

CHAPTER 5

STORM WATER POLLUTION CONTROL (5062)

SECTION:

- 8-5-1: DEFINITIONS
- 8-5-2: RELEASES AND CONNECTIONS (5062)
- 8-5-3: REDUCTION OF POLLUTANTS IN STORM WATER
- 8-5-4: AUTHORITY TO INSPECT (5062)
- 8-5-5: COMMENCEMENT OF AN ACTION (5062)
- 8-5-6: REMEDIES NOT EXCLUSIVE (5062)
- 8-5-7: DEFENDANTS AND RESPONSIBLE PARTIES (5062)
- 8-5-8: CIVIL VIOLATIONS AND CITATION (5062)
- 8-5-9: CIVIL PENALTIES (5062)
- 8-5-10: (RESERVED)
- 8-5-11: HABITUAL OFFENDER (5062)
- 8-5-12: FAILURE TO PROVIDE EVIDENCE OF IDENTITY (5062)
- 8-5-13: ABATEMENT (5062)
- 8-5-14: REQUEST FOR ABATEMENT HEARING (5062)
- 8-5-15: RECORDING AN ABATEMENT VIOLATION (5062)
- 8-5-16: EMERGENCY ABATEMENT (5062)
- 8-5-17: SUSPENSION OF CONSTRUCTION PERMIT OR LICENSE (5062)

8-5-1: DEFINITIONS:

The following terms as used in this Chapter shall mean: (2774, 5062/Reso. 6528)

A.A.C. (ARIZONA ADMINISTRATIVE CODE): Official compilation of rules that govern state agencies, boards and commissions. (5062)

A.R.S. (ARIZONA REVISED STATUTES): Statutory laws in the State of Arizona. (5062)

AZPDES STORM WATER PERMIT: A permit issued by any agency of the State of Arizona having appropriate authority over the Arizona Pollutant Discharge Elimination System which authorizes the discharge of storm water pursuant to the C.W.A. (5062)

BEST MANAGEMENT PRACTICES: Schedules of activities, prohibitions of practices, structural and nonstructural controls, operational and maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States to the maximum extent practicable. (5062)

CITY: City of Mesa, Arizona. (2774/Reso. 6528)

CITY MANAGER: The City Manager appointed in accordance with Article III of the Mesa City Charter. (2774, 5062/Reso. 6528)

CITY STORM SEWER SYSTEM: Those facilities not part of a publicly owned treatment works within the City by which storm water may be conveyed to waters of the United States, including all roads, streets, catch basins, curbs, gutters, ditches, channels, storm drains, retention or detention basins, and drywells that are owned and operated by the City. (2774, 5062/Reso. 6528)

CIVIL HEARING OFFICER: The Mesa Zoning Administrator within the Development and Sustainability Department or such other person as designated by the City Manager. (5062)

C.F.R. (CODE OF FEDERAL REGULATIONS): Codification of the general and permanent rules and regulations published in the Federal Register by the executive departments and agencies of the federal government of the United States. (2774, 5062/Reso. 6528)

C.W.A. (CLEAN WATER ACT): The Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500; 86 STAT. 816; 33 United States Code Sections 1251 through 1376), as amended [A.R.S. § 49-201(6)]. (2774, 5062/Reso. 6528)

DISCHARGE OF A POLLUTANT: Any addition of any pollutant or combination of pollutants to waters of the United States from any point source. (5062)

HAZARD: A condition that presents a risk to the public health or the environment. (5062)

IMMINENT HAZARD: A condition that presents an immediate likelihood for causing harm to the public health or the environment. (5062)

NOTICE TO ABATE: A notice issued to a responsible party concerning a violation of this Chapter of the Mesa City Code. (5062)

NPDES STORM WATER PERMIT: A permit issued by any agency of the United States having appropriate authority over the National Pollutant Discharge Elimination System which authorizes the discharge of storm water pursuant to the C.W.A. (2774, 5062/Reso. 6528)

PERSON: Any individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body or other entity [A.R.S. § 49-201(27)]. (2774, 5062/Reso. 6528)

PROPERTY: Any building, facility, lot, parcel, real estate, or land or portion of land, whether improved or unimproved, and including adjacent sidewalks and parking strips. (2774, 5062/Reso. 6528)

POINT SOURCE: Any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged to waters of the United States. Point source does not include return flows from irrigated agriculture. (5062)

POLLUTANT: Any fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances [A.R.S. § 49-201(29)]. (5062)

POTW (PUBLICLY OWNED TREATMENT WORKS): A treatment works owned by this state or a municipality of this state as defined in Section 502(4) of the Clean Water Act [A.R.S. § 49-255(5)]. (5062)

RELEASE: Any direct or indirect spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, placing, leaching, dumping, or disposing of a pollutant to the City storm sewer system. (2774, 5062/Reso. 6528)

RESPONSIBLE PARTY: A person who knows or has reason to know of the existence of any violation of this Chapter on that person's property or property which that person occupies or controls, in whole or in part, including but not limited to an owner, occupant, lessor, lessee, manager, managing agent, licensee or any person who has legal care or control of the property. (5062)

STORM WATER: Storm water runoff, snow melt runoff, and surface runoff and drainage [A.A.C R18-9-A901(36)]. (2774, 5062/Reso. 6528)

WATERS OF THE UNITED STATES: All waters as defined in 40 C.F.R. 122.2. (5062)

8-5-2: RELEASES AND CONNECTIONS: (5062)

- (A) Unless expressly permitted or exempted by this Chapter, no person shall release, directly or indirectly, to the City storm sewer system. (2774, 5062/Reso. 6528)
- (B) The release of pollutants to the City storm sewer system authorized by any AZPDES or NPDES Storm Water Permit or other AZPDES or NPDES permit which is issued to the person who causes the release is permitted under this Chapter. (2774, 5062/Reso. 6528)
- (C) Unless identified by the City Manager or designee under Subsection (D) of this Section, the following are exempt from the prohibition set forth in Subsection (A) of this Section: (2774, 5062/Reso. 6528)
 - 1. Releases composed entirely of storm water. (2774, 5062/Reso. 6528)
 - 2. Releases caused by a person from any of the following activities: (2774, 5062/Reso. 6528)
 - (a) Water line flushing and other potable water sources; (2774, 5062/Reso. 6528)
 - (b) Lawn watering and landscape irrigation; (2774, 5062/Reso. 6528)
 - (c) Irrigation water; (2774/Reso. 6528)
 - (d) Diverted stream flows; (2774, 5062/Reso. 6528)

- (e) Rising groundwaters; (2774, 5062/Reso. 6528)
 - (f) Uncontaminated groundwater infiltration to separate storm sewers; (2774, 5062/Reso. 6528)
 - (g) Uncontaminated pumped groundwater; (2774, 5062/Reso. 6528)
 - (h) Foundation and footing drains; (2774/Reso. 6528)
 - (i) Water from crawl space pumps; (2774/Reso. 6528)
 - (j) Air conditioning condensation; (2774, 5062/Reso. 6528)
 - (k) Springs; (2774, 5062/Reso. 6528)
 - (l) Individual residential car washing; (2774/Reso. 6528)
 - (m) Flows from riparian habitats and wetlands; (2774, 5062/Reso. 6528)
 - (n) Flows resulting from fire fighting activities; or (2774, 5062/Reso. 6528)
 - (o) Street wash water; (5062)
- (D) No person shall cause a release, directly or indirectly, to the City storm sewer system which is exempted under Subsection (C) of this Section if the City Manager or designee identifies and provides written notice to the person that the release from such person has the potential to result in a discharge of pollutants to waters of the United States. (2774, 5062/Reso. 6528)
- (E) No person shall release any pollutant, directly or indirectly, to the City storm sewer system where such release would result in or contribute to a violation of any AZPDES or NPDES Storm Water Permit issued to the City, either separately considered or when combined with other releases. Liability for any such release shall be the responsibility of the person causing or responsible for the release, and the person shall defend, indemnify, and hold harmless the City in all administrative or judicial enforcement actions relating to such release. (2774, 5062/Reso. 6528)
- (F) No person shall establish, use, maintain, or continue any direct or indirect connection to the City's storm sewer system which has the potential to result in a violation of this Section. This prohibition is retroactive and shall apply to connections made in the past, regardless of whether they were made under a permit or other authorization or whether they were permissible under the law or practices applicable or prevailing at the time of the connection. (2774/Reso. 6528)

8-5-3: REDUCTION OF POLLUTANTS IN STORM WATER:

- (A) All persons owning or operating facilities or engaged in activities which will or may reasonably be expected to result in the release of pollutants to the City storm sewer system, either directly or indirectly, shall undertake appropriate best management practices to minimize the release of such pollutants to the maximum extent practicable. Such best management practices shall include the requirements imposed by both of the following: (2774, 5062/Reso. 6528)
1. This Chapter; and (2774, 5062/Reso. 6528)
 2. Any written guidelines which may be developed, referenced, or adopted by resolution and on file with the City Clerk. (2774, 5062/Reso. 6528)
- (B) No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, maintained, or kept, except in appropriate containers or in lawfully established dumping grounds, any refuse, rubbish, garbage, or other discarded or abandoned objects, articles, and accumulations into or upon any component of the City storm sewer system or upon any public property. Additionally, no person shall do the same upon any private property in such a manner that could reasonably result in the release of pollutants to the City storm sewer system. (2774, 5062/Reso. 6528)
- (C) Persons owning or operating a parking lot, storage or loading area, or similar property which is exposed to rainfall shall maintain those properties in a manner so that any release from such properties does not cause or contribute to a violation of Section 8-5-2. (2774, 5062/Reso. 6528)
- (D) Any person performing construction activities shall undertake appropriate best management practices to minimize the release of pollutants and sediment to the maximum extent practicable. Such best management practices shall include the requirements imposed by both of the following: (2774, 5062/Reso. 6528)
1. This Chapter; and (2774, 5062/Reso. 6528)
 2. Comply with any written guidelines which may be developed, referenced, or adopted by resolution and on file with the City Clerk. (2774, 5062/Reso. 6528)
- (E) Persons having the potential to cause a release of pollutants to the City storm sewer system and who are required to submit a notice of intent to comply with an AZPDES or NPDES Storm Water Permit shall provide a copy of any approval or statement of authorization from the permitting agency to the City Manager or designee. The City will not issue a construction permit nor will verbal authorization be given to proceed with initial grading and drainage operations until the approval or statement of authorization from the permitting agency has been submitted to the City. (2774, 5062/Reso. 6528)

8-5-4: AUTHORITY TO INSPECT: (5062)

- (A) The Mesa Development and Sustainability Department or such other City division or department as the City Manager may designate is hereby authorized to make inspections for violations of this Chapter in the normal course of job duties or in response to a citizen complaint that an alleged violation of the provisions of this Chapter may exist or when there is a reason to believe that a violation of this Chapter has been or is being committed. (5062)
- (B) In order to determine compliance with this Chapter, private property may be entered with the consent of the owner or occupant or as authorized by a court of competent jurisdiction. (5062)

8-5-5: COMMENCEMENT OF AN ACTION: (5062)

- (A) The City Manager or designee is authorized to commence and enforcement action under this Chapter by issuing a notice of abatement under this Chapter or a citation for civil sanctions under this Chapter, or both. They may also seek the issuance of a complaint by the Mesa City Prosecutor for criminal prosecution of habitual offenders as defined in this Chapter. (5062)
- (B) Nothing in this Section shall preclude City employees from seeking voluntary compliance with the provisions of this Chapter or from enforcing this Chapter through notices of violation, warnings, or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances. (5062)

8-5-6: REMEDIES NOT EXCLUSIVE: (5062)

Violations of this Chapter are in addition to any other violation established by law, and this Chapter shall not be interpreted as limiting the penalties, actions or abatement procedures which may be taken by the City or other persons under other laws, ordinances, or rules. (5062)

8-5-7: DEFENDANTS AND RESPONSIBLE PARTIES: (5062)

Any responsible party who causes, permits, facilitates, aids, or abets any violation of this Chapter or who fails to perform any act or duty required pursuant to this Chapter, is subject to the enforcement provisions of this Chapter. Responsible parties may be individually and jointly responsible for the violations, the prescribed civil or criminal sanctions, for abatement of the violation and for any associated costs and fees. (5062)

8-5-8: CIVIL VIOLATIONS AND CITATION: (5062)

- (A) A civil action for violations of this Chapter may be commenced by issuance of a citation. (5062)
- (B) The citation will be substantially in the form established by the City Manager or designee. The citation shall advise the responsible party of the violation(s) committed, either by written description of the violations or by designation of the City Code section that was violated. The citation shall direct the responsible party to pay the civil sanction and all applicable fees in accordance with Section 8-5-9 of this Chapter within the time period specified on the citation or to appear before the Civil Hearing Officer within the time period specified on the citation and admit or deny the allegations contained in the citation. The Civil Hearing Officer may permit amendments to the citation if substantial rights of the responsible party are not thereby prejudiced. The citation shall be served pursuant to the Arizona Rules of Civil Procedure. (5062)
- (C) The responsible party shall, within the time period specified on the citation or within 10 calendar days of the issuance of the citation, whichever is greater, either pay the civil sanction and the fees, or appear in person, through an attorney or by e-mail with the clerk of the Civil Hearing Officer and admit or deny the allegations contained in the citation. (5062)
1. If the responsible party timely pays the civil sanction and the fees, either in person or by mailing payment to the City, the allegations in the citation shall be deemed admitted and such person shall be deemed responsible for having committed the offense(s) described in the citation. If the responsible party appears in person, through an attorney or by e-mail and admits the allegations, the Civil Hearing Officer shall enter judgment against the responsible party in the amount of the civil sanction, plus any applicable fees designated in Section 8-5-9; or, (5062)
 2. If the responsible party appears in person, through an attorney or by e-mail and denies the allegations contained in the citation, the clerk of the Civil Hearing Office shall set the matter for hearing. (5062)
- (D) If a person served with a citation fails to pay the civil sanction and the fees or to file on or before the time directed on the citation or at the time set for hearing by the Civil Hearing Officer, the allegations in the complaint shall be deemed admitted, and the Civil Hearing Officer shall enter a finding of responsible and a judgment for the City and impose the appropriate sanctions and fees. (5062)
- (E) All proceedings before the Civil Hearing Officer shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the allegations in the citation are denied, the City is required to prove violations of this Chapter by a preponderance of the evidence. No prehearing discovery shall be permitted, except under extraordinary circumstances as determined by the Civil Hearing Officer. The Civil Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. An appeal from final judgments of the Civil Hearing Officer may be taken pursuant to the Arizona rules of civil procedure for special actions. (5062)
- (F) Any person aggrieved by a decision of the Civil Hearing Officer, at any time within 30 calendar days after a final judgment has been rendered, may file a complaint of special action in Superior Court to review the Civil Hearing Officer's decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed, but the court may, on application, grant a stay and on final hearing, affirm or reverse, in whole or in part, or modify the decision reviewed. (5062)

8-5-9: CIVIL PENALTIES: (5062)

- (A) Any responsible party who is found responsible for a civil violation of this Chapter, whether by admission, default, or after a hearing, shall pay a civil sanction of not less than \$150 or more than \$1,500. A second finding of responsibility within 36 months of the commission of a prior violation of this Chapter shall result in an enhanced civil sanction of not less than \$250 or more than \$2,500. A third finding of responsibility within 36 months of the commission of a prior violation of this Chapter shall result in an enhanced civil sanction of not less than \$500 or more than \$2,500. In addition to the civil sanction, the responsible party shall pay the applicable fees and charges set forth in the City's Development and Sustainability Department (Code Compliance) Schedule of Fees and Charges, and may be ordered to pay any other applicable fees and charges. (5062)
- (B) After entering a judgment of responsible and setting a civil sanction and fees as specified in Section 8-5-9(A), the Civil Hearing Officer may order a compliance hearing and set a date for such hearing. Upon presentation of evidence and/or testimony by the City inspector at the compliance hearing that the violation(s) specified in the complaint has been abated, the Civil Hearing Officer may reduce all or a portion of the civil sanction commensurate with the cost borne by the defendant to achieve compliance, or the Civil Hearing Officer may vacate the previous judgment and dismiss the citation(s). If, a minimum of 7 calendar days before a scheduled compliance hearing, the Civil Hearing Officer receives both of the following items, then the Civil Hearing Officer may issue written orders commensurate with the authority given in this Section, to reduce civil sanctions and/or vacate the related judgment without holding the scheduled compliance hearing: (5062)
1. Written and notarized confirmation from the City inspector that the violation has been successfully abated, and (5062)
 2. A written and notarized statement from the defendant describing the actions taken and the itemized costs borne to abate the violation. (5062)
- If either item has not been received by the Civil Hearing Officer 7 calendar days before, then the compliance hearing shall take place as previously scheduled. (5062)
- (C) The 36 month provision of paragraph (A) of this Section shall be calculated by the dates the violations were committed. The responsible party shall receive the enhanced sanction upon a finding of responsibility for any violation of this Chapter that was committed within 36 months of the commission of another violation for which the responsible party was convicted or was otherwise found responsible, irrespective of the order in which the violations occurred or whether the prior violation was civil or criminal. (5062)
- (D) Each day in which a violation of this Chapter continues or the failure to perform any act or duty required by this Chapter or by the Civil Hearing Officer continues shall constitute a separate civil offense. (5062)

8-5-10: (RESERVED)

8-5-11: HABITUAL OFFENDER: (5062)

- (A) A person who commits a violation of this Chapter after previously having been found responsible for committing civil violations of this Chapter on 3 separate dates and within a 36 month period, whether by admission, by payment of the fine, by default, or by judgment after hearing, shall be guilty of a Class 1 criminal misdemeanor. The Mesa City Prosecutor is authorized to file a Class 1 criminal misdemeanor complaint in the Mesa City Court against habitual offenders. For purposes of calculating the 36 month period under this paragraph, the dates of the commission of the offenses are the determining factor. (5062)
- (B) Upon conviction of a violation of this Section, the court may impose a sentence authorized by the laws of the State of Arizona for a Class 1 misdemeanor, including incarceration not to exceed 6 months in jail or a fine not to exceed \$2,500, exclusive of penalty assessments prescribed by law, or both. The court shall order a person who has been convicted of a violation of this Section to pay a fine of not less than \$500 for each count upon which a conviction has been obtained and be placed on probation for up to 36 months. The court may reduce such fines to \$250 for each count upon which a conviction has been obtained provided all violations have been abated and the site is in compliance with all sections of this Chapter within 90 days of sentencing. (5062)
- (C) Every action or proceeding under this Section shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to criminal misdemeanors and the Arizona Rules of Criminal Procedure. (5062)

8-5-12: FAILURE TO PROVIDE EVIDENCE OF IDENTITY: (5062)

A person who fails or refuses to provide evidence of his identity to a duly authorized agent of the City upon request, when such agent has reasonable cause to believe the person has committed a violation of this Chapter, is guilty of a misdemeanor. Evidence of identity under this Section shall consist of a person's full name, residence address, and date of birth. (5062)

8-5-13: ABATEMENT: (5062)

- (A) In addition to or in lieu of filing a civil citation or criminal complaint, the City may serve a notice to abate any violation of this Chapter. (5062)
- (B) The notice to abate shall set forth the following information: (5062)
1. The responsible party has 30 calendar days from service of the notice to abate or correct the violation. (5062)
 2. Identification of the property in violation by street address, if known, and if unknown, then by legal description of the property or by Maricopa County book, map, and parcel number. (5062)
 3. Statement of the violation in sufficient detail to allow a reasonable person to identify and correct the violation(s). (5062)
 4. Reinspection date and time. (5062)

5. Name, business address, and business phone number of the City inspector who issued the notice to abate. (5062)
 6. A warning stating that if the violations are not corrected within the 30 calendar day period, the City may abate the problem itself or by private contractor, assess the responsible party for the cost of such abatement, and record a lien on the property for the assessment. (5062)
 7. Hearing procedures. (5062)
 8. Statement indicating that the 30 calendar day notice set forth in this Section shall not apply to emergency abatements pursuant to this Chapter. (5062)
- (C) If the responsible party or other person served a notice to abate by the City pursuant to this Chapter fails to comply with such notice; the City may correct or abate the conditions subject to the notice if those conditions constitute a hazard. If the City corrects or abates those conditions, the City Manager or designee may prepare a verified statement as to the actual cost of correcting or abating the violation, including costs of inspection and other City-incurred costs associated with abating the violation. The statement shall be served pursuant to the Arizona Rules of Civil Procedure. That statement shall further set forth the following: (5062)
1. That the statement of costs is an assessment upon the lots and tracts of land from which the City corrected or abated the violation. (5062)
 2. That the party has 15 calendar days from the date of delivery or mailing of the statement to pay. (5062)
 3. In the event payment is not received in 15 calendar days, the City will place a lien on the property in the amount of the assessment. (5062)
 4. Appeal procedures. (5062)
- (D) The notice to abate and the statement of abatement costs shall be served to the responsible party pursuant to the Arizona Rules of Civil Procedure. (5062)

8-5-14: REQUEST FOR ABATEMENT HEARING: (5062)

The responsible party receiving a notice to abate under this Chapter or a statement of costs incurred by the City in abating a hazard may appeal by requesting in writing a hearing and by serving such a request to the Development and Sustainability Department within 15 calendar days of service of the notice to abate or the statement of costs. The hearing shall be held before the Civil Hearing Officer as soon as practicable after the filing of the request. An appeal from final judgments of the Civil Hearing Officer may be taken pursuant to the Arizona Rules of Civil Procedure for special actions. If no written and timely request for hearing is made under this Section to the Development and Sustainability Department, then the notice of abatement or statement of costs is final and binding. (5062)

8-5-15: RECORDING AN ABATEMENT VIOLATION: (5062)

The notice to abate and statement of costs shall run with the land. The City, at its sole option, may record a notice to abate or statement of costs with the Maricopa County Recorder and thereby cause compliance by a person thereafter acquiring such property. When the property is brought into compliance, a satisfaction of notice to abate shall be filed with the Maricopa County Recorder. (5062)

8-5-16: EMERGENCY ABATEMENT: (5062)

- (A) If a situation presents an imminent hazard to life or public safety, the City may issue a notice to abate directing the responsible party to immediately take such action as is appropriate to correct or abate the emergency described in the notice. In addition, the City may act immediately to correct or abate the emergency itself or may commence an action in Superior Court to enjoin the responsible party to abate the imminent hazard. In the event the City is unable to contact the responsible party despite reasonable efforts to do so, it in no way affects the City's right under this Section to correct or abet the emergency itself. (5062)
- (B) The City may recover its costs incurred in abating an imminent hazard under this Section in the same manner as provided for in Section 8-5-13(C). The responsible party may appeal the City's emergency abatement action under this Section or the City's statement of costs for an emergency abatement in the same manner as provided for in Section 8-5-14. (5062)

8-5-17: SUSPENSION OF CONSTRUCTION PERMIT OR LICENSE: (5062)

Any construction permit or license issued by the City which authorizes work resulting in an alleged violation of Section 8-5-2 or Section 8-5-3 of this Chapter may be suspended pending abatement of said violation or final resolution of a civil hearing of the matter. (5062)

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