

07-07-44

BERKELEY COUNTY

STORMWATER MANAGEMENT ORDINANCE

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ORDINANCE NO. 07-07-44**AN ORDINANCE ESTABLISHING REGULATIONS TO DEVELOP AND ENFORCE A STORMWATER MANAGEMENT PROGRAM TO REDUCE THE DISCHARGE OF POLLUTANTS ASSOCIATED WITH STORMWATER RUNOFF AND BERKELEY COUNTY'S STORM SEWER SYSTEM.**

WHEREAS, uncontrolled stormwater runoff may have significant, adverse impact on the health, safety and general welfare of Berkeley County and the quality of life of its citizens; and

WHEREAS, Berkeley County is required by federal and State law to obtain a National Pollutant Discharge Elimination System (NPDES) permit from the South Carolina Department of Health and Environmental Control for stormwater discharges from Berkeley County's stormwater systems; and

WHEREAS, the NPDES permit requires that Berkeley County develop, implement, and enforce a storm water management program in its regulated area designed to reduce the discharge of pollutants from its small municipal separate storm sewer systems to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act.

NOW, THEREFORE BE IT ENACTED by Berkeley County Council, in a meeting duly assembled, that the following stormwater management ordinance shall be adopted:

**DIVISION 1
GENERAL PROVISIONS****Sec. 1.1 Title.**

This ordinance shall be known as the "Stormwater Management Ordinance of Berkeley County, South Carolina."

Sec. 1.2 Authority.

This ordinance is adopted pursuant to the authority conferred upon Berkeley County by the South Carolina Constitution, Act No. 194 of the Acts and Joint Resolutions of 1971 enacted by the General Assembly of the State of South Carolina, approved April 23, 1971, in 1976 South Carolina Code of Laws Sections 4-9-30, 4-9-40, 5-7-30, and 5-7-60.

Sec. 1.3 Jurisdiction.

The boundaries and jurisdiction of this Ordinance shall encompass those portions of unincorporated Berkeley County defined as the "regulated area" and such additional areas lying inside the corporate limits of other governments as approved by Berkeley County Council.

Sec. 1.4 Findings.

Berkeley County Council makes the following findings:

(a) Uncontrolled stormwater runoff may have significant, adverse impact on the health, safety and general welfare of Berkeley County and the quality of life of its citizens. The potential impacts of uncontrolled stormwater can lead to the degradation of water quality and general riverine ecosystem through excessive or illegal pollutant discharges, erosion, and flooding thereby limiting or removing its designated and potential uses.

(b) Berkeley County is required by federal law [33 U.S.C 1342(p) and 40 CFR 122.26] and by State law [S. C. Code Reg. 61-9 122.32 & 122.33] to obtain a National Pollution Discharge Elimination System (NPDES) permit from the South Carolina Department of Health and Environmental Control ("SCDHEC") for stormwater discharges from Berkeley County's stormwater systems. The NPDES permit requires that Berkeley County develop, implement, and enforce a stormwater management program (SWMP) in its regulated area designed to reduce the discharge of pollutants from its small municipal separate storm sewer systems (SMS4) to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act.

Sec. 1.5 Purpose.

(a) It is the purpose of this ordinance to protect, maintain, and enhance water quality and the environment of Berkeley County and the short-term and long-term public health, safety, and general welfare of the citizens of Berkeley County. This ordinance is also designed to minimize property damage by establishing requirements and procedures to control the potential adverse effects of increased stormwater runoff and related pollutant loads associated with both future development and existing developed land. Proper management of storm water runoff will further the purpose of this Ordinance to insure a functional drainage system, reduce the effects of development on land and stream channel erosion, attain and maintain water quality standards, enhance the local environment associated with the drainage system, reduce local flooding, maintain to the maximum extent practical pre-developed runoff characteristics of the area in terms of flow rate, volume and pollutant concentration, and facilitate economic development through residential, commercial, and industrial construction and development while mitigating associated pollutant, flooding, erosion, and drainage impacts.

(b) It is further the purpose of this ordinance to direct the development and implementation of a Stormwater Management Program (SWMP) and to establish legal authority which authorizes or enables Berkeley County at a minimum to:

- (1) Comply with State and Federal requirements related to stormwater management developed pursuant to the Clean Water Act;
- (2) Prohibit illicit discharges to Berkeley County stormwater management systems and facilities;
- (3) Control to the maximum extent practical the discharge to Berkeley County storm water management systems and facilities and receiving waters of spills, dumping, or disposal of materials other than storm water;
- (4) Address specific categories of non-stormwater discharges and similar other incidental non-stormwater discharges listed in the SWMP;
- (5) Require erosion and sediment controls to protect water quality on all applicable new and re-development projects both during and after construction;
- (6) Where necessary, require stormwater discharge rate and volume control during and following development, redevelopment, or construction;
- (7) Define and implement procedures of site plan review and site inspection of all applicable construction projects within regulated areas of Berkeley County;
- (8) Control the discharge from Berkeley County stormwater management systems and facilities of pollutants in such quantity that water quality standards are met or to otherwise address post-construction, long-term water quality. This includes the necessary means needed to comply with State and Federal regulations regarding stormwater management quantity and quality;
- (9) Define procedures for addressing citizen complaints of storm water-related issues within Berkeley County;
- (10) Provide for adequate long term operation and maintenance of Best Management Practices (BMPs);
- (11) Prior to applying for approval of construction activities within the Regulated Area of Berkeley County that require DHEC construction general permit coverage, the County must receive notification from DHEC's Office of Ocean and Coastal Resource Management (OCRM) that states the proposed project is consistent with the Coastal Zone Management Plan;

- (12) Carry out inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions and Ordinance requirements including the prohibition on illicit discharges to Berkeley County storm sewer system and receiving waters;
- (13) Encourage the use of non-traditional strategies to control stormwater discharges;
- (14) Encourage the creation of stream buffers and preservation of natural spaces to provide areas that could be used for flood storage, stormwater treatment and control, and recreation. Such areas may be required in special protection areas needed to protect, maintain, or enhance water quality and protect property from flooding problems;
- (15) Develop, implement, and enforce action plans to address pollutant load reductions required in impaired waterbodies and to work towards compliance with Total Maximum Daily Loads (TMDLs) established by EPA or SCDHEC and to work towards meeting water quality standards.
- (16) Enable enforcement of all said authorizations.

(c) It is still further the purpose of this ordinance to establish review authority for Berkeley County's Engineering Department for establishing consistency of construction projects with the Berkeley County SWMP.

Sec. 1.6 Construction and Scope

(a) The provisions of this Ordinance shall apply throughout those portions of unincorporated Berkeley County defined as the "regulated area" and such additional areas lying inside the corporate limits of other governments as approved by Berkeley County Council. The County Council will approve the designation of the "regulated area".

(b) The Berkeley County Engineer or his designee shall be primarily responsible for the coordination and enforcement of the provisions of this Ordinance and the SWMP.

(c) The application of this Ordinance and the provisions and references expressed herein shall be the minimum storm water management requirements and shall not be deemed a limitation or repeal of any other ordinances of Berkeley County or powers granted to Berkeley County by the State of South Carolina statutes, including, without limitation, the power to require additional or more stringent storm water management requirements. If site characteristics on new development and/or redevelopment indicate that complying with these minimum requirements will not provide adequate designs or protection for local property, residents, or the environment, the property owner, operator, or person responsible for land disturbing activities shall be required to provide additional and appropriate management practices, control techniques, system design, and engineering methods to attain an adequate level of protection.

Sec. 1.7 Severability.

Should any word, phrase, clause or provision of this ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, such declaration shall not affect this ordinance as a whole or any part hereof except that specific provision declared by such court to be invalid or unconstitutional.

Sec. 1.8 Rules of Language and Interpretation

- (a) The word "shall" is mandatory; the word "may" is permissive.
- (b) The particular shall control the general.
- (c) Words used in the present tense shall include the future, and words used in the singular include the plural, and the plural the singular, unless the context clearly indicates the contrary.
- (d) All public officials, bodies and agencies to which reference is made are those of Berkeley County, unless otherwise indicated.

Sec. 1.9 Relationship with Other Laws, Regulations and Ordinances

Whenever the provisions of this Ordinance impose more restrictive standards than are required in or under any other law, regulation or ordinance, the requirements contained in this article shall prevail. Whenever the provisions of any other law, regulation or ordinance require more restrictive standards than are required in this article, the requirements of such law, regulation or ordinance shall prevail.

Sec.1.10 Amendments

Berkeley County Council, may, in its discretion and following procedures specified by State law, amend or change this Ordinance or adopt additional regulations or resolutions to implement this Ordinance, implement the SWMP, or to otherwise further the goal of protecting the quality of the waters into which Berkeley County storm sewer systems outfall.

Sec.1.11 Conflicting Ordinances Repealed

All ordinances or parts of ordinances related to storm water management in conflict with the provisions of this Ordinance are hereby repealed. This Ordinance shall prevail in any and all conflicts with guidelines, manuals, or other publications pertaining to storm water management.

Sec. 1.12 Definitions.

"Applicant" is a person, firm, governmental agency, partnership, or any other entity who seeks to obtain approval under the requirements of this Ordinance and who will be responsible for the land disturbing activity and related maintenance thereof.

"**As-built drawings**" are revised construction drawings that show in the installed location of the new facilities on a project, including the stormwater system. This term and "record drawings" shall be synonymous.

"**Best Management Practices (BMPs)**" are any structural or non-structural measure or facility used for the control of stormwater runoff, be it for quantity or quality control. BMPs also includes schedules of activities, prohibitions of practices, maintenance procedures, treatment requirements, operating procedures, and other management practices to control site runoff, spillage or leaks, sludge or waste disposal, drainage from raw material storage, or otherwise prevent or reduce the pollution of waters of the State.

"**Construction**" or "**Construction Activity**" is activity involving clearing, grading, transporting, filling, or any other activity which results in a change in the natural cover or topography that may cause erosion and contribute to sediment and alter the quality and quantity of stormwater runoff.

"**Construction Activity Application**" means the set of drawings, specifications, design calculations, and other documents necessary to demonstrate compliance with this Ordinance.

"**Department**" means the Berkeley County Engineering Department.

"**Design Manual**" refers to the Berkeley County Storm water Design Standards Manual.

"**Developer**" means any person, or others who act on his own behalf, who is required to submit an application for approval of construction activities and is thereafter responsible for maintaining compliance with this Ordinance and conditions of the approved application.

"**Erosion**" means the general process by which soils or rock fragments are detached and moved by the action of wind, water, ice, and gravity.

"**Easement**" is an authorization by a property owner to the general public, a corporation, or a certain person or persons for the use of any designated part of his property for a specific purpose.

"**Flood/flooding**" is a temporary rise in the level of water which results in the inundation of areas not ordinarily covered by water.

"**Hazardous material**" is any item or agent (biological, chemical, physical) which has the potential to cause harm to humans, other living organisms, or the environment, either by itself or through interaction with other factors.

"**Illicit connection**" means a connection to a Berkeley County stormwater management system or facility that results in a discharge that is not composed entirely of stormwater runoff except discharges pursuant to an NPDES permit (other than the NPDES MS4 permit for Berkeley County).

"Improper disposal" means any disposal other than through an illicit connection that results in an illicit discharge, including, but not limited to the disposal of used oil and toxic materials resulting from the improper management of such substances.

"Illicit discharge" or **"Illegal discharge"** means any activity which results in a discharge to a Berkeley County storm water management system or facility or receiving waters that is not composed entirely of storm water except (a) discharge pursuant to an NPDES permit (other than the NPDES MS4 Permit for Berkeley County) and (b) discharges resulting from the fire-fighting activities.

"Low Impact Development (LID)" is a set of principles and design components used to manage storm water runoff by mimicking natural conditions and limiting pollutant transport through source control.

"Maintenance" means any action necessary to preserve storm water system component, including conveyances, facilities and BMPs in proper working condition, in order to serve the intended purposes set forth in this ordinance and to prevent structural failure of such components.

"MS4" means municipal separate storm sewer system and includes all conveyances or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) which is (a) owned or operated by Berkeley County; (b) designed or used for collecting or conveying storm water; (c) not a combined sewer system; and (d) not part of a Publicly Owned Treatment Works (POTW).

"New Development" or **"Re-Development"** means any of the following actions undertaken by any person, including, without limitation, any public or private individual or entity:

- (a) division of a lot, tract, or parcels or other divisions by plat or deed;
- (b) the construction, installation, or alteration of land, a structure, impervious surface or drainage facility;
- (c) clearing, scraping, grubbing or otherwise significantly disturbing the soil, vegetation, mud, sand or rock of a site; or
- (d) adding, removing, exposing, excavating, leveling, grading, digging, burrowing, dumping, piling, dredging, or otherwise disturbing the soil, vegetation, mud, sand or rock of a site.

"NPDES" means National Pollutant Discharge Elimination System.

"NPDES MS4 permit" means the NPDES permit for storm water discharges issued by SCDHEC pursuant to the Clean Water Act and the federal stormwater discharge regulations (40

CFR 122.26) that allows for restricting pollutant loads as necessary to meet water quality standards.

"Operator" means the person who is operating the property, including an operator or person who is in charge of any activity related to land disturbance, construction or post construction stormwater quality or quantity

"Outfall" or **"Discharge point"** means the point where a Berkeley County stormwater management system or facility or other municipal and private systems discharges to waters of the State/United States.

"Owner" means the property owner, or any person who acts in his own behalf, that submits an application for approval to disturb land or vegetation or encroachment and the person, if so designated by default or on legal documents, as the responsible party for maintenance of a stormwater system(s) and facility(s).

"Person" means any and all persons, natural or artificial and includes any individual, association, firm, corporation, business trust, estate, trust, partnership, two or more persons having a joint or common interest, state or federal or an agent or employee thereof, or any other legal entity.

"Pollutant" means anything which may cause or contribute to exceedences of water quality standards, including but not limited to sediment, bacteria, nutrients, dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

"Property Owner" means the legal owner of the property.

"Receiving waters" or **"receiving water body"** refers to any lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State of South Carolina, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt.

"Regulated Area" refers to the boundaries of Berkeley County's urbanized areas as determined by Decennial Census Data from the United States Bureau of the Census. Regulated Area also includes any portion of the County that is so designated by Berkeley County Council. The Regulated Area designated by Berkeley County Council coincides with the area defined as "Service Zone I" by the "Transportation Impact Fee Ordinance for Unincorporated Berkeley County" (Ordinance No. 06-11-75).

"Regulation" means any regulation, rule or requirement prepared by and/or adopted by Berkeley County Council pursuant to this Ordinance.

"Spill" means any accidental or purposeful discharge of any pollutants, hazardous materials, or other substance which is otherwise potentially detrimental to the designated use of a receiving water.

"SWMP" means Berkeley County Storm water Management Program, which may describe the components to be used by Berkeley County to control stormwater discharges, address flooding, and meet water quality standards.

"Stormwater" means stormwater runoff, snowmelt runoff, and surface runoff and drainage.

"Stormwater management" means the collection, conveyance, storage, treatment and disposal of stormwater runoff in a manner to meet the objectives of this ordinance and its terms, including, but not limited to, measures that control the increased volume and rate of storm water runoff and water quality impacts caused by manmade changes to the land.

"Storm water management systems and facilities" means those natural and man-made channels, swales, ditches, swamps, rivers, streams, creeks, branches, reservoirs, ponds, drainage ways, inlets, catch basins, pipes, head walls, storm sewers, lakes and other physical works, properties, and improvements which transfer, control, convey, or otherwise influence the movement of storm water runoff, be it for quantity or quality control.

"TMDL" is a Total Maximum Daily Load wasteload allocation designation. It is a regulatory value developed to represent the amount of a pollutant that a waterbody can incorporate while meeting water quality standards. TMDL is further defined as the legal document developed by EPA and SCDHEC designating the pollutant load a permitted discharge is allowed to input into a waterbody.

"Variance" means the modification of the minimum stormwater management requirements contained in this Ordinance and the SWMP for specific circumstances where strict adherence to the requirements would result in unnecessary hardship and not fulfill the intent of this Ordinance.

"Watercourse" is any natural or man-made conveyance used to transport runoff from one location to the next.

"Watershed" is a drainage area or drainage basin contributing to the flow of stormwater into a receiving watercourse or water body."

"Water Quality" means those characteristics of storm water runoff that relate to the physical, chemical, biological, or radiological integrity of water.

"Water Quantity" means those characteristics of stormwater runoff that relate to the rate and volume of the stormwater runoff.

Sec. 1.13 Reserved.

DIVISION 2 ORGANIZATION AND ADMINISTRATION

Sec. 2.1 Berkeley County Stormwater Management Program.

The SWMP being developed by Berkeley County to implement the purposes of this Ordinance shall serve as the basis for directing Berkeley County's efforts to control stormwater and to comply with all applicable State and federal regulatory and permitting requirements. The SWMP and any modifications and/or revisions to the SWMP are incorporated by reference and is hereby a part of this Ordinance. The SWMP requirements and any modifications and/or revisions to the SWMP are to be complied with and shall be enforced in accordance with the provisions of this Ordinance.

Sec. 2.2 Coordination with Other Agencies.

The Engineering Department may coordinate Berkeley County's activities with other federal, State, and local agencies that manage and perform functions relating to the protection of receiving waters through written agreement. The Engineering Department should coordinate with State and Federal Agencies having jurisdiction.

Sec. 2.3 Right-Or-Entry

(a) The County Engineer or his designee shall have right-of-entry on or upon the property of any person subject to this Ordinance. The County Engineer or his designee shall, upon showing satisfactory credentials, be provided ready access to the necessary parts of the premises for the purposes of inspecting, monitoring, sampling, inventorying, examining and copying of records, and performing any other duties necessary to determine compliance with this Ordinance.

(b) Where the property owner or operator has security measures in force requiring proper identification and clearance before entry onto the premises, the person shall make necessary arrangements with the necessary parties so that, upon presentation of suitable identification, the County Engineer or his designee will be permitted to enter without delay for the purposes of performing such responsibilities identified in (a).

Sec. 2.4 Reserved.

DIVISION 3 STORM WATER QUANTITY AND QUALITY MANAGEMENT REQUIREMENTS

Sec. 3.1 Regulations.

(a) The Engineering Department shall be responsible for day to day coordination, implementation, and enforcement of this Ordinance and the SWMP as well as the long-term management of the County's drainage. Without limitation, the Engineering Department shall have the following authority:

- (1) To issue any approval, certification, or license that may be required to comply with this Ordinance.
- (2) To deny a connection to a Berkeley County stormwater management system or facility, if State requirements and this Ordinance are not met.
- (3) To create and enact a Berkeley County Stormwater Designs Standards Manual.

The Design Manual may be used to convey design and engineering standards, construction management processes and procedures, and other aspects necessary for compliance with this Ordinance.

- (i) The Designs Standards Manual shall be created by the Berkeley County staff with public input and adopted by County Council.
 - (ii) The Manual can be amended by the staff with notification to County Council.
- (4) To require the submittal of an application for all applicable construction activities that result in construction activities with a land disturbance area of greater than or equal to one (1) acre, or other sites as deemed necessary by the Storm water Design Standards Manual.

These applications must include a plan to control stormwater pollutants and other components detailed in Berkeley County's Stormwater Design Standards Manual.

- (5) To require the development of stormwater management and sediment/erosion control plans for all applicable new and re-development projects and enforcement of these plans.
- (6) To approve applicable construction activities and to require as a condition of such approvals, structural or non-structural controls, practices, devices, operating procedures, or other mechanisms to protect public and private property from flooding and erosion and attain TMDL-mandated pollutant load reductions and water quality standards.
- (7) To require performance bonds as necessary of any person to secure that person's compliance with approval, certificates, licenses, or authorizations issued by the Engineering Department pursuant to this Ordinance, the SWMP and Federal and State laws. The Engineering Department shall develop a process that organizes the closure of bonds and construction projects to accommodate development phases and property ownership transfers.

- (8) To conduct all activities necessary to carry out the SWMP and other requirements included in this Ordinance, and to pursue the necessary means and resources required to properly fulfill this responsibility.
- (9) To require appropriate post construction best management practices and appropriate continued maintenance of those best management practices.
- (10) To require maintenance bonds as necessary to ensure the long-term maintenance of storm water management best management practices.
- (11) To determine appropriate fees, to impose penalties, and to take necessary and appropriate actions to enforce this Ordinance.
- (12) To require encroachment permits as necessary.

Sec. 3.2 Prohibitions and Exemptions

No person shall (1) develop any land; (2) engage in any industry or enterprise; (3) construct, operate or maintain any landfill, hazardous waste treatment, disposal or recovery facility, or any other industrial or related facility; (4) dispose of any hazardous material or toxic substance or other pollutant; or (5) otherwise allow the transport of sediment and other pollutants associated with stormwater runoff beyond their property boundaries without having provided for compliance with this Ordinance.

In cases where an imminent threat to the health or safety of the general public or the environment is suspected, the County Engineer or his designee shall perform an assessment to determine if immediate action is necessary. Such assessment may be made with or without the consent of the owner or operator. If such consent is refused, the County Engineer or his designee may utilize the enforcement measures authorized in this Ordinance to remove such threat. In such cases, the owner or operator, as the case may be, shall reimburse the County for its direct and related expenses. If the owner or operator, as the case may be, fails to reimburse the County, the County is authorized to file a lien for said costs against the property, file an action in magistrate or civil court for recovery of incurred expenses, and enforce such actions in magistrate or civil court.

The following development activities are exempt from the provisions of this Ordinance.

(a) Land disturbing activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices and minimum erosion protection measures established by the South Carolina Forestry Commission pursuant to Section 48-18-70 of the 1976 Code of Laws of South Carolina, as amended.

(b) Land disturbing activities on agricultural land for production of plants and animals, including but not limited to: forages and sod crops, grains and feed crops, tobacco,

cotton, and peanuts; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats, including the breeding and grazing of these animals; bees, fur animals, and aquaculture. The construction of an agricultural structure that requires the disturbance of one or more acres, such as, but not limited to, broiler houses, machine sheds, repair shops, coops, barns, and other major buildings shall require the submittal and approval of a Construction Activity Application prior to the start of the land disturbing activity.

(c) Linear utility installation activities that are covered under their own DHEC approved utility general permit requiring associated assurance of proper stormwater management.

Sec. 3.3 Design and Engineering Standards.

Design and engineering standards must define the desired level of quality and performance for stormwater management systems on all applicable construction activities in order to meet the purpose of this Ordinance. The standards establish the minimum technical requirements needed to express compliance through calculations, maps and drawings, or others as necessary.

The Engineering Department is authorized to develop and adopt policies, criteria, specifications, and standards for the proper implementation of the requirements of this Ordinance, Federal and State laws, and the SWMP, and to provide a sound technical basis for the achievement of stormwater management, including water quality and quantity objectives. These standards may be presented in the Stormwater Design Standards Manual.

It shall be the responsibility of the property owner, operator, or person responsible for land disturbing activities to provide adequate controls to meet the design and engineering standards.

Sec 3.4 Construction Activity Application Approval Process

A Construction Activity Application submittal shall be made for all applicable construction activities for review by the Engineering Department. The entire application process and requirements will be described in the Design Standards Manual.

It shall be the responsibility of the applicant (property owner, operator, or person responsible for construction activities) to provide a complete application package that meets the requirements of this Ordinance, the SWMP, and other State and Federal regulations.

Sec. 3.5 Stormwater Design Standards Manual

The Engineering Department is authorized to develop and adopt a Stormwater Design Standards Manual. The Manual may include design standards, procedures and criteria for conducting hydrologic, hydraulic, pollutant load evaluations, and downstream impact for all components of the stormwater management system. Although the intention of the manual is to

establish uniform design practices, it neither replaces the need for engineering judgment nor precludes the use of information not presented. Other accepted engineering procedures may be used to conduct hydrologic, hydraulic and pollutant load studies if approved by the Engineering Department.

The Manual, if adopted, shall contain at a minimum the following components:

- (a) Construction Activity Application contents and approval procedures;
- (b) Construction completion and closeout processes;
- (c) Hydrologic, hydraulic, and water quality design criteria (i.e., design standards) for the purposes of controlling the runoff rate, volume, and pollutant load. Suggested reference material shall be included for guidance in computations needed to meet the design standards;
- (d) Information and requirements for new and re-development projects in special protection areas necessary to address TMDLs, known problem areas and other areas necessary to protect, maintain, and enhance water quality and the environment of Berkeley County and the public health, safety, and general welfare of the citizens of Berkeley County.
- (e) Construction document requirements;
- (f) Minimum easement requirements;
- (g) Required and recommended inspection schedules and activities for all components of the stormwater management system, including construction-related BMPs.

The Manual shall be updated periodically to reflect the advances in technology and experience gathered with time.

Sec. 3.6 Ownership and Berkeley County Participation

(a) Property owners are responsible for maintaining stormwater quantity and quality facilities and all conveyance structures located on their property. Prior to the issuance of an approved Application for Construction Activity, the property owner shall execute a legal document entitled "Covenants for Permanent Maintenance of Stormwater Systems". The property owner shall record the Covenants in the Office of the Berkeley County Register of Deeds. The location of the facility, the recorded location of the Covenants document, and a statement of the property owner's responsibility for maintenance shall be included and also shown on a plat. In the case of an operator other than the property owner, a copy of a maintenance agreement between the operator and the property owner shall be included with the Covenants, defining the operators' duties and responsibilities and that the property owner shall be responsible for maintenance activities upon the termination of the agreement.

(b) The property owner shall grant to Berkeley County a perpetual, non-exclusive, transferable easement, beginning or ending at a public street or other access point that allows for

public inspection and emergency repair of all components of the drainage system, including all conveyances and all water quantity and quality control facilities. At the request of the County Engineer or his designee, the property owner shall grant to Berkeley County right-of-ways.

(c) Stormwater quantity and quality control facilities shall be located so that required easements can be effectively used and ownership and maintenance responsibility can be clearly defined in deeds and plats.

(d) Berkeley County shall be responsible for maintenance activities for stormwater collection/conveyance systems associated with County accepted public roads and County projects.

(e) For projects that are not County accepted public road projects, Berkeley County may in its sole discretion either accept or decline ownership and maintenance of all or part of a storm water system.

(f) The minimum maintenance requirements will be performed at necessary intervals by the property owner or operator during construction and for as long as a storm water management system or component is in use. Failure to perform such activities will constitute a violation of this Ordinance.

(g) If a facility or any portion of the stormwater system is not being maintained as required, the County Engineer or his designee will notify the property owner or operator in writing. If the property owner or operator fails to repair or maintain the facility within the allotted time, the Engineering Department may authorize the work to be performed by the County or others. In such cases, the property owner or operator shall reimburse the County for its direct and related expenses. If the property owner or operator fails to reimburse the County, the County is authorized to file a lien for said costs against the property, file an action in magistrate or civil court for recovery of incurred expenses, and enforce such actions in magistrate or civil court.

(h) A property owner or operator may hire or contract others to perform necessary maintenance actions, but Berkeley County will hold the person named in the Covenants as the responsible party should legal actions described in (g) be necessary.

(i) When the County Engineer or his designee determines that additional storage capacity or pollution reduction beyond that required by the applicant for on-site storm water management is necessary in order to enhance or provide for the public health, safety and general welfare, to correct unacceptable or undesirable existing conditions or to provide protection in a more desirable fashion for future development, Berkeley County may:

- (l) require that the applicant grant any necessary easements over, through or under the applicant's property to provide access to or drainage for such a facility;

- (2) require that the applicant obtain from the owners of property over, through or under where the stormwater management facility is to be located, any easements necessary for the construction and maintenance of same;

Sec. 3.7 Maintenance, Construction, Inspection, and Closeout

Maintenance of the storm water management system is critical for the achievement of its purpose of controlling storm water runoff quantity and quality and the short-term and long-term public health, safety, and general welfare of the citizens of Berkeley County.

(a) A maintenance plan for the stormwater management system shall be included in the application to perform a construction activity, and must address activities to be conducted during and after construction. As part of the maintenance plan, the property owner or operator of such facility shall specifically agree, through recordation of Covenants, to be responsible for keeping the system and facilities in working order. The Engineering Department shall develop procedures to provide reasonable assurance that maintenance activities are performed for both Berkeley County and privately maintained systems. The Engineering Department shall also define procedures for transferring maintenance responsibilities to another entity.

(b) The Engineering Department shall define procedures for conducting site inspections during construction and until a stormwater management system or facility is no longer in use. Such inspections may be performed by County staff or an approved inspector. Berkeley County has the authority to levy fees for inspections and re-inspections as described in the Storm water Design Standards Manual.

(c) As part of any application to perform a construction activity, the applicant shall submit his own maintenance and inspection schedules to be implemented during construction and for as long as a storm water management system or facility is in use. Required and recommended schedules for BMP maintenance and inspection are to be provided in the Design Manual.

(d) If the construction is to be phased, no stage work, related to the construction of stormwater management facilities shall commence until the preceding stage of work is completed in accordance with an approved application to perform a construction activity. The procedure for construction phases beginning and ending and what constitutes such conditions shall be developed.

(e) The applicant shall notify the County Engineer or his designee before commencing any work to implement the approved Construction Activity Application and upon completion of any phase or designated component of the site. Notification schedules shall be provided for in the Design Manual. All self-inspections, maintenance actions, BMP replacements, and changes to the approved application shall be documented and presented upon request to the County Engineer or his designee.

(f) The construction project completion and closeout process must be completed by the Engineering Department prior to any of the following actions, as applicable:

- (1) The use or occupancy of any newly constructed components of the site.
- (2) Final acceptance of any road into the official Berkeley County road inventory or designation of road owner and associated stormwater management system.
- (3) Release of any bond held by Berkeley County.
- (4) Approval and/or acceptance for recording of maps, plats, or drawings, the intent of which is to cause a division of a single parcel of land into two or more parcels, and/or acceptable bonding is provided.

Sec. 3.8 Watercourse Protection

Every person owning or operating property through which a watercourse passes shall keep and maintain that part of the watercourse within the property free of trash, debris, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or operator shall maintain existing privately owned structures within or adjacent to a watercourse so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

To assist in the compliance with State and Federal laws and regulations, the Engineering Department may develop special protection areas which require additional control of stormwater quality and quantity than provided by minimum design standards. Such areas may consist of watersheds corresponding to established TMDLs, known flooding problems and pollution impairments, or other areas necessary to protect, maintain, and enhance water quality and the environment of Berkeley County and the public health, safety, and general welfare of the citizens of Berkeley County. These areas can be expected to change with time as development continues and as federal and state law demands.

New storm water systems created as the result of any new and re-development project shall be connected to the existing drainage system in a manner so as not to degrade the integrity of the existing system, whether natural or manmade, and shall have demonstrated this to the Engineering Department prior to project closeout. Discharge points shall be confined to connections with an existing natural or man-made drainage system. When there is a direct stormwater discharge into collection systems not owned and maintained by Berkeley County, the owners of these systems shall maintain the right to disapprove new connections to their system.

Sec. 3.9 Notification of Spills

Notwithstanding other requirements of law, as soon as any person responsible for a facility or the facility's operation and maintenance, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or waters of the State, said person shall take all necessary steps to discover,

contain, and cleanup any such releases. The person shall also take immediate steps to protect against future recurrences of the discharge. In the event of such a release of hazardous materials, including but not limited to oils, greases, engine fluids and fuels, chemicals, herbicides and pesticides, and fertilizers, said person shall immediately notify all necessary agencies of the occurrence. This shall include E911, Berkeley County Emergency Preparedness, and the Berkeley County Engineering Department. Such notifications of hazardous spills shall be confirmed by written notice addressed and mailed to the Engineering Department within five (5) business days of the spill event. In the event of a release of non-hazardous materials, said person shall record an on-site written record of the spill. The owner or operator of such facility shall retain an onsite written record of any and all spills that will include information on cleanup measures taken and the actions to prevent its recurrence. Such records shall be retained for at least five (5) years. Failure to provide notification of a release as provided above is a violation of this ordinance.

Sec. 3.10 Cleanup Procedures

Berkeley County may develop spill procedures on how spills are cleaned up, and who is responsible for the cleanup in terms of the activities to be performed and cost of such actions.

Sec 3.11 Reserved.

DIVISION 4 DETECTION AND REMOVAL OF ILLICIT CONNECTIONS AND DISCHARGES AND IMPROPER DISPOSAL

Sec. 4.1 Illicit Connections, Illicit Discharges, and Improper Disposal.

(a) It is unlawful for any person to connect any pipe, open channel, or any other conveyance system that discharges anything except stormwater or other approved discharges into a Berkeley County stormwater management system or facility or a Water of the State.

(b) It is unlawful for any person to continue the operation of any such illicit connection regardless of whether the connection was permissible when constructed. Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to the satisfaction of the County Engineer or his designee and any other federal, state, or local agencies or departments regulating the discharge.

(c) It is unlawful for any person to throw, drain, or otherwise discharge to a Berkeley County storm water management system or facility or to waters of the State or to cause, permit, or allow a discharge that is composed of anything except stormwater or unpolluted water which is approved by the Engineering Department.

(d) The Engineering Department shall develop procedures for detecting, tracking, and eliminating illicit discharges and improper disposals to the stormwater system.

(e) The County Engineer or his designee may require controls for or exempt the following discharges from the prohibition provision in (a), (b), and (c) above, provided that a reasonable determination is made that they are not a significant source of pollution:

- (1) Unpolluted industrial cooling water, but only under the authorization and direction of the County Engineer or his designee and if an appropriate Industrial NPDES permit is in place.
- (2) Water line flushing, diverted stream flows, rising ground waters, and uncontaminated pumped ground waters, and uncontaminated ground water infiltration.
- (3) Discharges from potable water sources, foundation drains, air conditioning condensation, landscape irrigation, springs, water from crawl space pumps, footing drains, lawn watering, individual car washing, dechlorinated swimming pool discharges, flows from riparian habitats and wetlands, and street wash water.
- (4) Discharges or flows from fire fighting.

(f) The Engineering Department may develop procedures for allowing other non-storm water discharges.

Sec. 4.2 Detection of Illicit Connections, Illicit Discharges, and Improper Disposal.

(a) The Engineering Department shall take appropriate steps to detect and eliminate illicit connections and illicit discharges to Berkeley County stormwater systems, including the adoption of a program to screen illicit discharges and identify their source or sources, perform inspections, and levy fines if not removed.

(b) The Engineering Department shall take appropriate steps to detect and eliminate improper disposal. These steps may include programs to screen for disposal, programs to provide for public education and public information, inspection, levying fines, and other appropriate activities to facilitate the proper management and elimination of improper disposal.

Sec 4.3 Waste Disposal Prohibitions.

No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drain system, or water of the U.S., any refuse, rubbish, garbage, litter, pet fecal matter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. Yard debris, including natural foliage, may be deposited in the public right of way but not in or on any stormwater conveyance structures, including inlets and gutters, but only if a collection service is available. Wastes in proper waste receptacles may be placed in the street for collection, but again only if

collection by or through Berkeley County is in place. No waste or yard debris shall be placed in the street without such a collection service.

Sec. 4.4 Reserved.

**DIVISION 5
MONITORING AND INSPECTIONS**

Sec. 5.1 Monitoring.

The Engineering Department may monitor the quantity and concentration of pollutants in stormwater discharges from the areas and/or locations designated in Berkeley County's SWMP.

Sec. 5.2 Inspections.

(a) The County Engineer or his designee, bearing proper credentials and identification, may enter and inspect all properties for regular inspections, periodic investigations, monitoring, observation measurement, enforcement, sampling and testing, to effectuate the provisions of this ordinance and the SWMP programs. Such inspections may be made at active construction sites or at any stormwater management system or facility in perpetuity. The County Engineer or his designee shall duly notify the owner of said property or the representative on site and the inspection shall be conducted at reasonable times.

(b) Upon refusal by any property owner to permit an inspector to enter or continue an inspection, the inspector shall terminate the inspection or confine the inspection to the areas where no objection is raised. The County Engineer or his designee shall document the refusal and the grounds for such and promptly seek appropriate compulsory process.

(c) In the event that the County Engineer or his designee reasonably believes that discharges from the property into a Berkeley County stormwater management system or facility may cause an imminent and substantial threat to human health or the environment, the inspection may take place at any time and without notice to the owner of the property or a representative on site. The inspector shall present proper credentials upon reasonable request by the owner or representative.

(d) Inspection reports shall be maintained in a permanent file located in the Engineering Department's office.

(e) At any time during an inspection or at such other times as the Engineering Department or his designee may request information from an owner or representative, the owner or representative may identify areas of his facility or establishment, material, or processes that contain or might reveal a trade secret. If the County Engineer or his designee has no clear and convincing reason to question such identification, all material, processes and information obtained within such areas shall be conspicuously labeled "CONFIDENTIAL - TRADE SECRET." The trade secret designation shall be freely granted to any material claimed to be such by the owner or representative unless there is clear and convincing evidence for denying

such designation. In the event the County Engineer or his designee does not agree with the trade secret designation, the material shall be temporarily designated a trade secret and the owner or representative may request an appeal of the Engineering Department's decision in the manner in which all such appeals are handled in this ordinance.

Sec. 5.3 Reserved.

**DIVISION 6
ENFORCEMENT, PENALTIES, AND ABATEMENT**

Sec. 6.1 Enforcement

(a) The County Engineer or his designee may initiate an enforcement action when violations of this Ordinance occur, including:

- (1) When the County Engineer or his designee finds that work done for new development and re-development fails to conform to the approved Construction Activity Application, or finds that the approved work has not been done;
- (2) When the County Engineer or his designee determines that an owner or operator has failed to maintain a stormwater management facility,
- (3) When the County Engineer or his designee determines that an owner of any property is causing or partially causing flooding, erosion, or non-compliance with water quality standards or this Ordinance.

(b) The County Engineer or his designee shall direct conformity to approvals and this Ordinance by written Notice of Violation (NOV). The NOV shall serve as a legal requirement to remove the violation(s). The written NOV shall be provided to the owner or the person responsible for land disturbing activities stating the nature of the violation, the amount of time in which to correct deficiencies, the date on which an inspection will be made to make sure that corrective action has been performed, and the proposed penalty structure if corrective action is not taken by the inspection date. It shall be sufficient notification to deliver the notice to the person to whom it is addressed, or to deposit a copy of such in the United States Mail, properly stamped, certified and addressed to the address used for tax purposes or the address provided on the Construction Activity Application. The NOV may address the entire site or a specific portion of the site so as not to unduly impede the development of areas being managed for the control of storm water runoff and associated pollutants.

(c) After the issuance of the NOV, the Berkeley County Engineer or his designee is hereby given the authority to proceed with enforcement actions which may include:

- (1) Issuing a written order to comply, to suspend work, or to revoke the approval issued;

- (2) Seeking redress through legal action;
- (3) Withholding the release of permanent electric power to the site or certificate of occupancy;
- (4) Withholding or revoking other permits related to the site; and/or
- (5) Levying fines.

(d) The County Attorney is hereby directed to take all legal actions necessary to correct situations described in (a), (b) and (c), including actions that are necessary to remove from the property such objectionable conditions constituting non-compliance with this Ordinance.

(e) Nothing contained in this Ordinance shall impair the right or ability of the County Attorney to exercise any and all other remedies available, of-law or in equity, including without limitation, the pursuit of injunctive relief, under emergency circumstances where there exists the danger of bodily injury or death.

(f) The authorized enforcement agency or its appointed agent may obtain injunctive relief to enjoin violations of the provisions of this Ordinance, and any person damaged as a result of such violations may, upon a proper showing of such damages, obtain payment therefore by a civil action.

(g) This Ordinance may be enforced by any other remedy of law or equity that the County Attorney is authorized to pursue, to include the authorities and powers conferred to local governments by the General Assembly of South Carolina. The penalties and other remedies provided in this Ordinance are cumulative and not exclusive, and may be independently and separately pursued against the same person for the activity constituting a violation of this Ordinance. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies in other provisions of this Code or other laws and regulations.

Sec. 6.2 Fines

Any person violating any provision of this ordinance shall be subject to a fine of not more than one thousand dollars (\$1,000) for each violation. Each separate day of violation constitutes a new and separate violation. Notice of civil penalty shall be provided via the issuance of a uniform summons.

Sec. 6.3 Additional Legal Measures

(a) Where Berkeley County is fined and/or placed under a compliance schedule by the State or federal government for a violation(s) of its NPDES permit, and Berkeley County can identify the person(s) who caused such violation(s) to occur, Berkeley County may pass through the penalty and cost of compliance to that person(s).

(b) Berkeley County's attorney may institute injunctive, mandamus or other appropriate action or proceedings at law or equity, including criminal conviction, for the enforcement of this Ordinance or to correct violations of this Ordinance, and any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, mandamus or other appropriate forms of remedy or relief.

Sec. 6.4 Criminal Penalties

In addition to any applicable civil penalties, any person who willfully, with wanton disregard, or intentionally violates any provision of this Ordinance shall be guilty of a misdemeanor and upon conviction shall pay a fine of not more than \$500.00 or imprisoned for not more than thirty (30) days. Each day of violation shall constitute a new and separate offense.

Sect. 6.5 Corrective Action

In the event a violation of this Ordinance has not been corrected within the applicable time period for correction, Berkeley County, or its contractor, may enter upon the lot or parcel of land and correct the violation, and the costs incurred as a result of such action (including inspection, administration, labor and equipment costs) shall be collected from the bond, if in place and sufficient to cover such costs, or shall become a lien upon the property and shall be collected in the same manner as Berkeley County taxes are collected.

Sec. 6.6 Stop Work Order

The County Engineer, his designee, or other authorized personnel may issue a stop work order if it is found that a construction activity is being conducted in violation of this Ordinance.

The stop work order may allow or require correction of Notice of Violation (NOV) issues, but shall otherwise stop all other construction related activities. A stop work order may carry with it civil penalties as well. Any person in violation of a stop work order is subject to payment of all fees, bonds, and penalties prior to the lifting of the stop work order.

Sec. 6.7 Approval Suspension and Revocation

An approved Construction Activity Application may be suspended or revoked if one or more of the following violations have been committed:

- (a) Violations of the conditions of the Construction Activity Application approval;
- (b) Construction is not in accordance with the approved plans;
- (c) Non-compliance with correction notice(s) or stop work order(s);
- (d) The existence of an immediate danger to a downstream area (in the judgment of the County Engineer or his designee);

- (e) Other violations of this Ordinance.

Sec. 6.8 Reserved.

**DIVISION 7
VARIANCES**

Sec. 7.1 Design Criteria

The County Engineer may grant a variance only upon a determination that:

- (a) The variance will not be detrimental to the public health, safety, and general welfare of the County, and
- (b) The variance will not adversely affect the reasonable development of adjacent property, and
- (c) The variance is justified because of topography or other special conditions unique to the property involved, and the variance is not requested due to mere inconvenience or financial disadvantage, and
- (d) The variance is consistent with the objectives of this Ordinance and will not have the effect of nullifying the intent or purpose of this Ordinance, or any other pertinent County or State regulations.

A written request for a variance shall be required and shall state the specific variance sought and the reasons, with supporting data, a variance should be granted. The request shall include all information necessary to evaluate the proposed variance.

Sec. 7.2 Reserved.

**DIVISION 8
APPEALS**

Sec. 8.1 Appeals Process

Any person aggrieved by a decision, Notice of Violation, or denial of a variance by the County Engineer or his designee may appeal the same by filing a written notice of appeal with the Berkeley County Council within fifteen (15) days of the issuance of said decision, Notice of Violation, or denial of a variance. The Berkeley County Council will review the appeal and will either reverse or preserve the previous decision. In either case, a notice of appeal from the Berkeley County Council will state the reason for their appeal decision.

The Berkeley County Council shall hear such appeals in a quasi-judicial capacity within forty-five (45) days, at the next regularly scheduled meeting or such other time as may be

mutually agreed upon and will render a decision within ten (10) working days after the appeal has been heard.

If Berkeley County Council fails or neglects to repeal the said decision, Notice of Violation, or denial of a variance within sixty (60) days of the appeal request, the appeal of the said decision, Notice of Violation, or denial of a variance is automatically granted.

Any person aggrieved by the decision of the Berkeley County Council may appeal the decision to the Berkeley County Circuit Court in accordance with its rules and procedures.

Sec. 8.2 Reserved.

**DIVISION 9
CHARGES AND FEES**

Sec. 9.1 Funding.

In addition to all other charges, fees, and penalties, Berkeley County shall have the right to develop and impose a Stormwater Service Fee to fund implementation of this Stormwater Management Ordinance and its associated programs and plans. Establishment and revision of such fees shall be approved by Berkeley County Council.

Sec. 9.2 Connection to Conveyances.

The Engineering Department shall have the right to establish a schedule of appropriate fees for any person or property owner establishing a new discharge to Berkeley County stormwater management systems or to a wet weather conveyance. Such fee shall be payable as part of any application regulating the discharge of stormwater runoff (i.e. plan review and inspection fees). Application fees shall be established on the basis of facility classes relating to the quantity and quality of approved discharge. Establishment and revision of such fees shall be approved by Berkeley County Council.

Sec. 9.3 Plan review

Costs associated with plan review of land development construction documents other than those routinely performed by the Engineering Department may be assessed a fee to compensate for the cost in labor, equipment, and materials expended in the conduct of the review. Establishment and revision of such fees shall be approved by Berkeley County Council.

Sec. 9.4 Field inspection.

Costs associated with field inspection and re-inspections of land development or construction activities other than those routinely performed by the Engineering Department as part of compliance monitoring may be assessed a fee to compensate for the cost in labor, equipment, and materials expended in the conduct of the inspection. In addition, post-

construction maintenance inspection fees may be assessed by the Engineering Department. Establishment and revision of such fees shall be approved by Berkeley County Council.

Sec. 9.5 Reserved.

ADOPTED this 23rd day of July 2007.

S/Daniel W. Davis, Chairman
Berkeley County Council

Attest:

S/Barbara B. Austin, CCC
Clerk of County Council

First Reading: April 23, 2007
Second Reading: May 29, 2007
Public Hearing: June 25, 2007
Third Reading: July 23, 2007