

CITY OF ALBUQUERQUE

Planning Department
Alan Varela, Director



Mayor Timothy M. Keller

February 6, 2026

Whataburger Restaurants LLC – James G Turcotte, harcher@wbhq.com – 210-665-0098
Whataburger Restaurants LLC – Paul Nuno, pnuno@wbhq.com – 602-348-3103

**Sites: Whataburger – Albuquerque, NM (Gibson & Yale) - 2060 Gibson Blvd SE (M15E021A) - NMR1006PS
Lot D Plat of Lots A Thru F Lovelace Heights Addition**

Re: Drainage Ordinance (14-5-6-6) Violations for Erosion and Sediment Control

The City conducted a follow-up ESC Inspection on 2/5/2026 to verify the mitigation of previous violations and compliance with the Construction General Permit (CGP). The City inspected the site on 9/23/2025 and 1/12/2026 and reported that the site was missing the owner’s permit coverage posting, Stormwater Pollution Prevention Plan (SWPPP) and inspection reports, concrete washout on bare ground, and sediment track-out from the site. The sediment has been cleared and the washout cleaned up and disposed of, but the on-site SWPPP and permit coverage posting did not include the property owner and was missing other required information. The specific violations found during the ESC inspection on 2/5/26 are as follows:

1. **Posting** – The permit coverage posting with the required information for the owner/operators was missing in violation of CGP Part 1.5. The City considers QR codes for postings, SWPPPs, and inspection reports inadequate for the CGP requirement of on-site availability. The owner’s contact and NPDES ID# were not on the available posting.
2. **SWPPP** – It appears that the *owner’s* SWPPP and self-inspection reports were still missing at the time of inspection in violation of CGP Parts 4.7.3 and 7.3. The *contractor’s* SWPPP that was on-site for the inspection is deficient in violation of CGP Part 7.2. These deficiencies include, but are not limited to, the following:
 - a. The SWPPP map was not the owner’s ESC Plan approved by the City, and it did not include identifiable stormwater controls. (CGP Part 7.2.4)
 - b. The list of operators, including their areas of responsibility, was missing. The property owner has operational control over construction plans and specifications, and the general contractor has day-to-day operational control of the construction activities. Both need to be identified in the SWPPP. (CGP Part 7.2.1)
 - c. The Notice of Intent (NOI) for each operator (property owner and contractor) was missing. Since both the owner and contractor are considered operators, they both need CGP coverage and to include their NOIs in the SWPPP. (CGP Part 7.2.11)
 - d. The Stormwater Team was not identified in the SWPPP by name, position, and area(s) of responsibility. The areas of responsibility include personnel responsible for the design, installation, maintenance, and/or repair of stormwater controls, the application and storage of treatment chemicals (if applicable), conducting inspections, and taking corrective actions. (CGP Parts 6.1 and 7.2.2)

Required Mitigation:

- 1. 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 per CGP Part 1.5. 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. At a minimum, it must include the NPDES ID, a contact name and phone number, and how to contact the EPA for a copy of the SWPPP or to report stormwater pollutant discharges. QR codes are not an acceptable substitute.
- 2. SWPPP** – You must keep a copy of the current SWPPP and each inspection report at the site or at an easily accessible location so that it can be made immediately available at the time of an on-site inspection per CGP Parts 4.7.3 and 7.3. The owner may share a SWPPP with the contractor, but the SWPPP will need to be corrected and include the required information listed in CGP Part 7.2.

History of violations:

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

1. Posting – 9/24/25, 1/14/26, 2/6/26 (Level 3)
2. SWPPP – 9/24/25, 1/14/26, 2/6/26 (Level 3)
3. BMPs – 9/24/26 (Level 1)
4. Washout – 1/14/26 (Level 1)
5. Sediment – 1/14/26 (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.

The City is issuing a \$500 fine for failure to mitigate the previous Level 2 violations and is being reported to the EPA. The fine is for one day (2/6/2026). If the Level 3 violations are not mitigated within seven days, the property owner is subject to a fine of \$500/day according to 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 505-924-3325 or cenglish@cabq.gov.

Sincerely,

Chancellor English

Chancellor English, CPESC
Erosion and Sediment Control Program Specialist - Stormwater Quality
Planning Dept.