

CITY OF ALBUQUERQUE

Planning Department
Alan Varela, Director



Mayor Timothy M. Keller

March 18, 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) – SWQ-2026-00011 – NMR1006PS
2060 Gibson Blvd SE (M15E021A)
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 another follow-up ESC Inspection on 3/10/2026 to verify mitigation of the violations reported multiple times in the past 6 months. There was no change at the site regarding the repeated violations based on the current inspection and the prior inspection (2/5/2026). The SWPPP and Posting prepared for AW Construction were on-site, but do not meet City SWQ requirements for the owner, Whataburger Restaurants LLC. The City requires the owner of any construction activity to comply with the EPA's CGP. By certifying the required NOI (NPDES# NMR1006PS) and obtaining CGP Coverage, Whataburger Restaurants LLC implied that a SWPPP had been prepared for the NOI to obtain CGP Coverage. This is the SWPPP that should be on-site because AW Construction has never obtained CGP Coverage for this project, and their SWPPP has also been reported to you repeatedly for missing parts. Once again, QR Codes do not satisfy *any* CGP requirement unless the information can be reviewed using on-site equipment and is the "same as paper" during the inspection. The specific violations observed during the inspection were 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 needs to be corrected and include the required criteria 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, 3/18/26 (Level 4)
2. SWPPP – 9/24/25, 1/14/26, 2/6/26, 3/18/26 (Level 4)
3. BMPs – 9/24/26 (Mitigated)
4. Washout – 1/14/26 (Mitigated)
5. Sediment – 1/14/26 (Mitigated)

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 the failure to mitigate the previous Level 3 violations and will report this NOV to the EPA. The fine is for one day (3/10/2026). If the Level 4 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.