



Alan Varela, Director



Mayor Timothy M. Keller

March 14, 2023

OMNI Universal Trust, Michael G Rosenberg Trustee, mgr@lobo.net - 970-259-7501

**Site: Unser/McMahon Mixed Use Subdivision Lots 8 & 9
5762 McMahon Blvd. NW – A11E017_OMNI**

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

Mr. Rosenberg,

The City inspected your site yesterday, on 3/13/23, and nothing has changed since Notice of Violation (NOV)#1 was sent to you on 1/4/2023, except that the City approved your ESC Plan and NOI on 3/3/23. After I sent NOV#1, the first email response that I got back from you came on 1/12/23, stating your inability to get an answer from the local ESC consultants and questioning the "new owner responsibilities." After several more emails, I received an email from Len Horan of Caldon Seeding and Reclamation on 1/27/23 indicating that you hired him to mitigate the violations. However, the City didn't receive an ESC Plan and NOI from him until 2/24/23 after we sent you another failing inspection report on 2/21/23. The City approved the application on 3/3/23 and then conducted another inspection on 3/13/23. The NOI approval was the only progress you have made since the first NOV on 1/4/23.

The following violations were observed on 3/13/23 on lots 8 and 9:

1. The permit coverage wasn't posted.
2. Neither the SWPPP nor any reports were available on-site. Nobody was on-site, and the location of the SWPPP wasn't indicated on any sign on-site.
3. Inactive portions of the site need to be stabilized in accordance with CGP2.2.14.c.



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4. BMPs - The silt fence on the site's north side is worn out and full of sediment and is completely missing on the other three sides.



5. Sediment was in the streets. And must be picked up and removed.



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. You must post a sign or other notice of your permit coverage at a safe, publicly accessible location in close proximity to the construction site. The notice must be located so it is visible from the public road that is nearest to the active part of the construction site, and it must use a font large enough to be readily viewed from a public right-of-way per CGP 1.5.
2. The SWPPP, including Self Inspection Reports and Corrective Action Reports, must be kept up-to-date per CGP 7.1 and available on-site per CGP 4.7.3, 5.4.3, and 7.3. If an on-site location is unavailable to keep the SWPPP when no personnel are present, a notice of the plan's location must be posted near the main entrance of your construction site CGP 7.3.

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3. Stabilize the inactive disturbed areas. Implement and maintain stabilization measures in areas that remain inactive for 14 days or more. Measures must be initiated within 14 days, and complete the installation not later than 14 days per CGP 2.2.14.
4. 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.
5. Where sediment from this site has been deposited on the adjacent roads and sidewalks, remove the deposited sediment by the end of the same business day CGP 2.2.4.d,

History of Violations and Escalation Process:

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

- | | | | |
|---------------------------------|---------|----------|---------|
| 1. NOI not approved | 1/4/23, | 2/21/23, | |
| 2. Sign not Posted | 1/4/23, | 2/21/23, | 3/14/23 |
| 3. SWPPP not available on-site | 1/4/23, | 2/21/23, | 3/14/23 |
| 4. Stabilization missing | 1/4/23, | 2/21/23, | 3/14/23 |
| 5. BMPs dilapidated and missing | 1/4/23, | 2/21/23, | 3/14/23 |
| 6. Sediment in adjacent streets | 1/4/23, | 2/21/23, | 3/14/23 |

The City Escalation Process (attached) describes four levels of escalation based on the number of repeats and/or recalcitrant violations of each type. Failure to obtain permit coverage is a particularly egregious offense, so level 1 is skipped, and the escalation process begins at level 2.

Per the previous Violation letter dated 1/4/23, the City is assessing a fine of \$500, and the non-compliance is being reported to the EPA. This fine is for one day, 3/14/23. Additional days may be added if the violation is not mitigated within seven days. Progressive enforcement escalation procedures will be used and strictly enforced for recalcitrant or repeat offenders.

If you have any questions, 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