

## DIVISION 10. CONSTRUCTION SITE STORMWATER RUNOFF

### Sec. 82-310. Introduction/Purpose.

When vegetation is removed or soil is disturbed during the construction process, soil is highly vulnerable to erosion by wind and water. The sediment produced from this erosion endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Sedimentation of storm sewers and ditches also increases maintenance costs to the City of Fairbanks.

The City of Fairbanks, City of North Pole, University of Alaska Fairbanks, and Alaska Department of Transportation and Public Facilities - Northern Region collectively received a Phase II National Pollutant Discharge Elimination System (NPDES) Permit (Permit) from the U.S. Environmental Protection Agency (EPA) on June 1, 2005, to discharge from all Municipal Separate Storm Sewer Systems (MS4s) into receiving waters, which includes Beaver Springs, Chena River, Chena Slough, Noyes Slough, and other associated Waters of the U.S. The Permit requires the aforementioned agencies to develop, implement, and enforce a local storm water runoff plan review and inspection program to reduce pollutants in storm water runoff from construction activities within the Fairbanks Urbanized Area. Therefore, the purpose of this article is to empower the City of Fairbanks to meet the requirements of the permit within the Urbanized Area of the City of Fairbanks, as mandated by the EPA. The Alaska Department of Environmental Conservation (ADEC) assumed authority over the Permit in October 2009 under the Alaska Pollutant Discharge Elimination System (APDES) program. The original Permit conditions remain in effect. The objective of this article, to the maximum extent practicable, is to reduce the discharge of sediment and other pollutants resulting from construction activities to the MS4 and waters of the U.S. This article will also promote public and environmental welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth on land in the City of Fairbanks.

### Sec. 82-311. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Alaska Pollution Discharge Elimination System (APDES) Program:* In 2008, the State of Alaska applied to implement the NPDES Program. The EPA approved the application and agreed to transfer program authority to the State over four phases. The State's program is called the Alaska Pollutant Discharge Elimination System (APDES) Program and is administered by ADEC. The initial phase transferred in 2008 and included domestic discharges, log storage and transfer facilities, seafood processing facilities, and hatcheries. Phase II was completed in 2009 and included federal facilities, storm

water, wastewater pretreatment programs, and non-domestic discharges. Phase III was completed in 2010 to include mining activities. November 1, 2012 marked the completion of Phase IV and included wastewater permitting for the oil and gas industry, pesticides, munitions, and any other facilities that had not yet been transferred. New (APDES) regulations were adopted at 18 AAC 83, along with subsequent amendments effective October 23, 2008.

*Best management practices (BMPs):* Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution to the MS4 and waters of the U.S. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

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

*Construction activity:* Activities including, but not limited to, clearing and grubbing, grading, excavating, and demolition.

*Design criteria:* The design requirement that BMPs used during construction shall be designed to handle the two-year, six-hour duration storm event without failure of the BMPs and without any degradation to water quality of the receiving water.

*Erosion and sediment control plan (ESCP):* A set of plans indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction for activity that will result in a ground disturbance of 10,000 square feet to one acre.

*Fairbanks Urbanized Area:* The area of the Fairbanks North Star Borough delineated by the U.S. Census Bureau consisting of contiguous, densely settled census block groups and census block that meet minimum population density requirements, along with adjacent densely settled census blocks that together encompass a population of 50,000 people; as named by the U.S. Census Bureau on May 1, 2002 (67 FR 21962).

*Hazardous materials:* Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, biological, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

*Maximum extent practicable:* The discharge standard that uses best available technology and methods in order to reduce pollutants entering waters of the U.S. as established by CWA § 402(p).

*Municipal Separate Storm Sewer System (MS4):* The conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins,

curbs, gutters, ditches, man-made channels, or storm drains): (i) designed or used for collecting or conveying storm water; (ii) which is not a combined sewer; (iii) which is not part of a publicly owned treatment works; and, (iv) which discharges to waters of the U.S.

*National Pollutant Discharge Elimination System (NPDES):* The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA §§ 307, 402, 318, and 405.

*Pollutant:* Anything that causes or contributes to pollution including, but not limited to: dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

*Storm water:* Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation, including ice and snow melt runoff.

*Storm water pollution prevention plan (SWPPP):* A document that describes the BMPs and activities to be implemented by a person or business to identify sources of pollution or contamination at a site, and the actions to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable.

#### Sec. 82-312. Applicability.

This division shall apply to all ground disturbances totaling 10,000 square feet or greater on a common parcel within the Urbanized Area of the City of Fairbanks for development projects funded by the private sector, including private development where all or part of the project will be transferred to the City of Fairbanks at a later date (i.e. roads and associated right-of-way within new subdivisions).

#### Sec. 82-313. Responsibility for administration.

The City of Fairbanks shall administer, implement, and enforce the provisions of this division.

Sec. 82-314. Severability.

The provisions of this division are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this division or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this division.

Sec. 82-315. Ultimate responsibility.

The standards set forth herein and promulgated pursuant to this division are minimum standards; therefore this division does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

Sec. 82-316. Permit.

No person shall be granted a residential or commercial building permit for construction activity that will result in a ground disturbance of 10,000 square feet to one acre without the submission of an Erosion and Sediment Control Plan (ESCP) meeting the requirements set forth in this division, and approval by the City of Fairbanks.

No person shall be granted a residential or commercial building permit for construction activity that will result in a ground disturbance of greater than or equal to one acre, or result in a ground disturbance less than one acre but will be part of a larger common plan of development or sale that will collectively disturb more than one acre, without the submission of a SWPPP meeting the requirements set forth in this division, and approval by the City of Fairbanks.

An ESCP or SWPPP is not required for the following activities:

- (a) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
- (b) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility.
- (c) Existing nursery and agricultural operations conducted as a permitted main or accessory use.
- (d) Small construction activities (less than five acres) meeting the requirements for a rainfall erosivity waiver, total maximum daily load waiver, equivalent analysis waiver, or other waiver detailed in the most recently issued EPA construction general permit.

Sec. 82-317. Review and approval.

The City of Fairbanks will review each ESCP and SWPPP to determine its conformance with the provisions of this division. Within seven business days after receiving an ESCP or SWPPP, the City of Fairbanks shall, in writing:

- (a) Issue a letter of non-objection to the ESCP or SWPPP;
- (b) Issue a letter of non-objection to the ESCP or SWPPP subject to such reasonable conditions as may be necessary to secure substantially the objectives of this division, and issue the permit subject to these conditions; or
- (c) Disapprove the ESCP or SWPPP, indicating the reason(s) and procedure for submitting a revised application and/or submission.

Sec. 82-318. ESCP requirements.

The ESCP shall, at a minimum, include the following:

- a. Site description narrative.
  - i. *Site description*: Provide a site address and description of the property boundary, construction site boundary (area of disturbance in square feet), existing soil conditions, and approximate depth to groundwater.
  - ii. *Project description*: Provide a description of the nature and extent of the construction activity, including all ground disturbing activities, their sequence, estimated begin and end dates, and any work requiring dewatering.
  - iii. *Area of disturbance*: Provide estimates (to the nearest 500 square feet) of the total area of the property, and the total area (square feet) that is expected to be disturbed.
  - iv. *Receiving waters*: Include the name and approximate distance (to the nearest 100 feet) of all receiving waters, including wetlands as defined by the U.S. Army Corps of Engineers, where storm water will discharge. If the storm water discharges to the MS4 (i.e. roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains), identify the point of discharge to the MS4 and the receiving water to which the MS4 outfalls.
  - v. *Erosion and sediment controls*: Describe all BMPs to be used during construction, both structural (i.e. perimeter control, matting, etc.) and non-structural (project phasing, sequencing, etc.), including all BMP inspection and maintenance requirements.
  - vi. Any information on known contaminated soils or groundwater that may be present on site in consultation with the ADEC Contaminated Sites Program.
- b. Site plan.
  - i. *Site characteristics*: Include the property boundary, construction site boundary, names of all adjacent streets or roadways, north arrow, and scale bar.
  - ii. *Construction plan*: Include the location of all planned excavation and fill activities; and all existing and proposed buildings, surfaced areas, utility

- installations, material or equipment staging areas, temporary soil stockpile areas, and borrow sites.
- iii. *Drainage patterns*: Include approximate slopes (to the nearest percent) and direction of slopes (i.e. flow direction arrows) for both pre- and post-construction for all surfaces, ditches, and culverts.
  - iv. *Receiving waters*: Identify all surface waters and wetlands within one mile of the construction site, including the location where storm water will discharge to the receiving waters. If the storm water discharges to the MS4, identify the point of discharge to the MS4 using the most recent copy of the City of Fairbanks Storm water MS4 map.
  - v. *Erosion and sediment controls*: Identify the location of all BMPs to be used during construction, including final stabilization.
- c. BMP detail sheets.
    - i. *BMP standard detail sheets*: Include standard drawings of all structural BMPs to be used, including BMP-specific notes detailing installation and maintenance requirements.
  - d. The name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm.
  - e. A signed statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the ESCP.
  - f. Payment of the ESCP plan review fee in the amount prescribed by the City of Fairbanks.

Sec. 82-319. SWPPP requirements.

The SWPPP shall, at a minimum, meet the following requirements:

- (a) Conformance to the most recently issued ADEC Construction General Permit and any existing permit stipulations.
- (b) Conformance to any additional standards adopted by the City of Fairbanks necessary to ensure that construction site operators practice adequate erosion, sediment, and waste control.
- (c) Be developed by a certified professional in storm water management or a professional engineer registered in the State of Alaska.
- (d) Meet the design criteria that BMPs used during construction shall be designed to handle the two-year, six-hour duration storm event without failure of the BMPs and without any degradation to water quality of the receiving water.
- (e) Include a copy of the notice of intent submitted to the ADEC.
- (f) Include a signed statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the SWPPP.

- (g) Include the name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm.
- (h) Include payment of the SWPPP plan review fee in the amount prescribed by the City of Fairbanks.
- (i) Include payment of the construction site inspection fee in the amount prescribed by the City of Fairbanks.
- (j) The SWPPP must be kept on-site and contain a record of the implementation of the SWPPP and other permit requirements, including the installation and maintenance of BMPs, site inspections, and storm water monitoring.

#### Sec. 82-320. Inspection.

The City of Fairbanks will inspect each permitted construction site at least once per year. Access to a construction site for inspection shall not be denied. In addition to other available penalties, any permit issued under this division may be immediately suspended until an inspection is conducted. If, during construction, the City of Fairbanks finds that BMPs are improperly installed, not maintained, or inappropriate for proper erosion, sediment and waste control, any permit issued under this division may be immediately suspended until the identified problem is resolved.

#### Sec. 82-321. Notification of spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drainage system, or waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the City of Fairbanks in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Fairbanks within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

## Sec. 82-322. Enforcement.

No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be done, contrary to or in violation of any terms of this division. Any person violating any of the provisions of this division shall be deemed guilty of a misdemeanor and each day during which any violation of any of the provisions of this division is committed, continued, or permitted, shall constitute a separate offense. In addition to any other penalty authorized by this section, any person, partnership, or corporation convicted of violating any of the provisions of this division shall be required to bear the expense of such restoration.

In the event that any person holding a residential or commercial building permit pursuant to this division violates the terms of the permit or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or development site so as to be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, the City of Fairbanks may issue a notice of violation, suspend, or revoke the permit.

### *Notice of Violation*

Whenever the City of Fairbanks finds that a person has violated a prohibition or failed to meet a requirement of this article, the City of Fairbanks may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (a) The performance of monitoring, analyses, and reporting;
- (b) The elimination of construction storm water discharges, illicit connections or discharges;
- (c) That violating discharges, practices, or operations shall cease and desist;
- (d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (e) Payment of a fine to cover administrative and remediation costs; and
- (f) implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore affected property within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

## Sec. 82-323. Appeal of notice of violation.

Any person receiving a notice of violation may appeal the determination of the City of Fairbanks. The notice of appeal must be received within 30 days from the date of the notice of violation. Hearing on the appeal before the appropriate authority or his/her

designee shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the City of Fairbanks or their designee shall be final.

Sec. 82-324. 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 30 days of a decision by the City of Fairbanks, then the City of Fairbanks shall enter upon the subject private property, and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the City of Fairbanks or designated contractor to enter upon the premises for the purposes set forth above.

Sec. 82-325. Cost of abatement of the violation.

Within 90 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest to the City of Fairbanks objecting to the amount of the assessment within 14 days. If the amount due is not paid within a timely manner as determined by the decision of the City of Fairbanks or by the expiration of the time in which to file an 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. Any person violating any of the provisions of this article shall become liable to the City of Fairbanks by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest as allowable by law shall be assessed on the balance beginning on the 91st day following discovery of the violation.

Sec. 82-326. Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this division. If a person has violated or continues to violate the provisions of this division, the City of Fairbanks may petition for a preliminary or permanent injunction restraining the person from activities that would create further violations, or compelling the person to perform abatement or remediation of the violation.

Sec. 82-327. Compensatory action.

In lieu of enforcement proceedings, penalties, and remedies authorized by this division, the City of Fairbanks may impose upon a violator alternative compensatory actions, such as, attendance at compliance workshops, and cleanup activities, etc.

Sec. 82-328. 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 division is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate may be taken to enjoin or otherwise compel the cessation of such nuisance.

Sec. 82-329. Criminal prosecution.

Any person that has violated or continues to violate this division shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to criminal penalties and/or imprisonment.

The City of Fairbanks may recover all attorney's fees, court costs, and other expenses associated with enforcement of this division, including sampling and monitoring expenses.

Sec. 82-329.1. Remedies not exclusive.

The remedies listed in this division are not exclusive of any other remedies available under any applicable federal, state or local law, and it is within the discretion of the City of Fairbanks to seek cumulative remedies.

## **DIVISION 11. ILLICIT DISCHARGE DETECTION AND ELIMINATION**

Sec. 82-330. - Purpose/intent.

The purpose of this division is to provide for the health, safety, and general welfare of the citizens of the City of Fairbanks through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This division establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the Alaska Pollutant Discharge Elimination System (APDES) permit process.

The objectives of this division are to:

- (a) Regulate the contribution of pollutants to the storm drainage system and local waterways from storm water discharges and snow melt by any user.
- (b) Prohibit illicit connections and discharges to the storm drainage system or local waterways.