

CITY OF ALBUQUERQUE

Planning Department
Alan Varela, Director



Mayor Timothy M. Keller

February 1, 2024

Robert Montgomery
Raising Cane's Restaurants, LLC
rmontgomery@raisingcanes.com - (972) 769-3364

Teresa Costantindis, Executive VP for Finance and Administration
The Regents of the University of New Mexico
MSC06-3595
1 University of New Mexico
Albuquerque NM 87106

Site: Raising Cane's Restaurant at 1401 Gibson Blvd SE (L15E051A)

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

To Mr. Montgomery,

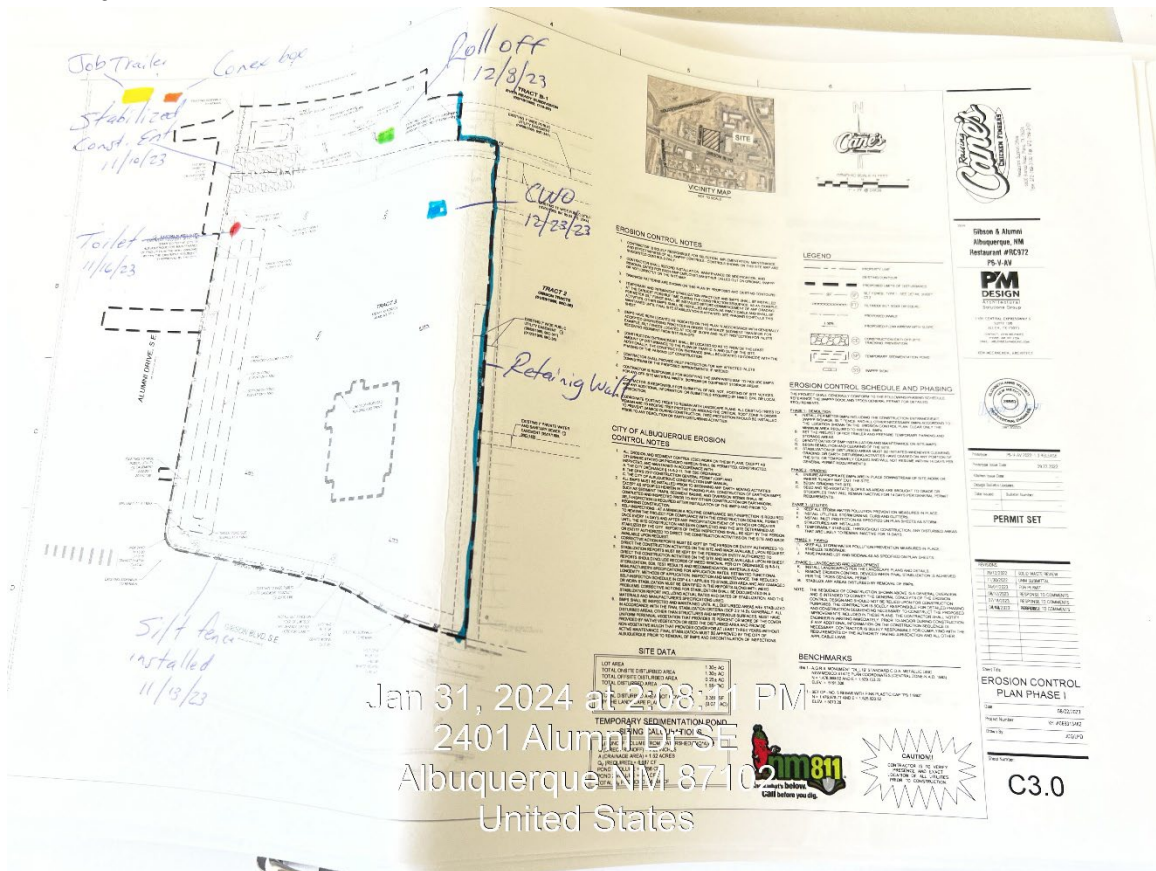
This is the 2nd Notice of Violation (NOV#2) of the ESC Ordinance § 14-5-2-11 and the EPA's Construction General Permit (CGP) at this site. Construction support activities associated with the Raising Cane's building permit were conducted on a 0.4-acre portion of Alumni Dr. SE public right of way (ROW) and a 1.0-acre portion of Tract 5 of the Plat of UNM Gibson Commercial District owned by the Regents of the University of New Mexico, without submitting the property owner's Notice of Intent (NOI) and ESC Plan to the City of Albuquerque Storm Water Quality SWQ Section, and without constructing Erosion and Sediment Controls/Best Management Practices (BMP) as noted during the city inspection on 1/10/24. During a city inspection on 1/25/24, the Level 2 types of violations (NOI, ROW, and BMP) were in the process of being mitigated by removing all construction materials and then covering the disturbed areas with rock to satisfy the Final Stabilization Criteria in CGP 2.2.14.c.ii. Later, during the city inspection on 1/31/24, stabilization was complete. The ROW violation persisted due to an office stacked with materials and a storage Conex box in the paved portion of the ROW. Shane Craven, Embree's Superintendent, said the remaining construction materials and office will be moved onsite in the next couple of days, clearing all the construction staging out of the ROW. Due to the cooperation and progress in mitigating the Level 2 types of violation noted in the first NOV sent on 1/16/24, another 7 days will be allowed to completely mitigate the ROW violation without escalation in keeping with the City's established Escalation process.

The following additional violations were observed during the.

1. **Washout** - Portions of the concrete washout weren't picked up and properly disposed of in violation of CGP 2.3.4.B.ii.



2. **SWPPP** - The SWPPP was not up-to-date in violation of CGP 7.3.
 - a. The SWPPP Map and self-inspection reports didn't identify the missing silt fence on the west side of the site as a corrective action. It has been missing since the first city inspection on 1/16/24.



- b. There weren't any corrective action reports or logs documenting any dates when the silt fence went missing from the west side of the site in violation of CGP 5.2.4. Reports failed to document why it was infeasible to complete the installation or repair within the required 7-day corrective action deadline, and your schedule for installing the stormwater controls and making them operational as soon as feasible after the 7-day timeframe was also missing, all in violation of CGP 5.2.1.c.
3. **BMPs** - The silt fence (SF) was missing on the west side of the site next to an onsite dry utility trench. Portions of the SF have been missing since the city inspection on 1/10/24. Substitute perimeter BMPs, such as staked mulch socks, are also missing in violation of CGP 2.2.3. The missing BMPs weren't reported on the SWPPP map, the self-inspection reports, or any "corrective action" reports in the SWPPP, another failure to keep the SWPPP and reports up-to-date in violation of CGP 7.1

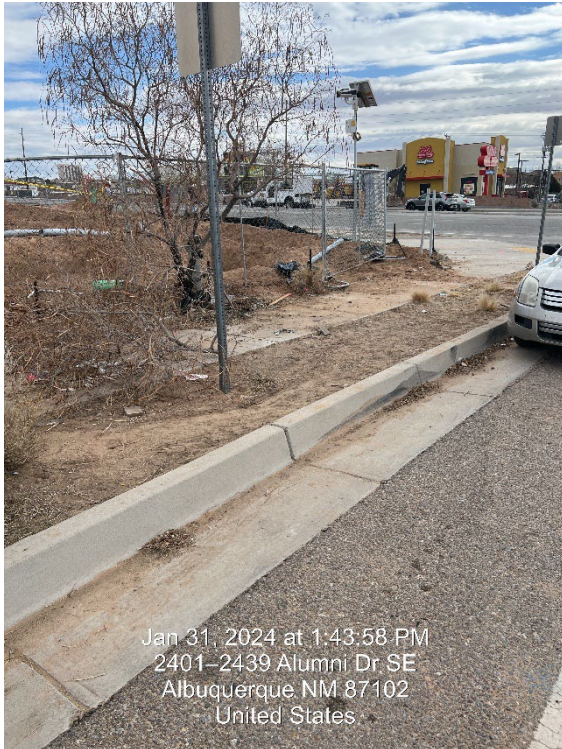


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4. **Sediment** has been washed into the street, as evidenced by the erosion marks in the dried mud in the gutter and sidewalk along Alumni Dr. and the deposited sediment in the low spot at the south end of Alumni Dr. This is also indicative of a sediment-laden stormwater discharge most likely due to the lack of perimeter controls on the west side of the site.



Albuquerque's Erosion and Sediment Control (ESC) ordinance § 14-5-2-11 (attached) requires the property owner to comply with the Construction General Permit (CGP) [2022 Construction General Permit \(CGP\) | US EPA](#).

Required Mitigation:

1. **Washout** - Remove and dispose of contaminated soils and hardened concrete with other waste per CGP 2.3.4.B.ii. Direct all future wash water from concrete, paint, and stucco into a leak-proof container per CGP 2.3.4
2. **SWPPP** - The SWPPP, including the SWPPP Map, 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. During dry utility construction, alternative perimeter controls must be designed by the stormwater team member responsible for design of the stormwater controls per CGP 6.1.a and 9.6.1.c.iii, shown on the SWPPP map, and reported in a Corrective Action report signed by the owner/operator.
3. **BMPs** - You must install sediment controls along any perimeter areas of the site that are downslope from any exposed soil or other disturbed areas, as required by CGP 2.2.3. When the problem requires a new or replacement control or significant repair, install the new or modified control and make it operational or complete it by no later than seven (7) calendar days from discovery per CGP 5.2.1.

- 4. Sediment** - Where sediment has been tracked-out from your site onto paved roads, sidewalks, or other paved areas outside of your site, remove the deposited sediment by the end of the same business day in which the track-out occurs or by the end of the next business day if track-out occurs on a non-business day. Remove the track-out by sweeping, shoveling, or vacuuming these surfaces or by using other similarly effective means of sediment removal. You are prohibited from hosing or sweeping tracked-out sediment into any constructed or natural site drainage feature, storm drain inlet, or receiving water.

History of Violations:

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

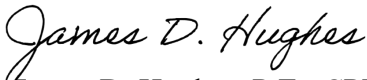
1. NOI – 1/16/24
2. Right of Way Encroachment 1/16/24, 1/31/24 (Level 2)
3. BMPs – 1/16/24, 1/31/24 (Level 2)
4. SWPPP – 1/16/24, 1/31/24 (Level 2)
5. Sediment - 1/16/24, 1/31/24 (Level 2)
6. Washout - 1/16/24, 1/31/24 (Level 2)

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

If the current Level 2 violations are not mitigated within seven days from receipt of this notice, 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, contact me at 924-3420, jhughes@cabq.gov.

Sincerely,



James D. Hughes, P.E., CPESC, CFM
Principal Engineer, Stormwater Quality
Planning Dept.