft Permit, the use of sondes was an approach proposed by some of the Permittees, not unilaterally required by the Department.

It is the Department's understanding that one entity will be handling the monitoring for these Permittees, and the monitoring will be based on a watershed approach. These Permittees have a history of working closely together and with the surrounding MS4 entities, and there is nothing in this Draft Permit that prohibits or restricts these MS4 entities from working together to address stormwater issues, to include monitoring. Additionally, the Department has been conducting monitoring on both the main stem of the Cahaba River as well as tributaries for the pollutants of concern. Other agencies, such as United States Geological Survey (USGS), also perform sampling with real-time stations on both the main stem of the Cahaba River and its tributaries. The Department reviews the monitoring plans and provides comments when necessary. Again, the public has an opportunity to engage in the development and implementation of the Permittee's SWMPP as detailed in Part II.D.1. of the Draft Permit.

Part III.B of the Draft Permit requires the Permittee to sample total suspended solids (TSS) via grab samples. This Draft Permit provides specific requirements, in addition to monitoring, that shall be addressed by the Permittee's SWMPP, including BMPs selected by the Permittee which are adequate to assist in compliance with the TMDLs. Part II.E. of the Draft Permit requires monitoring to address the BMP effectiveness for TMDL implementation. If existing BMPs are not sufficient, then the BMPs must be revised. Also, Part IV.d. of the Draft Permit requires the Permittee to submit within the Annual Report a monitoring section which discusses the progress and results of the monitoring programs and includes, at a minimum, the following information: status of implementation of monitoring program; monitoring locations; raw data, to include, an explanation/discussion of the data for each component of the monitoring program; an interpretation of the analytical data for determinacy of meeting water quality standards. As with monitoring plans, the Department reviews all annual reports, to include monitoring data, and will continue to review this data individually and on a watershed basis. The Department provides feedback on the data as deemed appropriate.

BARD RESPONSE TO COMMENTS

Comment (1): The Draft Permit Improperly Incorporates Guidance Provisions as Mandatory Permit Requirements.

According to ADEM's own regulations, NPDES permits issued to large or medium MS4s must include the applicable requirements of 40 C.F.R. § 122.42(c). *See* ADEM Admin. Rule 335-6-6-.11. Currently, the proposed Draft Permit incorporates a number of guidance provisions that go beyond what the CWA and Phase I regulations require. BARD acknowledges and commends ADEM for the changes it has made to address this guidance issue in the recent MS4 draft permits it has issued. Nevertheless, guidance provisions classified as mandatory requirements still exist in the Draft Permit. This is not administratively proper, as guidance provisions are not legally binding. Alabama's Administrative Procedure Act ("AAPA") requires a public notice and comment rulemaking before any compliance standard can have the effect of law. *See* Ala. Code §§ 41-22-1, *et seq.* Because ADEM has not complied with the AAPA in this regard, it must: (1) remove all proposed provisions not enumerated in applicable rules and regulations as permit requirements before finalizing the permit; (2) suspend the permit renewal process until the provisions are properly promulgated through notice and comment rulemaking, or (3) revise the Draft Permit such that the provisions are included as recommendations of the agency, but not mandatory permit requirements.

The inclusion of these guidance provisions as permit requirements undercuts the maximum extent practicable ("MEP") standard promulgated by EPA to serve as the lodestar for the entire MS4 program and the creation of individual permits for regulated MS4s. Under both the CWA and EPA's Phase I regulations, a municipality must develop and implement a storm water management program designed to reduce the discharge of pollutants from its respective MS4 to the MEP. *See, e.g.*, 33 U.S.C. § 1342(p)(3)(B)(iii); 40 C.F.R. § 122.26(d)(2)(iv); 55 Fed. Reg. 47989, 47994 (Nov. 16, 1990). Despite the importance of the term, EPA intentionally left MEP undefined in its regulations in order to provide both permitting authorities and regulated MS4s maximum flexibility in implementing MS4 program requirements. While EPA's Phase I regulations provided little insight as to what constitutes MEP, EPA's 1999 rulemaking for small MS4s (known as "Phase II") attempted to describe how MEP should be applied in practice. *See, e.g.* 64 Fed. Reg. 68722, 68732 (December 8, 1999). The Phase II discussion of MEP is very useful in the present context since section 402(p)(3)(B)(iii) of the CWA—the source of the MEP standard—makes no distinction between large, medium, or small MS4s. EPA's reasoning therefore applies equally to all MS4s irrespective of size. *See* 64 Fed. Reg. at 68737 (noting that the minimum control measures required by the Phase II rule for small MS4s are "very similar to a number of the permit requirements for medium and large MS4s under the existing storm water program").

In its Phase II rulemaking, EPA explains that MEP is a site-specific standard that should be applied in a flexible manner, taking into account cost considerations and water quality effects. 64 Fed. Reg. at 68732. The pollutant reduction procedures that represent MEP are likely to differ significantly between MS4s because of each system's unique local hydrologic and geologic concerns and potentially divergent pollutant control strategies. *Id.* at 68754. EPA recommends that permit writers and individual MS4s evaluate the following factors in determining what constitutes MEP for a given regulated governing body: (1) the size of the MS4, (2) the local climate, (3)

implementation schedules, (4) the financial constraints of a given county or municipality, (5) beneficial uses of receiving water, (5) hydrology, (6) geology, (7) the capacity of the county or municipality to perform operation and maintenance, (8) conditions of receiving waters, (9) specific local concerns, and (10) other aspects included in a comprehensive watershed plan. *See* 64 Fed. Reg. at 68732, 68754. EPA instructed that each regulated governing body be afforded the flexibility it needs to determine what BMPs will appropriately fulfill the applicable minimum control measures and satisfy MEP. *See id.*

In stark contrast to these aforementioned principles, ADEM's Draft Permit directly incorporates a number of generic, guidance provisions from various sources–including, but not limited, to EPA's MS4 Program Evaluation Guidance—and imposes them as mandatory requirements for minimum control measures. Despite not being required by the Phase I regulations, these currently proposed permit requirements must be included in the City's Storm Water Management Plan and implemented as a part of its MS4 program. This is directly contrary to EPA's intent to allow counties or municipalities maximum flexibility in developing their programs.

By proposing to include the guidance provisions as mandatory permit requirements, ADEM is effectively eliminating the MEP standard that governs when, how, and under what conditions the County should implement certain guidance provisions or other BMPs to reduce pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA. ADEM's incorporation of mandatory guidance provisions handcuffs the County, leaving it very little discretionary authority to implement the MS4 program how it sees fit in compliance with the Phase I regulations.

BARD is also concerned that ADEM and/or other interested stakeholders will treat the City's Draft Permit as a template or baseline for future NPDES permits reissued to Phase I MS4s within the State over the coming years. This concern is seemingly justified given that this Draft Permit is almost identical to ones recently issued by ADEM to the City of Montgomery, City of Mobile and Shelby County. The substantially similar permits for these governing bodies located in geologically and hydrologically diverse areas of the State provide clear evidence that ADEM is not properly adhering to the MEP standard EPA intended to be fundamental to the MS4 permitting process. *See* 64 Fed. Reg. at 68754 (providing that "the pollutant reduction procedures that represent MEP may be different for each MS4 . . . [g]iven the unique local hydrologic and geologic concerns that may exist among the various MS4s and the possible differing pollutant control strategies."); *see also* 55 Fed. Reg. 47989, 48001, 48038 (providing that "[the Environmental Protection Agency ("EPA")] notes that each municipal program will be tailored to the conditions in that city" and that the controls utilized by each MS4 "may be different in different permits"). It is a basic premise of EPA's rulemaking that the significantly different circumstances characterizing each MS4 disallows generic permit conditions which can be applied interchangeably to each system. Instead, each MS4 must be given the flexibility necessary to evaluate what BMPs are appropriate to satisfy the applicable minimum control measures under its unique circumstances. *Id.* At 68754. ADEM must reevaluate this Draft Permit to account for any relevant unique circumstances affecting the City and its MS4. And, BARD asks that ADEM remain cognizant of this principle as it drafts new permits for other MS4s in the future.

Response (1): Your comment does not identify portions of the Draft Permit you feel incorporate "guidance provisions classified as mandatory requirements." The intent of the Draft Permit is to require the Permittee to implement, maintain and enforce a comprehensive stormwater management program which involves using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate to reduce the discharge of pollutants from its MS4 consistent with Section 402(p)(3)(B) of the Clean Water Act and 40 CFR Part 122.26. The Draft Permit language and provisions have been agreed to by the Permittee instead of being unilaterally required as suggested by your comment.

The Department agrees that the permitted entity should be granted flexibility to determine what BMPs are appropriate to fulfill the applicable minimum control measures and satisfy the MEP standard. For this reason, the specific BMPs the Permittee utilizes to meet Permit requirements will be determined by the Permittee and laid out in the SWMPP, which will be reviewed by the Department. So, while the overarching Draft Permit requirements may be similar or identical to those found in other Phase I permits, the BMPs utilized to meet these requirements will likely vary, giving the Permittee the flexibility in implementation. The Department believes that the terms of this Draft Permit meet the statutory and regulatory requirements and are achievable by the Permittee.

Comment (2): The Draft Permit Disregards the Alabama State Legislature's Instructions as to the Scope of MS4 Programs.

The Phase I regulations are an unfunded federal mandate. In revising Chapter 11-89C of the Alabama Code during the last legislative session, the Alabama Legislature recently clarified what ADEM may require of counties and municipalities to comply with this unfunded mandate. As explained in detail below, the current Draft Permit conflicts with the tenets of these statutory provisions.

As background, the Alabama Legislature first voiced its growing concern in 1997 regarding the significant costs municipalities are required to incur simply to comply with the Phase I regulations. In a joint resolution, lawmakers made clear that municipal MS4 programs need to be limited to that which is "absolutely required to satisfy the relevant federal laws and regulations." *See* Ala. Act 97-931 (H.J.R. 144) (1997). Under the recently amended Chapter 11-89C of the Alabama Code, the Legislature explicitly provides that any and all rules and regulations ADEM adopts related to storm water discharges into MS4s "shall be limited to include only those rules, regulations, and/or aspects that are absolutely required to satisfy the storm water laws." *See* Ala. Code §11-89C-9(a); *see also* Ala. Code § 11-89C-1(e) (instructing that the "substantive scope" "of such local programs [is to be limited] to include only those rules, regulations, and/or aspects that are absolutely required to satisfy the Clean Water Act, as specifically set out in the Code of Federal Regulations."). These prohibitions were collectively intended to limit both the *jurisdictional and substantive scope* of the local MS4 programs to matters absolutely required by the relevant federal laws and regulations. *Id.* By doing so, the Alabama Legislature ensured that the costs associated with MS4 programs "would be restrained by the strict limitations on the scope of such programs to that scope absolutely required by the relevant federal laws and regulations." Ala. Act 97-931 (H.J.R. 144) (1997). By incorporating requirements beyond those required by the Phase I regulations, ADEM is unlawfully disregarding the statutory limitations set forth in

Section 11-89C-9(a).

Before finalizing the Draft Permit (or any future Phase I MS4 permit), ADEM must determine that incorporating numerous requirements beyond those mandated by the Phase I regulations is consistent with the recently revised provisions of Chapter 11-89C of the Alabama Code.

Response (2): The Department sees no conflict between the Draft Permit requirements and Ala. Code Chapter 11-89C. In addition, your comment does not indicate which Draft Permit requirements you feel go "beyond those required by the Phase I regulations." The intent of the Draft Permit is to require the Permittee to implement, maintain and enforce a comprehensive stormwater management program which involves using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate to reduce the discharge of pollutants from its MS4 consistent with Section 402(p)(3)(B) of the Clean Water Act and 40 CFR Part 122.26. The stormwater program elements and requirements (Part II.B of the Draft Permit) that must be addressed by the Permittee are those that are listed in 40 CFR 122.26(d)(2)(iv). The specific BMPs the Permittee utilizes to meet each of these elements will be determined by the Permittee and laid out in the SWMPP, which will be reviewed by the Department.

Comment (3): Citations to Handbooks Must Reference the Specific Publication Date and/or Edition

ADEM has incorporated by reference the Low Impact Development ("LID")/green infrastructure ("GI") handbook and the Alabama Handbook for Erosion Control, Sediment Control, and Stormwater Management on Construction Sites and Urban Areas published by the Alabama Soil and Water Conservation Committee without specifying the publication date, version, edition, etc., of these materials. This is improper as a matter of administrative law. It is a basic principle of notice and comment rulemaking that the public must be provided a meaningful chance to review, analyze, and offer comments on the rules and regulations that administrative agencies propose as laws. *See* Ala. Code § 41-22-5(a) ("Prior to the adoption, amendment, or repeal of any rule, the agency shall: . . . [provide] a statement of either the terms or substance of the intended action or a description of the subjects and issues involved. . . [and] [a]fford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing"). For example, the Alabama Code authorizes ADEM to "adopt, by reference in its rules and without publishing the adopted matter in full, all or any part of a code, standard or regulation which has been adopted by . . . a generally recognized organization or association approved by the joint committee administrative regulation review." *See* Code § 41-22-9. However, such references must "fully identify the adopted matter *by date and otherwise*" and "copies of the adopted matter" must be made available "*for inspection.*" *Id.* (emphasis added).

While commenters are able to assess and offer comments to standards set forth in the current versions of these handbooks (assuming it is these versions ADEM intends to reference), they have no way to consider what a future version may prescribe. This means that the standards in the Draft Permit could substantively change without an additional public comment period, effectively circumventing the AAPA. ADEM must therefore specify the precise versions or editions of these handbooks it intends to incorporate by reference.

Response (3): To clarify, the following definition has been added to Part V.Y: ***Alabama Handbook*** means the September 2014 edition of the Alabama Handbook for Erosion Control, Sediment Control, And Stormwater Management on Constructions Sites and Urban Areas, Alabama Soil and Water Conservation Committee (ASWCC) published at the time permit is effective. References to the Low Impact Development ("LID")/green infrastructure ("GI") handbook are included for informational purposes only, so there is no need to specify the publication date.

Comment (4): Part II. Subparts A.3.b. and B.5.a.3. Consideration of LID/GI

A conflict exists between these two Draft Permit provisions. Section II.A.3.b. provides that LID/GI *shall* be considered; whereas, Section II.B.5.a.3. of the Draft Permit requires the City to "[e]ncourage" landowners and developers to implement LID/GI when doing so is pragmatic and economically feasible. The use of LID/GI cannot be mandated in the Draft Permit because the use of such control measures is not enumerated in any federal regulation, or accompanying text, that is applicable to MS4s. *See generally* 40 C.F.R. § 122.26; 55 Fed. Reg. 47989-48091; 64 Fed. Reg. 68721-68851. Thus, while it is acceptable for ADEM to encourage permittees to consider the use of LID/GI, it is improper (for the reasons discussed in the guidance provisions general comments set out above) for ADEM to mandate use or consideration of LID/GI since there is no requirement to do so in the Phase I regulations.

Response (4): The Draft Permit states in Part II.A.3.b, LID/GI shall be considered where feasible. Part II.B.5.a.3 of the Draft Permit states to encourage landowners and developers to incorporate the use of low impact development (LID/GI) where feasible. In neither instance is the Department mandating the use of LID/GI, only that it be **considered** and **encouraged** where feasible.

Comment (5): Part II., Subpart B.4. Construction Site Stormwater Runoff Control.

ADEM should clarify that the City is permitted to utilize and incorporate various components of ADEM's existing construction storm water program to satisfy the requirements of this subpart. Although EPA has informally interpreted the Phase I regulations as prohibiting a medium or large MS4 from relying solely on ADEM's program (though there is no explicit statement in the Phase I regulations to this effect), there is no reason that a medium or large MS4 cannot incorporate *parts* of ADEM's program to meet this requirement. Specifically, as EPA has pointed out:

> The [Phase I] regulations contemplate a degree of flexibility in allowing Individual Phase I MS4s to design a construction program appropriate for local conditions, provided that the minimum components . . . are included and the local government is able to control discharges from construction sites to the maximum extent practicable. Further, local governments may maximize efficiencies with existing state-level programs. For example, a local government may adopt local requirements that mirror or *incorporate* requirements from the state construction general permit, or it may coordinate its enforcement activities with state enforcement of the state construction general permit.

See March 20, 2008 Letter from Mr. James D. Giattina, Director of Water Management Division, EPA Region IV, to Mr. Steve Jenkins, Chief of Field Operations, Water Division, ADEM (emphasis added). A City could, for example, rely on ADEM's review and approval of Erosion and Sediment Control plans for sites that require ADEM review (i.e. priority sites). This would avoid conflicting opinions (City vs. ADEM) on Erosion and Sediment Control plan design, as well as preventing the City from having to "reinvent the wheel." Moreover, Chapter 11-89C of the Alabama Code provides that any entity in compliance with an ADEM-issued NPDES permit is deemed compliant with any local ordinance issued by the City pursuant to its MS4 obligations, meaning the City could not lawfully require a developer to revise its plans at ADEM-regulated construction sites. Requiring the City to review these plans therefore amounts to unnecessary double regulation and undermines the efficient use of governmental resources without any compelling justification.

Similarly, construction sites that disturb one acre or greater are currently subject to ADEM's general NPDES permit for qualifying construction sites. This general permit requires frequent, periodic inspections. The Draft Permit requires the City to inspect these sites as well. Thus, by requiring the City to implement an inspection program, a third entity is tasked with inspecting such sites (i.e., NPDES Construction Permittee, MS4, and ADEM). This is a waste of resources. The City's role should be limited to quality control, with periodic inspection left to its discretion. The Draft Permit, as presently drafted, requires the City to waste resources in a duplication of ADEM's responsibilities.

Finally, the Draft Permit would require the City to implement an enforcement response plan. This is another needless duplication of ADEM's responsibilities. The City should be allowed to utilize ADEM's existing system for its NPDES construction storm water program and seek enforcement only on those sites that are non-compliant and that ADEM is not addressing. The Draft Permit does not clearly reference that the City may rely upon ADEM and its construction storm water program for the enforcement of all violations at sites regulated by ADEM's general permit for qualifying construction sites. Indeed, revised Chapter 11-89C makes it mandatory for the City to rely upon ADEM for this enforcement to the maximum extent permitted by law. This needs to be more clearly articulated in the text of the Draft Permit.

Response (5): Again, the Department sees no conflict between the Draft Permit and Ala. Code Chapter 11-89C, as the Draft Permit allows the Permittee to rely upon ADEM to the extent allowed. This Draft Permit was developed to meet the requirements set forth in 40 CFR 122.26(d)(2)(iv)(D), and with the consent of the Permittee. If the Department has taken and is proceeding with an enforcement action, then Ala. Code § 11-89C-12 prohibits the Permittee from pursuing an enforcement action for the same alleged violation; however, under Section 11-89C-12(b), the Permittee may pursue enforcement actions for continued or continuing violations.

Comment (6): Part II., Subpart B.5. Post-Construction Storm Water Management in New Development and Re-Development.

BARD is particularly concerned with a number of requirements set out in this subpart. A discussion of each is set out below.

a. The proposed regulation of pre- and post-construction hydrology is improper

How is the City to interpret and implement Section II.B.5.a.2, which requires "preconstruction hydrology" to mimic "post-construction hydrology"? Do these terms refer to flow, volume, timing, or all of these? Should it refer to any of the above or anything other than the discharge of a "pollutant" as it is defined under the CWA, it is outside the scope of the MS4 program and cannot be enforced by ADEM and/or EPA under the MS4 program. Neither the CWA nor the CFR use the term "hydrology," not even in guidance. In fact, the concept of regulating hydrology through MS4 permits was arguably developed by EPA as a means to unlawfully incorporate section 438 of the Energy Independence and Security Act ("EISA") into CWA section 402(p)(3)(B). *See generally In Re Joint Base Lewis-McChord Municipal Separate Storm Sewer System*, NPDES Appeal No. 13-09 (EPA App. Bd. 2009).

In December 2007, EISA section 438 established storm water design requirements for federal development and redevelopment projects, stating that such projects over 5,000 square feet must "maintain or restore, to the maximum extent technically feasible, the predevelopment hydrology of the property with regard to the temperature, rate, volume, and duration of flow." *See* 42 U.S.C. § 17094. In addressing the argument that EPA could not incorporate this provision into a MS4 permit under the auspices of CWA section 402(p)(3)(B), EPA stated:

> EPA's Permit does not purport to implement Section 438 of EISA, 42 U.S.C. § 17094. Further, EPA disagrees that the CWA and EISA § 438 are mutually exclusive unless Congress directs otherwise. Postconstruction performance standards for development sites are established by EPA in Permit Part II.B.5 pursuant to CWA Section 402(p)(3). EPA's [Fact Sheet] at page 32 explains that these provisions are intended to "*...protect water quality in Puget Sound and its tributaries to the maximum extent practicable, [such that] all new development and redevelopment sites within the surrounding watersheds must be planned, designed, and constructed in a manner that minimizes the negative impact of urbanization by mimicking natural hydrology.*"

U.S. Dep't of the Army, Petition for Review of NPDES Permit for Joint Base Lewis-McChord Municipal Separate Storm Sewer System and Request for Oral Argument, 9 (2009) (quoting EPA, Response to Comments, pp. 28-29, response 50) (emphasis in original).

Despite the fact that EPA's response appears disingenuous in light of the similarity in language between the provisions, EPA asserts that the CWA and EISA are not mutually exclusive "unless Congress directs otherwise." This rationale is incorrect because agencies may only act on authority expressly granted by Congress, not on authority inferred from Congressional silence. *See Va. Dept. of Transp. v. EPA*, 2013 WL 5374, *3 (E.D. Va. 2013) ("[t]he question is whether the statute grants the agency the authority it is claiming, not whether the statute explicitly withholds that authority"). Hence, ADEM, by proxy, should not adopt hydrology requirements from EISA section 438 and enforce them as mandatory extensions of CWA section 402(p)(3)(B).

Even if EPA and/or ADEM are not seeking to incorporate EISA section 438, hydrology regulations are impermissible because EPA may not regulate storm water flow as a surrogate pollutant. *See Va. Dep't of Tranps.*, 2013 WL 53741, at *4-5 (holding that EPA may not regulate storm water

flow as a surrogate pollutant).7 By EPA's own admission, this is precisely what it intends when it imposes hydrology regulations. *See* U.S. Dep't of the Army, Petition for Review of NPDES Permit for Joint Base Lewis-McChord Municipal Separate Storm Sewer System and Request for Oral Argument, 9 (2009) (EPA stating that hydrology regulations are intended to "minimize[] the negative impact of urbanization") (quoting EPA, Response to Comments, pp. 28-29, response 50); *see also* 64 Fed. Reg. at 68760 (in reference to minimizing impervious surfaces (i.e., urbanization) "[t]his strategy can slow the rate of runoff, reduce runoff volumes, attenuate peak flows, and encourage filtering and infiltration of storm water").

If it is not ADEM's intention by and through this provision to regulate storm water flow where a discharge of pollution does not actually occur, the Draft Permit must be redrafted with clear and justiciable terms which explain the purpose of the hydrology regulations under Section II.B.5.a.2.

Response (6): Again, the intent of the Draft Permit is to require the Permittee to implement, maintain and enforce a comprehensive stormwater management program which involves using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate to reduce the **discharge of pollutants** from its MS4 consistent with Section 402(p)(3)(B) of the Clean Water Act and 40 CFR Part 122.26(d)(2)(iv)(A)(2). 40 CFR 122.26(d)(2)(iv)(A)(2) is clear that the Permittee is responsible for controlling the **discharge of pollutants** in stormwater runoff from new developments and significant redevelopments. The Department notes that flow is not a pollutant.

Regarding hydrology, the Department believes that the definition provides the Permittee with a clear understanding of what must be performed to comply with Part II.5 of the Draft Permit. Additionally, the definition used in this Draft Permit is consistent with other recently-issued MS4 Phase I Permits.

Comment (7): ***ADEM should not use the MS4 permitting process as a means to regulate land use***

In some form, requiring minimization of impervious surfaces, preservation of ecologically sensitive areas, the establishment of vegetative buffers, protection of vegetation and soil, and/or regulation of hydrology all amount to impermissible attempts to regulate land use by way of federal mandate. Federal authority under the CWA does not go so far as to usurp the "quintessential state and local power" found in the "[r]egulation of land use." *Rapanos v. U.S.*, 547 U.S. 715, 738-39 (2006) ("We ordinarily expect a 'clear and manifest' statement from Congress to authorize an unprecedented intrusion into traditional state authority. The phrase 'the waters of the United States' hardly qualifies.") (Scalia, J. plurality) (citations omitted); *see also Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 174 (2001) (*SWANCC*) (rejecting a similar CWA application because of "significant constitutional questions raised" by impingement of the States' traditional and primary power over land and water use"). The decisions in both *SWANCC* and *Rapanos* turned on how broad the term "waters of the United States" should be interpreted and both cases reasoned that Congress did not authorize "*de facto*" federal regulation of land use through the CWA. *See Rapanos*, 547 U.S. at 738 ("[t]he extensive federal jurisdiction urged by the Government would authorize the Corps to function as a *de facto* regulator of immense

stretches of intrastate land—an authority the agency has shown its willingness to exercise with the scope of discretion that would befit a local zoning board").

In the present case, ADEM, through the MS4 permitting process, has imposed postconstruction BMPs in the Draft Permit which would allow it to function as a *de facto* regulator of immense stretches of intrastate land with the scope of discretion that would befit a local zoning board. For example, by placing limitations on impervious surfaces and hydrology, and imposing water retention mandates, ADEM has effectively paralyzed opportunities for meaningful, industrial development in the City. Because the CWA only authorizes regulations narrowly tailored to reduce the discharge of pollutants, ADEM authority under section 402(p)(3)(B) should be so limited here.

Response (7): The post-construction BMP requirements in the Draft Permit do not operate to regulate land use. The intent of the Draft Permit is to require the Permittee to implement, maintain and enforce a comprehensive stormwater management program which involves using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate to reduce the **discharge of pollutants** from its MS4 consistent with Section 402(p)(3)(B) of the Clean Water Act and 40 CFR Part 122.26(d)(2)(iv)(A)(2). 40 CFR 122.26(d)(2)(iv)(A)(2) is clear that the Permittee is responsible for controlling the discharge of pollutants in stormwater runoff from new developments and significant redevelopments. Regarding the controls required to reduce the discharge of pollutants from new developments and significant redevelopment, 40 CFR 122.26(d)(2)(iv) states, in part, that the Permittee's program must include:

> A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed.

The intent of Part II.B.5 of the Draft Permit is to require controls to reduce the **discharge of pollutants** and to ensure that the Permittee retains flexibility in determining the appropriate BMPs utilized to meet the required MEP standard. The Department believes that the Draft Permit is clear in this intent and no changes were made based on this comment.

Comment (8): Other Concerns

BARD questions EPA's authority to require the submittal of an as-built certification for post-construction BMPs under Section II.B.5.a.6 of the Draft Permit. Regardless of either EPA or ADEM's legal authority, BARD questions the prudence of creating what will almost assuredly be a costly and onerous requirement for both the developer as well as the City, especially without further clarification regarding the nature of the certification. Is the developer required to certify that the BMPs were built as shown on the plans, that they are effective, or both?

Finally, Section II.5.a.9. of the Draft Permit requires either the City or another entity to perform long-term operation and maintenance of post-construction BMPs. This requirement is beyond the scope of both EPA and ADEM's authority. Neither regulatory body possesses the authority to

require Alabama municipalities or counties to take over such responsibilities, or to take any other affirmative actions. This requirement must therefore be removed.

Response (8): The requirements in Part II.B.5.a.6 to submit "as-built" certifications along with the inspections of post-construction BMPs will aid in the assurance that the BMPs were installed and are functioning as planned. Part II.B.5.a.9 language has been agreed to by the Permittee, and the Department believes it is achievable for the Permittee. In addition, this language is consistent with recently issued Phase I MS4 permits, and the recently issued Phase II MS4 General Permit (ALR040000).

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Tracking Number: 9171082133393671553641

Delivered

Product & Tracking Information

See Available Actions

Postal Product:
First-Class Mail®

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
June 12, 2017, 12:06 pm	**Delivered**	**BIRMINGHAM, AL 35217**
Your item was delivered at 12:06 pm on June 12, 2017 in BIRMINGHAM, AL 35217.		
June 10, 2017, 4:06 pm	Business Closed	BIRMINGHAM, AL 35217
June 10, 2017, 4:06 pm	Business Closed	BIRMINGHAM, AL 35217
June 10, 2017, 8:06 am	Arrived at Unit	BIRMINGHAM, AL 35217

See More

Available Actions

Text Updates

Email Updates

Return Receipt Email

See Less

Can’t find what you’re looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs (http://faq.usps.com/?articleId=220900)

There’s an easier way to track your packages.

Why jump from page to page to track packages being sent to you? With My USPS™, you can easily track all your packages in one place. Sign up to:

- Set up automatic email and text alerts, so you’ll never have to manually track a package again
- Provide delivery instructions, so your carrier knows where to leave packages

Sign Up

(https://reg.usps.com/entreg/RegistrationAction_input?app=UspsTools&appURL=https%3A%2F%2Ftools.usps.com%2Fgo%2FTrackConfirmAction%3Finput%3FtRef%3Dfullpage%26tLc%3D2%26text28777%3D%26tLabels%3D%3D917108213339367153641%252C)

(https://www.usps.com/)

HELPFUL LINKS

Contact Us (https://www.usps.com/help/welcome.htm)

Site Index (https://www.usps.com/globals/site-index.htm)

FAQs (http://faq.usps.com/)

ON ABOUT.USPS.COM

About USPS Home (http://about.usps.com/)

Newsroom (http://about.usps.com/news/welcome.htm)

USPS Service Updates (http://about.usps.com/news/service-alerts/welcome.htm)

Forms & Publications (http://about.usps.com/forms-publications/welcome.htm)

Government Services (https://www.usps.com/gov-services/gov-services.htm)

Careers (http://about.usps.com/careers/welcome.htm)

OTHER USPS SITES

Business Customer Gateway (https://gateway.usps.com/)

Postal Inspectors (https://postalinspectors.uspis.gov/)

Inspector General (http://www.uspsoig.gov/)

Postal Explorer (http://pe.usps.gov/)

National Postal Museum (http://www.postalmuseum.si.edu/)

Resources for Developers (https://www.usps.com/webtools/welcome.htm)

LEGAL INFORMATION

Privacy Policy (http://about.usps.com/who-we-are/privacy-policy/privacy-policy-highlights.htm)

Terms of Use (http://about.usps.com/termsofuse.htm)

FOIA (http://about.usps.com/who-we-are/foia/welcome.htm)

No FEAR Act EEO Data (http://about.usps.com/who-we-are/no-fear-act/welcome.htm)

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