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| NPDES FORM 3510-9 |  | UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, DC 20460 NOTICE OF INTENT (NOI) FOR THE 2022 NPDES CONSTRUCTION PERMIT | FORM Approved OMB No. 2040-0305 |
|-------------------------|--|--|---------------------------------------|

Submission of this Notice of Intent (NOI) constitutes notice that the operator identified in Section III of this form requests authorization to discharge pursuant to the NPDES Construction General Permit (CGP) permit number identified in Section II of this form. Submission of this NOI also constitutes notice that the operator identified in Section III of this form meets the eligibility requirements of Part 1.1 CGP for the project identified in Section IV of this form. Permit coverage is required prior to commencement of construction activity until you are eligible to terminate coverage as detailed in Part 8 of the CGP. To obtain authorization, you must submit a complete and accurate NOI form. Discharges are not authorized if your NOI is incomplete or inaccurate or if you were never eligible for permit coverage. Refer to the instructions at the end of this form.

Permit Information

NPDES ID: NMR1005C4

State/Territory to which your project/site is discharging: NM

Is your project/site located on federally recognized Indian Country lands? No

Are you requesting coverage under this NOI as a *"Federal Operator"* or a *"Federal Facility"* as defined in Appendix A (<https://www.epa.gov/system/files/documents/2022-01/2022-cgp-final-appendix-a-definitions.pdf>)? No

Have stormwater discharges from your current construction site been covered previously under an NPDES permit? No

Will you use polymers, flocculants, or other treatment chemicals at your construction site? No

Has a Stormwater Pollution Prevention Plan (SWPPP) been prepared in advance of filling this NOI, as required? Yes

Are you able to demonstrate that you meet one of the criteria listed in Appendix D (<https://www.epa.gov/system/files/documents/2022-01/2022-cgp-final-appendix-d-endangered-species-protection.pdf>) with respect to protection of threatened or endangered species listed under the Endangered Species Act (ESA) and federally designated critical habitat?

Yes

Have you completed the screening process in Appendix E (<https://www.epa.gov/system/files/documents/2022-01/2022-cgp-final-appendix-e-historic-properties.pdf>) relating to the protection of historic properties? Yes

Indicating "Yes" below, I confirm that I understand that CGP only authorized the allowable stormwater discharges in Part 1.2.1 and the allowable non-stormwater discharges listed in Part 1.2.2. Any discharges not expressly authorized in this permit cannot become authorized or shielded from liability under CWA section 402(k) by disclosure to EPA, state or local authorities after issuance of this permit via any means, including the Notice of Intent (NOI) to be covered by the permit, the Stormwater Pollution Prevention Plan (SWPPP), during an Inspection, etc. If any discharges requiring NPDES permit coverage other than the allowable stormwater and non-stormwater discharges listed in Parts 1.2.1 and 1.2.2 will be discharged, they must be covered under another NPDES permit.

Yes

Operator Information

Operator Information

Operator Name: Whatabrands, Inc.

Operator Mailing Address:

Address Line 1: 300 Concord Plaza Dr.

Address Line 2:

City: San Antonio

ZIP/Postal Code: 78216

State: TX

County or Similar Division: Bexar

Country: US

Operator Point of Contact Information

First Name Middle Initial Last Name: Talal Medlej

Title: New Unit Project Manager

Phone: 210-209-3908 Ext.:

Email: tmedlej@wbhq.com

NOI Preparer Information

☒ This NOI is being prepared by someone other than the certifier.

First Name Middle Initial Last Name: Jason Boley

Organization: ms consultants, inc.

Phone: 412-264-8701 Ext.:

Email: jboley@msconsultants.com

Project/Site Information

Project/Site Name: Whataburger

Project/Site Address

Address Line 1: 2141 Gibson Blvd. SE

Address Line 2:

City: Albuquerque

ZIP/Postal Code: 87106

State: NM

County or Similar Division: Bernalillo

Latitude/Longitude: 35.057919°N, 106.62405°W

Latitude/Longitude Data Source: Map

Horizontal Reference Datum: WGS 84

Project Start Date: 09/25/2023

Project End Date: 06/25/2025

Estimated Area to be Disturbed: 1

Types of Construction Sites:

Commercial

Will there be demolition of any structure built or renovated before January 1, 1980?

No

Will you be discharging dewatering water from your site?

No

Was the pre-development land use used for agriculture?

No

Are there other operators that are covered under this permit for the same project site?

No

Have earth-disturbing activities commenced on your project/site?

No

Is your project/site located on federally recognized Indian Country lands?

No

Is your project/site located on a property of religious or cultural significance to an Indian tribe?

No

Discharge Information

Does your project/site discharge stormwater into a Municipal Separate Storm Sewer System (MS4)?

Yes

Are there any waters of the U.S. within 50 feet of your project's earth disturbances?

No

Are any of the waters of the U.S. to which you discharge designated by the state or tribal authority under its antidegradation policy as a Tier 2 (or Tier 2.5) water (water quality exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water) or as a Tier 3 water (Outstanding National Resource Water)? See Resources, Tools and Templates (https://www.epa.gov/npdes/construction-general-permit-resources-tools-and-templates)

No

001: 17806412 Unidentified Water

Latitude/Longitude: 35.05818°N, 106.622184°W

Tier Designation: N/A

Is this receiving water impaired (on the CWA 303(d) list)?

No

Has a TMDL been completed for this receiving waterbody?

No

002: 17806486 Unnamed Tributary (South Diversion Channel to I-25)(nm-97.A_0150

Latitude/Longitude: 35.055409°N, 106.624432°W

Tier Designation: N/A

Is this receiving water impaired (on the CWA 303(d) list)?

No

Has a TMDL been completed for this receiving waterbody?

No

Stormwater Pollution Prevention Plan (SWPPP)

Will all required personnel, including those conducting inspections at your site, meet the training requirements in Part 6 of this permit?

Yes

First NameMiddle InitialLast Name: CassandraDurkin

Title: Compliance Manager

Phone: 505-344-9410Ext.:

Email: projects@inspectionplus.com

Endangered Species Protection Worksheet: Criterion A

Determine ESA Eligibility Criterion

Are your discharges and discharge-related activities already addressed in another operator's valid certification of eligibility for your "action area" under the current 2022 CGP?

No

Has consultation between you, a Federal Agency, and the USFWS and/or the NMFS under section 7 of the Endangered Species Act (ESA) concluded?

No

Are your construction activities the subject of a permit under section 10 of the ESA by the USFWS and/or NMFS, and this authorization addresses the effects of your site's discharges and discharge-related activities on ESA-listed species and/or designated critical habitat?

No

You must determine whether species listed as either threatened or endangered, or their critical habitat(s) are located in your site's action area (i.e., all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action, including areas beyond the footprint of the site that are likely to be affected by stormwater discharges, discharge-related activities, and authorized non-stormwater discharges).

Determine your Action Area

You must consider the following in determining the action area for your site, and confirm that all the following are true:



In determining my "action area", I have considered that discharges of pollutants into downstream areas can expand the action area well beyond the footprint of my site and the discharge point(s). I have taken into account the controls I will be implementing to minimize pollutants and the receiving waterbody characteristics (e.g., perennial, intermittent, ephemeral) in determining the extent of physical, chemical, and/or biotic effects of the discharges. I confirm that all receiving waterbodies that could receive pollutants from my site are included in my action area.

True

- In determining my "action area", I have considered that discharge-related activities must also be accounted for in determining my action area. I understand that discharge-related activities are any activities that cause, contribute to, or result in stormwater and authorized non-stormwater point source discharges, and measures such as the siting, construction timing, and operation of stormwater controls to control, reduce, or prevent pollutants from being discharged. I understand that any new or modified stormwater controls that will have noise or other similar effects, and any disturbances associated with construction of controls, are part of my action area.

True

Determine is ESA-listed species and/or critical habitat are in your site action area.

ESA-listed species and designated critical habitat are under the purview of the NMFS and the USFWS, and in many cases, you will need to acquire species and critical habitat lists from both federal agencies.

National Marine Fisheries Service (NMFS)

For NMFS species and designated critical habitat information, use the following webpage:

https://www.epa.gov/npdes/construction-general-permit-cgp-threatened-and-endangered-species-eligibility

(https://www.epa.gov/npdes/construction-general-permit-cgp-threatened-and-endangered-species-eligibility)

I have checked the webpage listed above and confirmed that:

- ☒

There are no NMFS-protected species and/or designated critical habitat in my action area.
- ☐

There are NMFS-protected species and/or designated critical habitat in my action area.

U.S. Fish and Wildlife Service (USFWS)

For USFWS species and critical habitat information, use the following webpage:

https://www.epa.gov/npdes/construction-general-permit-cgp-threatened-and-endangered-species-eligibility

(https://www.epa.gov/npdes/construction-general-permit-cgp-threatened-and-endangered-species-eligibility)

I have checked the webpage listed above and confirmed that:

- ☒

There are no FWS-protected species and/or designated critical habitat in my action area.
- ☐

There are FWS-protected species and/or designated critical habitat in my action area.

You are eligible under **Criterion A**.

Identify the USFWS information sources used (Note: state resources are not acceptable):

2023-0030233

Identify the NMFS information sources used (Note: state resources are not acceptable):

2023-0030233

You must attach: ⓘ

- Aerial image(s) of the site.

A printout of the species' list(s) showing no ESA-listed species or designated critical habitat in my action area.

| Name | Uploaded Date | Size |
|--|---------------|-----------|
|  Species List_ New Mexico Ecological Services Field Office.pdf (attachment/1630913) | 02/01/2023 | 726.51 KB |
|  Exhibit 3 - Site Aerial Map.pdf (attachment/1630912) | 02/01/2023 | 355.30 KB |

Have you attached aerial image(s) of the site? Yes

Have you attached a printout of the species' list(s) showing no ESA-listed species or designated critical habitat in my action area? Yes

Have you provided documentation in your SWPPP supporting your eligibility under Criterion A? Yes

Historic Preservation

Are you installing any stormwater controls as described in Appendix E (https://www.epa.gov/system/files/documents/2022-01/2022-cgp-final-appendix-e-historic-properties.pdf) that require subsurface earth disturbances? (Appendix E (https://www.epa.gov/system/files/documents/2022-01/2022-cgp-final-appendix-e-historic-properties.pdf), Step 1)

No

Certification Information

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 have no personal knowledge that the information submitted is other than 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. Signing an electronic document on behalf of another person is subject to criminal, civil, administrative, or other lawful action.

Certified By: Talal Medlej

Certifier Title: New Construction Project Manager

Certifier Email: tmedlej@wbhq.com

Certified On: 02/01/2023 1:02 PM ET

