

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.

- (c) Establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this division.

Sec. 82-331. Definitions.

For the purposes of this division, the following shall mean:

Authorized enforcement agency: Employees or designees of the City of Fairbanks designated to enforce this division.

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 the 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; general good housekeeping practices; pollution prevention and educational practices; maintenance procedures; and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. 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 subject to APDES construction permits. Currently, these include construction projects resulting in land disturbance of one acre or more and discharges from smaller sites that are part of a larger common plan of development or sale. Such earth-disturbing activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.

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.

Illegal discharge: Any direct or indirect non-storm water discharge to the storm drainage system, except as exempted by this division.

Illicit connections: An illicit connection is defined as either of the following:

Any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drainage system including, but not limited to, any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drainage system; and any connections to the storm drainage system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or any drain or conveyance connected to the storm drainage system from a commercial or industrial land use, and which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial activity: Activities subject to NPDES industrial permits as defined in 40 CFR, Section 122.26 (b)(14).

Municipal Separate Storm Sewer System (MS4): Facilities within the City of Fairbanks Urbanized Area owned or operated by the co-permittees holding Permit No. AKS-053406 by which storm water is collected and/or conveyed, including, but not limited to, any roads with drainage systems, city streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

National Pollutant Discharge Elimination System (NPDES) storm water discharge permit: A permit issued by the Environmental Protection Agency (EPA) (or by a state 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.

Non-storm water discharge: Any discharge to the storm drainage system that is not composed entirely of storm water.

Person: Any individual, association, organization, partnership, firm, corporation or other entity recognized by law, and acting as either the owner or the owner's agent.

Pollutant: Anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oils, grease, and other automotive fluids; non-hazardous liquids, detergents, and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ammunition, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

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

Snow storage: Any area used to store snow removed from residential and commercial facilities, roadways, parking lots, storage areas.

Storm drainage system: MS4 facilities within and under the control of the City of Fairbanks by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, city streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

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

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.

Wastewater: Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Waterways: Area waterways include the Chena River, Noyes Slough, ponds, lakes, gravel pits, storm water retention basins, and all associated drainage pathways, swales, ditches, channels, etc.

Sec. 82-332. Applicability.

This division shall apply to all water entering the storm drainage system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

Sec. 82-333. Responsibility for administration.

The City of Fairbanks shall administer, implement, and enforce the provisions of this division. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the director of the authorized enforcement agency to persons or entities acting in the beneficial interest of, or in the employ of, the agency.

Sec. 82-334. 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. 82-335. 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. 82-336. Discharge prohibitions.

Prohibition of illegal discharges

- (1) No person shall cause or permit the illicit discharge of any of the following in such a manner that access was, is, or will be gained to:
 - a. Waters of the state, or waters of the United States, unless such is first treated in a manner approved by the authorized enforcement agency having jurisdiction; or
 - b. To a storm drainage system of the City of Fairbanks, other than pursuant to an APDES permit:
 1. Grease, fatty materials, offal, or garbage;
 2. Sand, sand dust, dirt, gravel, sawdust, coal, coal ash, metal filings, broken glass, yard waste, domestic animal or livestock waste or any material which may cause or create an obstruction in the storm sewer system;
 3. Gasoline, benzene, fuel oil or a petroleum product, or volatile liquid;
 4. Milk or any liquid milk waste products;
 5. Wax, cyanide, phenols, or other chemical or substances that may cause damage to materials of which the storm sewer system is constructed;
 6. Wastewater; or
 7. Pollutants or any materials other than storm water which are prohibited by the Clean Water Act, National Pollutant Discharge Elimination System under 33 USC 1342 (1987) and regulations adopted thereunder located at 40 CFR 22, 23 and 24 (1990).
- (2) Dumping in watercourse. No person shall deposit, dump, abandon, throw, scatter, or transport solid waste, garbage, rubbish, junk, fill, soil, dirt, snow, yard waste, domestic animal or livestock waste or other material in such a manner

as to obstruct, impound, pollute or cause siltation of any river, stream, creek, watercourse, ditch, drain, or gutter except as otherwise allowed by valid federal, state, or local permits or licenses relative to water pollution, water impoundment, or water quality control.

The commencement, conduct or continuance of any illegal discharge to the storm drainage system is prohibited except as described as follows:

- a. The following discharges are exempt from discharge prohibitions established by this division: water line flushing or 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 or cooling systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one part per million (PPM chlorine), firefighting activities, and any other water source not containing pollutants.
- b. Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
- c. Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.
- d. The prohibition shall not apply to any non-storm water discharge permitted under an APDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA, 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 drainage system.

Prohibition of illicit connections.

- (1) The construction, use, maintenance, or continued existence of illicit connections to the storm drainage system is prohibited.
- (2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (3) A person is considered to be in violation of this division if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

Sec. 82-337. Suspension of MS4 access.

Suspension due to illicit discharges in emergency situations. The City of Fairbanks may, without prior notice, suspend MS4 discharge access to a person when such suspension

is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4, or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

Suspension due to the detection of illicit discharge. Any person discharging to the MS4 in violation of this division may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the authorized enforcement agency.

Sec. 82-338. Industrial or construction activity discharges.

Any person subject to an industrial or construction activity APDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with such permit may be required in a form acceptable to the City of Fairbanks prior to the allowing of discharges to the MS4.

Sec. 82-339. Monitoring of discharges.

Applicability. This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

Access to facilities.

- (a) The City of Fairbanks shall be permitted to enter and inspect facilities subject to regulation under this division as often as may be necessary to determine compliance. If a discharger has security measures in force that require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.
- (b) Facility operators shall allow the City of Fairbanks ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an APDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
- (c) The City of Fairbanks shall have the right to set up, on any permitted facility, such devices as are necessary in the opinion of the authorized enforcement

agency to conduct monitoring and/or sampling of the facility's storm water discharge.

- (d) The City of Fairbanks has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at their own expense. All devices used to measure storm water flow and quality shall be calibrated yearly to ensure their accuracy.
- (e) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City of Fairbanks and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (f) Unreasonable delays in allowing the City of Fairbanks access to a permitted facility is a violation of a storm water discharge permit and of this division. A person who is the operator of a facility with a APDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this division.
- (g) If the City of Fairbanks has been refused access to any part of the premises from which storm water is discharged and is able to demonstrate probable cause to believe that there may be a violation of this division, 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 division or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

Sec. 82-340. Requirement to prevent, control, and reduce storm water pollutants by the use of best management practices.

The City of Fairbanks will adopt requirements identifying BMPs for any activity, operation, or facility that may cause or contribute to pollution or contamination of storm water, the storm drainage system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the storm drainage system or watercourses through the use of structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the storm drainage system. Compliance with all terms and conditions of a valid APDES permit authorizing the discharge of storm water associated with an industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a as necessary for compliance with requirements of the APDES permit.

Sec. 82-341. Watercourse protection.

Every person owning property through which a watercourse passes, or such person's lessee, 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 lessee 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. Any pollutants discharged into a watercourse through a privately-owned system shall constitute an illegal discharge.

Sec. 82-342. 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 authorized enforcement agency 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. 82-3434. Enforcement.

Notice of violation. Whenever the City of Fairbanks finds that a person, public entity, business, or corporation has violated a prohibition or failed to meet a requirement of this division, the authorized enforcement agency 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 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; and

- (e) Payment of a fine to cover administrative and remediation costs; and
- (f) The 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. 82-344. Appeal of notice of violation.

Any person receiving a notice of violation may appeal the determination of the authorized enforcement agency. 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 authorized enforcement agency or their designee shall be final.

Sec. 82-345. 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 authorized enforcement agency upholding the original decision, then representatives of the authorized enforcement agency 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 authorized enforcement agency or designated contractor to enter upon the premises for the purposes set forth above.

Sec. 82-346. 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 authorized enforcement agency 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 authorized enforcement agency 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 authorized enforcement agency by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest as allowed by law shall be assessed on the balance beginning on the 91st day following discovery of the violation.

Sec. 82-347. 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 authorized enforcement agency 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. 82-348. Compensatory action.

In lieu of enforcement proceedings, penalties, and remedies authorized by this division, the authorized enforcement agency may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

Sec. 82-349. 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. 82-350. 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 authorized enforcement agency may recover all attorney's fees, court costs, and other expenses associated with enforcement of this division, including sampling and monitoring expenses.

Sec. 82-351. 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 authorized enforcement agency to seek cumulative remedies.

Secs. 82-352—82-369. Reserved.