

CITY OF ALBUQUERQUE

Planning Department
Alan Varela, Director



Mayor Timothy M. Keller

November 15, 2023

Faizel Kassam, KLG 9, LLC, fkassam@legacydm.net

Sites: Peaks at Markana Phase 1 –6700 Modesto Ave NE- NMR1003VA – C18E088

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

On 11/15/23, the City of Albuquerque SWQ Section conducted a follow-up inspection to verify compliance with the Environmental Protection Agency (EPA) Construction General Permit (CGP) and the City's ESC Ordinance § 14-5-2-11 during which the following violations were observed.

1. **NOI** – The property owner's NOI with NPDES ID NMR1003VA expired on 2/17/22 per CGP 1.4.5.c and missed the deadline for coverage under the 2022 CGP in Violation of CGP 1.4.3, so all stormwater discharges from this site have been unpermitted since 2/18/22 in violation of the statement on the cover page of the 2022 CGP that says "*Permit coverage is required from the "commencement of construction activities" (see Appendix A) until one of the conditions for terminating CGP coverage has been met (see Part 8.2).*"
2. **BMPs** – The Erosion and Sediment Controls were inadequately sized. This entire 5-acre construction site drains to a wattle in a concentrated flow path at an opening in the fence on the south side of this site. The entire site is supposed to drain to an appropriately sized sediment basin in the southwest corner of the site where an undersized pond was constructed, but there was no clear path to get the drainage from the pavement into the pond. A trash enclosure was being constructed between the pavement and the pond.



3. The contractor said there haven't been any changes to the SWPPP since the last inspection. The **SWPPP** wasn't up-to-date since:
 - a. The property owner's 2017 NOI with NPDES ID NMR1003VA expired
 - b. The property owner's name was incorrect on the 2017 NOI. "KLA 9, LLC" disagrees with Bernalillo County property records that show "KLG 9, LLC" owns the property.
 - c. The property owner's signature was missing from the self-inspection reports.
 - d. The required temporary sediment basin was crossed out on the SWPPP Map.
4. The **Posting** of NPDES coverage was incorrect due to the expiration of NMR1003VA.
5. **Washout** – Concrete, stucco, and paint were on the ground, both on the paved streets and on the dirt, in violation of CGP 2.3.4. No washout containers were in sight and seemed to be missing, with the exception of one large container for concrete trucks.



Required Mitigation:

1. **NOI** - KLG 9, LLC must file an NOI with the EPA per CGP 1.4.3 and provide the NOI to the SWQ Section of the Development Services Division of the Planning Department of the City of Albuquerque for approval per Ordinance § 14-5-2-1.
2. **BMPs** – The temporary sediment basin must be constructed in the southwest corner of the site with a minimum volume of 18,000 cf for the 5 acres draining to it per CGP 2.2.12.C where it must remain for the duration of construction activities and until the site satisfies the Final Stabilization Criteria per CGP 2.2.14.c
3. 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. Update the NOI for KLG 9, LLC and the SWPPP Map. All operators must sign their reports per CGP G.11.2.
4. **Posting** - 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.
5. **Washout** - Remove and dispose of contaminated soils and hardened concrete with other waste in per CGP 2.2.3. Direct all future wash water from concrete, paint, and stucco into leak-proof containers per CGP 2.3.4.

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History of Violations:

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

1. NOI ----- 11/2/23 (Level 2), 11/15/23 (Level 3)
2. BMPs - 3/1/22 (Level 1), -----11/2/23 (Level 2), 11/15/23 (Level 3)
3. SWPPP - 3/1/22 (Level 1), 3/10/22 (Level 1), 11/2/23 (Level 2), 11/15/23 (Level 3)
4. Posting - 3/1/22 (Level 1), ----- 11/2/23 (Level 2), 11/15/23 (Level 3)
5. Sediment ----- 3/10/22 (Level 1)
6. Washout ----- 11/15/23 (Level 1)

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

Per the previous Violation letter dated 11/3/2022, the city is assessing a fine of \$500 for the current level 3 violations, and the non-compliance is being reported to the EPA. This fine is for one day, 11/15/23. Additional days may be added if the violation is not mitigated within 7 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, P.E., CPESC

James D. Hughes

Principal Engineer, Planning Dept.
Development and Review Services