AN ORDINANCE **03-O-0764**
BY COUNCILMEMBER CLAIR MULLER
AS SUBSTITUTED BY CITY UTILITIES COMMITTEE

AN ORDINANCE TO AMEND CHAPTER 74 OF THE CODE OF ORDINANCES OF THE CITY OF ATLANTA TO EXPLICITY PROHIBIT ILLICIT DISCHARGES AND ILLEGAL CONNECTIONS TO THE STORM SEWER SYSTEM OF THE CITY OF ATLANTA; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta must maintain the integrity of the city storm sewer system; and

WHEREAS, the introduction of pollutants into the storm sewer system of the City of Atlanta poses a major threat to the health, safety and welfare of the residents of the City; and

WHEREAS, illegal deposits of pollutants such as yard waste, yard trimmings and discharges of other materials into components of the City's sewer system threaten the integrity of these systems; and

WHEREAS, the City of Atlanta has implemented several ordinances to protect its sewer system; and

WHEREAS, Metropolitan North Georgia Water Planning District requires that the City of Atlanta implement provisions specifically prohibiting the illicit discharge of pollutants to the storm sewer system of the City and any illegal connections to the storm sewer system; and

WHEREAS, the City of Atlanta must provide a means for enforcing those sections of the City of Atlanta Code of Ordinances which seek to protect its sewer system; and

WHEREAS, the provisions of this ordinance will meet these requirements.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, as follows:

SECTION 1: That Section 74-110. Prohibitions and illicit connections shall be deleted and amended so that the new Section 74-110 shall read as follows:

Section 74-110. Obstruction of flow of water.

No person or business shall erect, construct, or otherwise permit any obstruction that prevents the natural flow of water to any component of the stormsewer system of the City of Atlanta.

SECTION 2: That Chapter 74, Article VIII shall be amended to include Sections 74-406—74-425, so that the new Sections 74-406—74-425 shall read as follows:

Sections 74-406—74-425. Reserved.

SECTION 3: That Chapter 74 shall be amended to include Article IX, so that the new Chapter 74, Article IX shall read as follows:

ARTICLE IX. ILLICIT DISCHARGE AND ILLEGAL CONNECTIONS

DIVISION 1. GENERALLY

Section 74-426. Statement of findings.

It is hereby determined that:

(1) Discharges to the storm sewer system of the City of Atlanta that are not composed entirely of stormwater runoff contribute to increased nonpoint source pollution and degradation of receiving waters;
(2) These non-stormwater discharges occur due to spills, dumping and improper connections to the storm sewer system of the City of Atlanta from residential, industrial, commercial or institutional establishments.
(3) These non-stormwater discharges not only impact waterways individually, but geographically dispersed, small volume non-stormwater discharges can have cumulative impacts on receiving waters.
(4) The impacts of these discharges adversely affect public health and safety, drinking water supplies, recreation, fish and other aquatic life, property values and other uses of lands and waters;
(5) These impacts can be minimized through the regulation of spills, dumping and discharges into the storm sewer system of the City;
(6) Localities in the State of Georgia are required to comply with a number of State and Federal laws, regulations and permits which require a locality to address the impacts of stormwater runoff quality and nonpoint source pollution due to improper non-stormwater discharges to the storm sewer system of the City;
(7) Therefore, the City of Atlanta must adopt this ordinance to prohibit such non-stormwater discharges to the storm sewer system of the City of Atlanta. It is

determined that the regulation of spills, improper dumping and discharges to the storm sewer system of the City is in the public interest and will prevent threats to public health and safety, and the environment.

Section 74-427. Statement of policy and intent.

(a) The purpose of this ordinance is to protect the public health, safety, environment and general welfare through the regulation of non-stormwater discharges to the storm sewer system of the City of Atlanta to the maximum extent practicable as required by Federal law.

(b) This ordinance establishes methods for controlling the introduction of pollutants into the storm sewer system of the City of Atlanta in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are to:

(1) Regulate the contribution of pollutants to the storm sewer system of the City of Atlanta by any person;
(2) Prohibit illicit discharges and illegal connections to the storm sewer system of the City;
(3) Prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping or disposal, to the storm sewer system of the City; and
(4) To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this ordinance

Section 74-428. Definitions.

Accidental discharge means a discharge prohibited by this ordinance which occurs by chance and without planning or thought prior to occurrence.

Clean Water Act means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Commissioner means the Commissioner of the Department of Watershed Management or his designee.

Construction activity means activities subject to the Georgia Erosion and Sedimentation Control Act or NPDES General Construction Permits. These include construction projects resulting in land disturbance. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Department means the Department of Watershed Management (DWM).

Illicit discharge means any direct or indirect non-stormwater discharge to the storm sewer system of the City, except as exempted in section 74-437 of this ordinance.

Illegal connection means either of the following:

(a) Any pipe, open channel, drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by the Department of Watershed Management; or
(b) Any pipe, open channel, drain or conveyance connected to the storm sewer system of the City of Atlanta which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial activity means activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit means a permit issued by the Georgia EPD under authority delegated pursuant to 33 USC § 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Storm sewer system of the City of Atlanta means any facility designed or used for collecting and/or conveying stormwater, including but not limited to any roads with drainage systems, highways, streets, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural stormwater controls, ditches, swales, natural and man-made or altered drainage channels, reservoirs, and other drainage structures, and which is:

(1) Owned or maintained by the City of Atlanta; and
(2) Not part of a publicly-owned treatment works.

Non-stormwater discharge means any discharge to the storm drain system that is not composed entirely of stormwater.

Person means, except to the extent exempted from this ordinance, any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the State, any interstate body or any other legal entity.

Pollutant means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; refuse,

rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.

Pollution means the contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

Premises mean any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Publicly-owned treatment works (POTW) means a treatment works as defined by section 212 of the Clean Water Act, which is owned by a State or municipality (as defined by section 502(4) of the Clean Water Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Clean Water Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

State waters means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the State of Georgia which are not entirely confined and retained completely upon the property of a single person.

Stormwater runoff or *stormwater* means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Structural stormwater control means a structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

Violator means any person, business or commercial entity violating any provision of this article or allowing any person or persons under their control or authority to violate any provision of this article.

Section 74-429. Applicability.

The provisions of this ordinance shall apply throughout the corporate limits of the City of Atlanta.

Section 74-430. Compatibility with Other Regulations.

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

Section 74-431. Responsibility for Administration.

The police and the Commissioner of the Department of Watershed Management or his designee shall administer, implement, and enforce the provisions of this ordinance.

Sections 74-432—74-435. Reserved.

DIVISION 2. PROHIBITIONS AND NOTICE OF VIOLATIONS

Section 74-436. Prohibition of Illicit Discharges.

No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the storm sewer system of the City of Atlanta any pollutants or waters containing any pollutants, other than stormwater.

Section 74-437. Exemptions.

The following discharges are exempt from the prohibition provision above:

(1) Water line flushing discharging potable water performed by a government agency, other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, natural riparian habitat or wetland flows, and any other water source not containing pollutants;

(2) Discharges or flows from fire fighting, discharges from fire hydrant flushing, and other discharges as being necessary to protect public health and safety;
(3) The prohibition provision above shall not apply to any non-stormwater discharge permitted under an NPDES permit or order issued to the discharger and administered under the authority of the State and the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm sewer system of the City of Atlanta.

Section 74-438. Prohibition of illegal connections.

The construction, connection, use, maintenance or continued existence of any illegal connection to the storm sewer system of the City is prohibited.

(1) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
(2) A person violates this ordinance if the person connects a line conveying sewage to the storm sewer system of the City of Atlanta, or allows such a connection to continue.
(3) Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Commissioner of the Department of Watershed Management.
(4) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Department of Watershed Management requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be completed, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the Department of Watershed Management.

Section 74-439. Industrial or construction activity discharges.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Department of Watershed Management prior to allowing discharges to the sewer system of the City of Atlanta.

Section 74-440. Access and inspection of properties and facilities.

The Commissioner of Watershed Management or any duly authorized agent of the department may, upon the permission of the property owner, enter on and inspect any and all public and private property in the City to determine by inspection that those properties are or not free of any condition which may be in violation of this Article. For the purpose of this duty, the agent of the Department of Watershed Management is clothed with police powers and shall be designated a special officer of the city.

(1) If a property or facility has security measures in force which require proper identification and clearance before entry into its premises, the owner, agent of the owner or operator of any property or facility within the City shall make the necessary arrangements to allow access to representatives of the Department of Watershed Management.
(2) The owner, agent of the owner or operator of any property or facility within the City shall allow the Department of Watershed Management ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of an NPDES permit to discharge stormwater.
(3) The Department of Watershed Management reserves the right, upon the approval of the property owner, to conduct monitoring and/or sampling of flow discharges.
(4) Any judge of the municipal court may grant permission to the Department of Watershed Management to require the owner, agent of the owner or operator of any private property or facility to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the Department of Watershed Management.

    a. It is prohibited for any person to interfere in any way with the proper sampling and monitoring operations of any equipment or devices.
    b. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.

(5) Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner, agent of the owner or operator at the written or oral request of the Department of Watershed Management and any obstruction shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.
(6) Unreasonable delays in allowing the Department of Watershed Management access to a facility is a violation of this ordinance.
(7) If the Department of Watershed Management has been refused access to any part of the premises from which stormwater is discharged, and the Department of Watershed Management is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the

Department of Watershed Management may seek issuance of a search warrant from any court of competent jurisdiction.

Section 74-441. Notification of accidental discharges and spills.

(a) Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or non-stormwater discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the storm sewer system of the City of Atlanta, or State Waters, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.

(b) Said person shall notify the Department of Watershed Management in person or by phone, facsimile or in person no later than twenty-four (24) hours of the nature, quantity and time of occurrence of the discharge.

(1) If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.
(2) Said person shall also take immediate steps to ensure no recurrence of the discharge or spill.

(c) Any notification made to the City of Atlanta is not exclusive of any State or Federal notification requirements.

(d) Failure to provide notification of a release as provided above is a violation of this ordinance.

Sections 74-442—74-445. Reserved.

DIVISION 3. VIOLATIONS, ENFORCEMENT AND PENALTIES

Section 74-446. Violations.

(a) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Article. Any person who has violated or continues to violate the provisions of this ordinance, may be subject to the enforcement actions outlined in this section or may be restrained by injunction.

(b) In the event the violation constitutes an immediate danger to public health or public safety, any judge of the municipal court shall have the power to authorize the Commissioner of the Department of Watershed Management to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and restore the property. The Department of Watershed Management is authorized to recover the total amount of all costs of the abatement as outlined in sections 74-450 and 74-453.

Section 74-447. Notice of Violation.

Whenever the Department of Watershed Management finds that a violation of this ordinance has occurred, the Commissioner may order compliance by written notice of violation.

(1) The City of Atlanta may serve notice to abate a violation, by mailing such notice to the last-known address of the alleged violator.
(2) The notice of violation shall contain the following information:

a. The name and address of the alleged violator;
b. The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
c. A statement specifying the nature of the violation;
d. A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;
e. A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and
f. A statement that the determination of violation may be appealed to the Department of Watershed Management by filing a written notice of appeal within thirty (30) days of service of notice of violation.

(3) Such notice may require actions including, but not limited to any of the following:

a. The performance of monitoring, analyses, and reporting;
b. The elimination of illicit discharges and illegal connections;
c. That violating discharges, practices, or operations shall cease and desist;
d. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
e. Payment of costs to cover administrative and abatement costs; and
f. The implementation of pollution prevention practices.

Section 74-448. Appeal of Notice of Violation.

(a) *Administrative remedy.*

(1) Prior to any final order to comply with any Notice of Violation, the alleged violator shall be given the opportunity to appeal any Notice of Violation issued by the Department to the Commissioner of Watershed Management.
(2) The city acting by and through its Commissioner of Watershed Management shall review the Notice of Violation, the reasons submitted by the alleged violator for determining such conditions not to be in violation, and shall issue a decision in writing.
(3) If such decision is to affirm, overturn or modify said Notice of Violation, the Commissioner shall set forth the reasons for doing so.

(b) *Judicial review.* Any person aggrieved by such decision, after exhausting his or her administrative remedies, shall have the right to appeal to the Superior Court of the county wherein which such alleged violation occurred or is proposed to occur, for review of such written decision.

(c) The Commissioner of the Department of Watershed Management shall conduct the review process for any Notice of Violation, as described in this section.

Section 74-449. Enforcement measures after appeal.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within ten (10) days of any decision of the Superior Court upholding the decision of the Department of Watershed Management and the Commissioner, then representatives of the Department of Watershed Management may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and restore the property. It shall be unlawful for any person, owner, agent of the owner or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

Section 74-450. Costs of abatement of the violation.

(a) Within thirty (30) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs.

(1) The property owner may file a written protest objecting to the assessment or to the amount of the assessment within ten (10) days of such notice.
(2) If the amount due is not paid within thirty (30) days after receipt of the notice, or if an appeal is taken, within thirty (30) days after a decision on said appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

(b) Any person or business shall be liable to the City for the total amount of all costs and expenses incurred by the city in abating a violation.

Section 74-451. Enforcement.

The primary authority and responsibility for the enforcement of the provisions of this chapter shall be vested in the Commissioner of Watershed Management. Upon a determination that a person is in violation of this chapter, the Commissioner or his designee shall give written Notice of Violation that indicates they are in violation of a section in this chapter, and they may or issue a citation requiring the violator to appear before the judge of the municipal court for a hearing on the charge of violation of this chapter. Upon a finding that a section of this chapter has been violated, the violator shall be subject to one or more of the penalties provided in Section 74-452 of this Article.

Section 74-452. Penalties.

(a) For any violations of this ordinance, any person violating the provisions of this article may be subject to the following penalties:

(1) *First violation.* Upon conviction, a fine not less than $50.00 and not more than $1,000.00 and a probationary period not to exceed ninety (90) days.
(2) *Second violation.* Upon conviction, a fine not less than $250.00 and not more than $1,000.00, or probationary period not to exceed one-hundred eighty (180) days with a period of confinement in the city jail not to exceed ten (10) days, or both.
(3) *Third violation.* Upon conviction, a fine not less than $500.00 and not more than $1,000.00, or a probationary period not to exceed one (1) year with a period of confinement in the city jail not to exceed thirty (30) days, or both.
(4) Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

(b) In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten (10) days, or such greater period as the Department of Watershed Management shall deem appropriate, after the Department has taken one or more of the actions described above, the violator may be subject to a fine not to exceed $1,000.00 for each day the violation remains unremedied after receipt of the notice of violation.

(c) *Businesses and commercial entities.* In addition to any other penalty imposed under this article, if any person or business performing work under any contract with the city is found guilty of violating this section, the city may terminate the contract by giving written notice of the termination to the person or business. The contract shall be null and void upon delivery of such notice.

Section 74-453. Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Article is a threat to public

health, safety, welfare, and environment may be declared and deemed a nuisance, and may be abated by injunctive or other equitable relief according to the provisions of Article V of this chapter.

Section 74-454. Remedies not exclusive.

(a) The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable Federal, State or local law and the Department of Watershed Management may seek cumulative remedies.

(b) The Department of Watershed Management may recover attorney's fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

Section 74-455. Severability.

If the provisions of any section, subsection, paragraph, subdivision or clause of this Article shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this Article.

Sections 74-456—74-470. Reserved.

SECTION 4: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.