



December 30, 2022

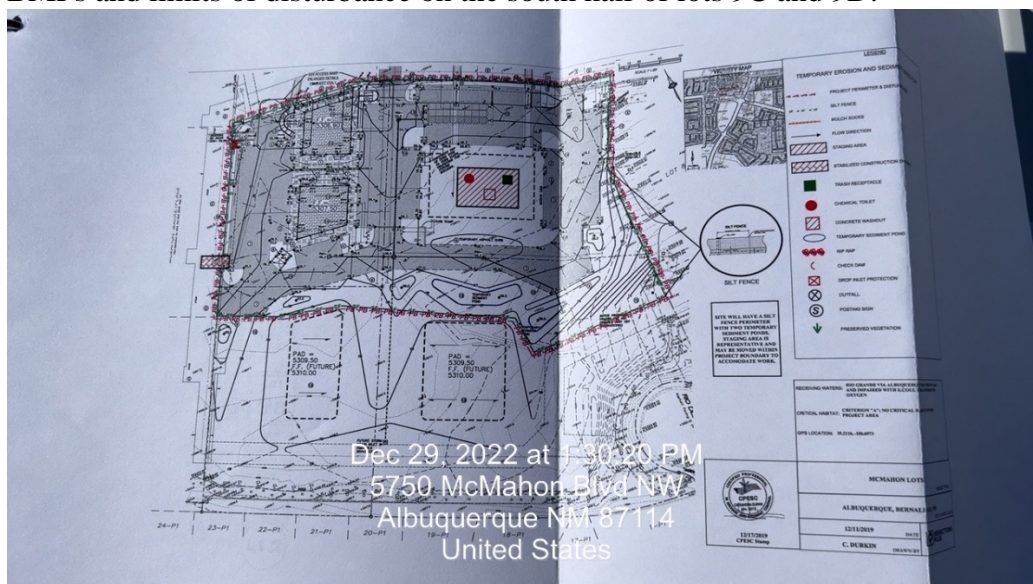
JMD-McMahon, LLC – Doug Peterson doug@petersonproperties.net

**Site: McMahon Market Place Lots 9B, 9C, & 9D - 5750 McMahon Blvd NW
A11E011I – NMR10059**

Re: Drainage Ordinance (§14-5-2-11) Violations for Erosion and Sediment Control

At a followup inspection on 12/29/22, substantial progress had been made in mitigating previous violations by removing the washout, posting permit coverage, providing an NOI covering 2.5 acres, and by making a SWPPP with an uninterrupted record of inspection reports available onsite. The total remaining area of disturbance was about 2.2 acres on lots 9B, 9C, and 9D, as shown on the Google Earth photo dated 7/6/22 and inspection photos below. The site was inactive with no construction equipment or personnel present. The ground cover was mostly bare dirt and tumble weeds with patches of gravel. The tumble weeds are annual plants, so they don't satisfy the Final Stabilization Criteria CGP 2.2.14, which requires perennial vegetation. Significant progress had also been made in removing tumble weeds in compliance with the Weed Removal Ordinance §9-8-1 requires removal of weeds wider or taller than 4". The following violations remained on 12/29/22.

1. The SWPPP map didn't reflect current site conditions and none of the reports had been signed by the operator. The aerial photo included a small area east of Lot 9B in the limits of disturbance that has been landscaped. The map that showed the BMPs omitted the BMPs and limits of disturbance on the south half of lots 9C and 9D.





Alan Varela, Director

Mayor Timothy M. Keller

The most recent self-inspection report, dated 12/13/22, failed to mention the washout, the expired permit coverage, and the missing posting as noted in the previous Notice of Violation (NOV#3) sent on 12/20/2022. It says silt fence is missing from the future pad sites and refers to the corrective action log and photos that were not in the SWPPP.

General Permit SWPPP Inspection

Site Name:	Albuquerque	Inspector:	Jeff Hart
Permit #:	A110111 NM81002NB	Inspection Frequency:	Bi-weekly
Date of Visit:	Dec 13, 2022, 1:52:59 PM	Last Rain Event:	Tuesday, December 13, 2022, 0.01"
		48h Forecast:	

Started: 12/19

Completed: 01/20

Installing Utilities: Completed

Started: Phase 1

Completed: 11/21

Building Structure: Completed

Started: Phase 1

Completed: 11/21

Paving and Walks:

Started: Phase 2

Completed:

Final Grading/Stabilize Site: Not Started

Started: Phase 2

Completed:

Other:

Started:

Site-specific BMPs

The corrective actions initiated and date completed are in the Corrective Action Log

List of BMPs installed:

Fabric fence with wood stakes at property boundary per ECP. Fabric fence and silt fence at the building sample staked at non stabilized earth. Silt fence.

Are all of the above controls installed? Yes No

Do any of the above controls need maintenance? Yes No

If any of the controls have not been installed or require maintenance, please list the control and explain.

Silt fence missing from most of the future pad sites. Please see the corrective action items with corresponding pictures.

Are the BMPs shown on the map? Yes No

Were there any changes to the SWPPP? Yes No

Has the SWPPP been updated? Yes No

Were the changes to the SWPPP implemented within 7 days? Yes No

Dec 20 2022 at 1:40:58 PM
5750 McMahon Blvd NW
Albuquerque NM 87114
United States



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The SWPPP contained two delegations of authority (DA), one to Chris Sioss, and the other to Inspections Plus. Inspections Plus doesn't meet the requirements of CGP Appendix G11.2.2 because they are a third party clearly excluded at the top of page 15 of the EPA's Frequent Questions (attached) so Chris Sioss is the DA who should be signing the reports on behalf of Doug Peterson of JMD McMahon, LLC.: however, the reports weren't signed by the Operator.

City of Albuquerque SWPPP Inspection Checklist

General Permit SWPPP Inspection		Inspector	Self report
Site Name	ALBUQUERQUE	Inspector	Self report
Permit #	AT202111-0000000000	Inspection Frequency	Monthly
Date of Visit	Dec 13, 2022, 1:57:59 PM	Last Inspection	Monday, December 4, 2022, 8:00 AM
		Next Inspection	Tuesday, December 13, 2022, 8:00 AM

Implemented? ☐ Yes ☒ No ☐ N/A

Maintenance Required? ☐ Yes ☒ No ☐ N/A

11. Are non-storm water discharges (e.g., wash water, dewatering) properly controlled?

Implemented? ☐ Yes ☒ No ☐ N/A

Maintenance Required? ☐ Yes ☒ No ☐ N/A

12. Has the site been updated to reflect current conditions?

Implemented? ☐ Yes ☒ No ☐ N/A

Maintenance Required? ☐ Yes ☒ No ☐ N/A

13. Is the NOI posted?

Implemented? ☐ Yes ☒ No ☐ N/A

Maintenance Required? ☐ Yes ☒ No ☐ N/A

14. Were previous corrections made within 7 days of last inspection or before the next storm event?

Implemented? ☐ Yes ☒ No ☐ N/A

Maintenance Required? ☐ Yes ☒ No ☐ N/A

Walk through facility and look for signs of pollution including paint, solvents, chemicals, solid waste, oil, and fuel.

Are there any signs of hazardous materials being exposed to storm water runoff? ☐ Yes ☒ No

Have there been any reportable quantities releases of hazardous materials? ☐ Yes ☒ No

Additional Notes

Certification & Signatures

Certification Statement:
"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Electronic Signature - Inspector
X Jeff Hart Date Dec 13, 2022

Title
Senior Inspector

Electronic Signature - Site Operator
X _____ Date _____

Title

Dec 29, 2022 at 1:41:10 PM
5750 McMahon Blvd NW
Albuquerque NM 87114
United States

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2. BMPs – Most of the silt fence is falling down and still needs reset. The location of the silt fence needs to agree with the locations shown on the SWPPP map and the Map needs to be updated to accurately reflect the current site conditions. The SF locations should accommodate construction activities on lot 9B including staging areas.



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Background

This site is part of a 12 acre “Common Plan of Development or Sale” called McMahon Market Place started by Armstrong Development on 8/2011 according to the following Google Earth aerial photo (below). The area of the Common Plan of Development may have been reduced to 10 acres in 2012, when the entire site appears to have been stabilized for a brief period of time.



Google Earth shows the “Commencement of Construction Activities” on the south portion of this site in the aerial photo dated 2/19/2014 (below) which hasn’t satisfied the Final Stabilization Criteria, CGP 2.2.14, in the 8 years since then.



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Property records today show about 9 acres are owned by Doug Peterson, Esq. Managing Member of JMD Partnership, LLC, Managing Member of JMD-McMahon, LLC with about 2.2 acres of bare dirt remaining according to Google Earth 7/6/2022, below.



The City of Albuquerque first issued an ESC permit for this site to JMD-McMahon, LLC in 2014. The first NOIs were for Permit #s NMR12BL48 (McDonalds 2016) and NMR12BM22 (Taco Bell 2017).

Permit # NMR1000WQ was certified on 11/08/2017 by Doug Peterson for JMD-McMahon, LLC for Lots 9C and 9D. The first Notice of Violation (NOV) was sent 1/29/2018 for Concrete Washout, BMPs missing, and Oil Spill in association with Lots 9C and 9D, Hydrotrans # A11E011G. Then two more NOVs were sent on 6/4/21 and 6/16/21 for Posting, SWPPP, Reports, and BMPs in association with Lots 9A, 9B, 9C, and 9D, Hydrotrans # A11E011I. A \$500 Fine was also sent on 6/16/21 but never paid.

Permit # NMR1002NB was certified on 6/30/21 by Doug Peterson for JMD-McMahon, LLC for the McMahon Lots, presumably 9B, 9C, and 9D, with an estimated area of disturbance of 2.5 acres. Coverage under NMR1000WQ and NMR1002NB expired on 2/16/2022 before the Final Stabilization Criteria of CGP 2.2.14 was satisfied.

Permit # NMR10059B was certified on 12/01/2022 by Doug Peterson manager of JMD-McMahon, LLC for “McMahon Market Place Bldg. NW” with an estimated area to be disturbed of 1 acre. That NOI was submitted to the City of Albuquerque SWQ Section of the Planning Department with a SWPPP map showing only Lot 9B, even though Lots 9C and 9D are also still disturbed and owned by JMD-McMahon, LLC.

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Definitions

“Commencement of Construction Activities” – the initial disturbance of soils (or ‘breaking ground’) associated with clearing, grading, or excavating activities or other construction-related activities (e.g., grubbing; stockpiling of fill material; placement of raw materials at the site).

“Common Plan of Development or Sale” – A contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one common plan. The "common plan" of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot.

Albuquerque’s Erosion and Sediment Control (ESC) ordinance § 14-5-2-11 at link https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque_nm/0-0-0-19897 requires the property owner to provide an ESC Plan and the EPA’s Notice of Intent (NOI) to the city for review and approval prior to issuing construction permits and prior to any land-disturbing activity. It also requires compliance with the Construction General Permit (CGP) [2022 Construction General Permit \(CGP\) | US EPA](#).

Required Mitigation:

1. Ensure that all stormwater controls (BMPs), including the silt fence, are installed and maintained and remain in effective operating condition during permit coverage per CGP 2.1.4. If at any time you find that a stormwater control needs routine Maintenance, you must immediately initiate the needed maintenance work and complete such work by the close of the next business day. When the problem requires a new or replacement control or significant repair, install the new or modified control and make it operational, or complete the repair, by no later than seven (7) calendar days from the time of discovery per CGP 5.2.1.
2. The SWPPP, including Self Inspection Reports and Corrective Action Reports, must be kept up-to-date per CGP 7.1. Add the Corrective Action reports, sign all reports, and update the SWPPP maps.

History of Violations and Escalation Process:

Notice of the following types of violations was sent on the dates noted below:

1. NOI – 12/20/22 (Level 2)
2. Posting – 6/4/21, 6/16/21, 12/20/22 (Level 3)
3. BMPs – 1/29/18 , 6/4/21, 6/16/21, 12/20/22, 12/30/22 (Level 3)
4. SWPPP – 1/29/18 , 6/4/21, 6/16/21, 12/20/22, 12/30/22 (Level 3)
5. Waste - 6/4/21, 6/16/21
6. Washout - 1/29/18 , 12/20/22 (Level 3)
7. Stabilization – 6/4/21, 6/16/22, 12/20/22 (Level 3)



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The City Escalation Process (attached) describes four levels of escalation based on the number of repeats and/or recalcitrant violations of each type.

Since the owner has been cooperative and has made significant progress mitigating the violations, ten days additional time is being granted to mitigate the remaining two violations in accordance with the footnote at the bottom of the Escalation Process. If the violations are not mitigated within seven days, the property owner is subject to a fine of \$500/day per the City's Drainage Control Ordinance, and the non-compliance will be reported to the EPA. Repeat violations are also subject to a fine of \$500/day.

If you have any questions, you can contact me at 924-3420 or jhughes@cabq.gov.

Sincerely,

James D. Hughes

James D. Hughes, P.E.
Principal Engineer, Planning Dept.
Development and Review Services