

DIVISION 12. POST-CONSTRUCTION STORMWATER MANAGEMENT

Sec. 82-370. Introduction/purpose.

Land development and redevelopment projects and associated increases in impervious cover alter the hydrologic response of local watersheds and increase storm water runoff rates and volumes, flooding, stream channel erosion, and sediment transport and deposition. This can be controlled and minimized through the regulation of project design in consideration of post-development storm water runoff quantity and quality.

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) 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 program to address post-construction storm water runoff from new development and redevelopment projects within the Fairbanks Urbanized Area. Therefore, the purpose of this division 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. This division 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. 82-371. 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. 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 for (1) runoff volume that post-development peak runoff shall be limited to five percent over pre-development peak runoff based on the ten-year, one-hour duration storm event; and (2) runoff quality that permanent BMPs shall be designed to treat the initial 0.5 inch of runoff from each storm event, and provide treatment at a minimum of 0.005 inch per minute after the first flush storm event.

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.

Maintenance agreement: A signed statement that the owner of the site will operate, maintain, and/or schedule all permanent BMP(s) in accordance with the Permanent Storm Water Control Plan.

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, manmade channels, or storm drains):

- (1) Designed or used for collecting or conveying storm water;

- (2) Which is not a combined sewer;
- (3) Which is not part of a publicly owned treatment works; and
- (4) 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.

Permanent Storm Water Control Plan (PSWCP): A document that describes the specific BMPs, and maintenance therein, to be incorporated into the project design to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable for construction activity that will result in a ground disturbance of greater than or equal to one acre.

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.

Sec. 82-372. Applicability.

This division shall apply to all ground disturbances totaling one acre 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. 82-373. Responsibility for administration.

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

Sec. 82-374. 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. 82-375. 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. 82-376. Permit.

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 meeting the requirements set forth in this division, and approval by the City of Fairbanks.

Sec. 82-377. Review and approval.

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

- (a) Issue a letter of non-objection to the PSWCP;
- (b) Issue a letter of non-objection to the PSWCP 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 PSWCP, indicating the reason(s) and procedure for submitting a revised application and/or submission.

Sec. 82-378. PSWCP requirements.

The PSWCP shall be developed by a certified professional in erosion and sediment control or a professional engineer registered in the State of Alaska, and at a minimum, include the following:

- (a) BMP selection narrative.
 - i. Site description: Provide a description of the property boundary, construction site boundary (area of disturbance), existing soil conditions, and approximate depth to groundwater.
 - ii. Site conditions: Include a summary of pre- and post-developed site conditions including existing and proposed land use, amount of impervious area, drainage patterns to and from the site, and any known historical drainage problems such as flooding and/or erosion.

- iii. 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.
 - iv. Pollutant sources: Include a description of all potential pollutant sources from the proposed land use, which may add pollutants to storm water discharges.
 - v. BMP selection: Identify all permanent structural and nonstructural BMPs selected and incorporated into the project design to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable. For each BMP, also include a description of the methodology used to size and locate each BMP.
 - vi. Operation and maintenance procedures: Include a description of all operation and maintenance procedures for each BMP to be installed on site.
- (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, existing and proposed buildings, surfaced areas, and utility installations.
 - iii. Drainage patterns: Include approximate slopes (to the nearest percent) and direction of slopes (i.e., flow direction arrows) for both pre- and post-development 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.
 - v. Permanent storm water controls: Identify the location of all permanent structural BMPs to be installed on site, as well as all areas where non-structural BMPs will be implemented.
- (c) Sizing and design information.
- i. Include calculations, manufacturers' guidance, or other process decisions showing how all permanent structural BMPs were sized and designed, and their performance goals. At a minimum, the project must meet the design requirement for (1) runoff volume that post-development peak runoff shall be limited to five percent over pre-development peak runoff based on the

ten-year, one-hour duration storm event; and (2) runoff quality that permanent BMPs shall be designed to treat the initial 0.5 inch of runoff from each storm event, and provide treatment at a minimum of 0.005 inch per minute after the first flush storm event.

- (d) A signed statement that the owner of the site will operate, maintain, and/or schedule all permanent BMP(s) in accordance with the PSWCP.
- (e) Payment of the PSWCP plan review fee in the amount prescribed by the City of Fairbanks.

Sec. 82-379. 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 that 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. 82-380. 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 division, 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; 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 are 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. 82-381. Appeal of notice of violation.

Any person receiving a notice of violation may appeal to 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 14 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. 82-382. 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 representatives of 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. 82-383. 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 allowed by law shall be assessed on the balance beginning on the 91st day following discovery of the violation.

Sec. 82-384. 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. 82-385. 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 storm drain stenciling, attendance at compliance workshops, stream cleanup, etc.

Sec. 82-386. 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. 82-387. 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 attorneys' fees,

court costs, and other expenses associated with enforcement of this division, including sampling and monitoring expenses.

Sec. 82-388. 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.