



# CITY OF ALBUQUERQUE INVOICE

**SEAN JARIWALA**

**817 CENTRAL AVE NE**

Reference NO: SI-2023-01722

Customer NO: CU-36285125

| Date     | Description              | Amount   |
|----------|--------------------------|----------|
| 10/25/23 | 2% Technology Fee        | \$10.00  |
| 10/25/23 | Storm Water Quality Fine | \$500.00 |

Due Date: **10/25/23**

Total due for this invoice:

**\$510.00**

Options to pay your Invoice:

1. Online with a credit card: <https://posse.cabq.gov/posse/pub/lms/Default.aspx>
2. In person: Plaza Del Sol, 600 2nd St. NW, Albuquerque, NM 87102

PLEASE RETURN THE BOTTOM PORTION OF THIS INVOICE NOTICE WITH PAYMENT



City of Albuquerque  
PO Box 1293  
Albuquerque, NM 87103

**Date:** 10/25/23  
**Amount Due:** **\$510.00**  
**Reference NO:** SI-2023-01722  
**Payment Code:** 130  
**Customer NO:** CU-36285125

SEAN JARIWALA  
817 CENTRAL AVE NE  
ALBUQUERQUE, NM 87102



130 0000SI202301722000993551191651659000000000000510000CU36285125

# CITY OF ALBUQUERQUE

Planning Department  
Alan Varela, Director



Mayor Timothy M. Keller

October 25, 2023

1321 Flightway LLC – Sean Jariwala – 817 Central Ave NE, Albuquerque, NM 87102

**Site: 1321 Flightway Avenue NE**

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

To Sean Jariwala;

The City of Albuquerque performed a follow-up inspection to observe any attempted mitigation of the violations sent September 15, 2023. Not only have the stockpiles and disturbed soil remained untouched, there was notable sediment discharge in the City Right of Way (ROW) near a storm drain inlet. EPA Construction General Permit (CGP) coverage has not been obtained, therefore stormwater discharges from this site are not allowed. A Grading and Drainage Plan, Notice of Intent (NOI), and Erosion and Sediment Control (ESC) Plan have not been submitted to the City.

The City is issuing this second NOV and a \$500 fine for violating City Ordinance 14-5-2-11 and EPA CGP requirements following the guidelines set in the City Escalation Process. The invoice for the fine is included in this letter. Please contact me for payment instructions at [cenglish@cabq.gov](mailto:cenglish@cabq.gov) or (505) 924-3325.

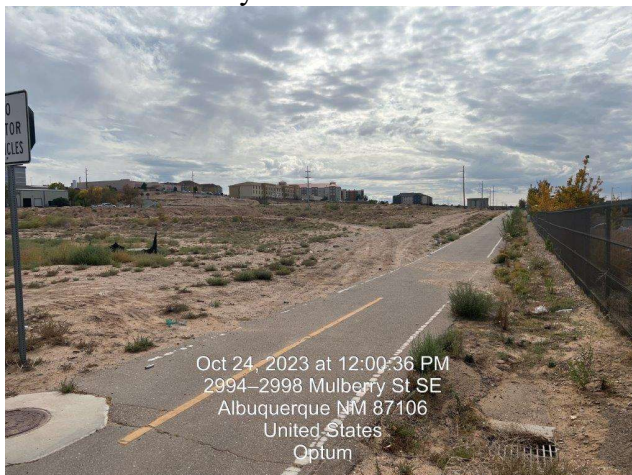
City Ordinance 14-5-2-11 requires the property owner to comply with the EPA's Construction General Permit (CGP) and file for the CGP Notice of Intent (NOI) if land disturbance totals 1 acre or more. The property owner is responsible for providing the City with the NOI and to comply with the requirements of the CGP. As detailed in the included Escalation Process, the City will notify the EPA about owners that are repeatedly in violation of the CGP in addition to the NOV and fine. Please mitigate the following violations to avoid further financial penalties.

Based on the follow-up inspection, the City observed the following violations:

1. Failure to provide the City with a NOI after disturbing more than 1 acre of land in violation of City Ordinance 14-5-2-11-(A) and the EPA's CGP. Sediment discharge was also observed at the site's southern border, which is located near a storm drain inlet. Stormwater discharges are not allowed without permit coverage.



2. Since there is no NOI associated with this property, there was no posting of the permit coverage in violation of CGP Part 1.5.
3. Not having a Stormwater Pollution Prevention Plan (SWPPP) available for and during an inspection in violation of CGP Part 7. Self-inspection reports were also unavailable during the inspection in violation of CGP Part 4.7.3 and City Ordinance 14-5-2-11-(C)-1.
4. A lack of downstream perimeter stormwater controls to prevent sediment discharge into the City's Stormwater conveyances in violation of CGP Parts 2.2.3 and 2.2.5.





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5. No stabilization measures for stockpiles and exposed soil that have no construction activity or is inactive for more than 14 calendar days in violation of CGP Part 2.2.14.



6. The sediment discharge in the ROW identified in the first part of this section is also in violation of CGP Part 2.2.4.

Albuquerque's Erosion and Sediment Control (ESC) ordinance § 14-5-2-11 at link [https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque\\_nm/0-0-0-19897](https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque_nm/0-0-0-19897) requires the property owner to provide an ESC Plan and the EPA's Notice of Intent (NOI) to the city for review and approval prior to issuing construction permits and prior to any land-disturbing activity. It also requires compliance with the Construction General Permit (CGP) [2022 Construction General Permit \(CGP\) | US EPA](#).

### **Required Mitigation:**

1. The City requires the property owner to provide the CGP NOI documentation that contains the property owner name and contact information a minimum of 14 days prior to earth disturbance for projects that disturb one acre or more. Please see the City Ordinance 14-5-2-11 (Construction Site Responsibility by Property Owner) included in this package. Please visit the City of Albuquerque Stormwater Quality Section for the submittal process at [www.cabq.gov/planning/development-review-services/stormwater-quality-section](http://www.cabq.gov/planning/development-review-services/stormwater-quality-section).
2. CGP Part 1.5 requires you to post a sign or other notice of your permit coverage at a safe, publicly accessible location in close proximity to the construction site, and that the notice must be located so it is visible from the public road that is nearest to the active part of the construction site.
3. CGP Part 7 requires the preparation of a SWPPP before applying for the NOI. This Part also states the requirements for the contents of the SWPPP. CGP Part 7.3 requires that the SWPPP be available for at the time of an on-site inspection. City Ordinance 14-5-2-11 requires self-inspections once every 14 calendar days and after a rain event that exceeds ¼ inch. CGP Part 4, "Inspection Requirements," details the frequency, area, and requirements of the self-inspections. The inspection reports must be made available for an on-site inspection per CGP 4.7.3.
4. You must install sediment controls along any perimeter areas of the site that are downslope from any exposed soil or other disturbed areas, per CGP Part 2.2.3. CGP Parts 2.2.5.b and 2.2.5.c requires you to install a sediment barrier along all downgradient perimeter areas of stockpiled soil and to provide cover or temporary stabilization for piles that will be unused for 14 or more days.
5. Furthermore, CGP Part 2.2.14 requires stabilization measures of disturbed soil be installed where construction activities have permanently ceased or will be temporarily inactive for 14 or more calendar days.
6. Where sediment has been tracked-out from your site onto paved roads, sidewalks, or other paved areas outside your site, remove the deposited sediment by the end of the same business day. Remove the sediment by sweeping, shoveling, or vacuuming these surfaces. You are prohibited from hosing or sweeping tracked-out sediment into any constructed or natural site drainage feature, storm drain inlet, or receiving water per CGP Part 2.2.4.

### **History of Violations:**

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

1. NOI – 9/15/23, 10/25/23 (Level 3)
2. Posting – 9/15/23, 10/25/23 (Level 2)
3. SWPPP – 9/15/23, 10/25/23 (Level 3)
4. BMPs – 9/15/23, 10/25/23 (Level 3)
5. Stabilization – 9/15/23, 10/25/23 (Level 2)
6. Sediment – 10/25/23 (Level 1)

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

# CITY OF ALBUQUERQUE

Planning Department  
Alan Varela, Director



*Mayor Timothy M. Keller*

**Per the previous Violation letter dated 9/15/23, the City is assessing a fine of \$500 for the level 3 violations, and the non-compliance is being reported to the EPA. This fine is for one day, 10/25/23. Additional days may be added if the violation is not mitigated within seven days. Progressive enforcement escalation procedures will be used and strictly enforced for recalcitrant or repeat offenders. Repeat violations are also subject to a fine of \$500/day.**

If you have any questions, you can contact me at 924-3325, or [cenglish@cabq.gov](mailto:cenglish@cabq.gov).

Sincerely,

*Chancellor English*

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

## English, Chancellor

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**From:** English, Chancellor  
**Sent:** Wednesday, October 25, 2023 11:58 AM  
**To:** 'Esparza, David'  
**Cc:** Hughes, James D.  
**Subject:** Notice of Violation - no permit coverage  
**Attachments:** M15E056 Violation 2 Fine 1 - signed.pdf; M15E056 Invoice - Fine 1.pdf

David;

For your information; The City of Albuquerque has identified a property owner that has disturbed over 1 acre of land without CGP coverage. This is the 2<sup>nd</sup> Notice of Violation which includes a monetary fine. I have attached the NOV and fine amount for details of the site. This was sent to the property owner through the mail, as we do not have any other contact information.

Thank you,



**Chancellor English**

Erosion and Sediment Control Specialist

o 505.924.3325

e [cenglish@cabq.gov](mailto:cenglish@cabq.gov)

[cabq.gov/planning](http://cabq.gov/planning)

## **§ 14-5-2-11 CONSTRUCTION SITE RESPONSIBILITY BY PROPERTY OWNER.**

(A) For projects that disturb one acre or more, or less than one acre but are part of a larger common plan of development exceeding one acre, the property owner is to provide the Construction General Permit (CGP) Electronic Notice of Intent (eNOI) documentation that contains the property owner name and contact information a minimum of 14 days prior to earth disturbance and prior to obtaining Work Order or Building Permit approval. To be accepted, the eNOI is to be properly filled out and certified. If the eNOI is a Low Erosivity Waiver by the contractor, then an Erosion and Sediment Control Permit per § [14-5-2-11](#)(B) is to be approved by the city.

(B) For projects that are less than one acre and are not part of a larger common plan of development, but meet the criteria as specified in § [14-5-2-12](#)(B)(6), an approved Erosion and Sediment Control Permit is required prior to earth disturbance, Work Order approval and Building Permit approval.

(1) The Erosion and Sediment Control Permit or eNOI holder must be either the owner of the property or an authorized agent of the owner in order for the permit to legally cover the activities occurring at the site. If the permit holder is other than the owner, evidence of delegation of authority acceptable to the city shall be provided prior to issuance of a permit by the city.

(2) A project will be approved for earth disturbance, work order, or building permit only upon approval of plans and conditions by the City Engineer.

(C) Construction site inspections and quality controls shall include:

(1) Self-inspections by permittee. At a minimum a routine compliance self-inspection is required to review the project for compliance with the Construction General Permit once every 14 days and after any precipitation even of 1/4 inch or greater until the site construction has been completed and the site determined as stabilized by the city. Reports of these inspections shall be kept by the person or entity authorized to direct the construction activities on the site and shall be conducted during progress of the work, during work suspensions, and until final acceptance of site stabilization by the city. An owner's or his/her agent's failure to properly maintain records shall subject that owner to the penalty provisions of §§ [14-5-2-1](#) et seq.

(2) City compliance inspections. The city will conduct routine compliance inspections of projects for compliance with the Construction General Permit. The city will conduct routine compliance inspections of all construction projects cumulatively disturbing one acre or more or as specified in § [14-5-2-12](#)(B)(6) for compliance with the Construction General Permit. Site inspections will be followed by any necessary compliance or enforcement action to ensure corrective action has occurred. Corrective action is to be completed within seven days or the owner is subject to escalation per §§ [14-5-2-1](#) et seq. All projects will be inspected at completion for confirmation of stabilization.

(a) Construction site compliance. If the city finds that the site is not in compliance with the Construction General Permit and that stormwater controls will not prevent sediment and waste from entering the city's drainage system and/or leaving the



construction site the city may direct the owner or his/her agent by written order to come into compliance. If deficiencies are required to be mitigated, the owner or his/her agent shall be verbally notified with a follow-up written confirmation occurring later. It shall be the duty of the owner or his/her agent to immediately take all necessary steps to prevent such migration of sediment and waste off the premises or from entering receiving waters. Delivery of an order by the city to the owner or his/her agent shall be deemed to be notice thereof, and binding upon the owner. An owner's or his/her agent's failure to substantially comply with the order shall subject that owner to the penalty provisions of §§ [14-5-2-1](#) et seq.

(b) Maintenance of control measures. The property owner or the owner's agent carrying out the Construction General Permit requirements shall maintain all control measures, retaining walls, structures, plantings, and other protective devices. Should the applicant or any other subsequent property owners fail to maintain the temporary control facilities, retaining walls, structures, plantings, and other protective devices, the city reserves the authority to enter affected property, provide needed maintenance, and to charge the owner for the work performed by the city or its contractors and to place a lien on the property to cover the costs of said actions. Such municipal lien shall be a statutory lien against the real property. This provision is in addition to the city's ability to assess penalties or pursue any other remedies as necessary to effectuate the purpose of §§ [14-5-2-1](#) et seq.

1. The maintenance of facilities constructed at private expense on public property is the responsibility of the owner or owner's agent until permanent facilities are in place.

2. The developer shall be responsible for maintaining or replacing temporary crossing structures for a period of six years or until a permanent structure is built, whichever comes first. The city shall maintain temporary crossings which are designed and built such that they may be directly incorporated into the ultimate facilities.

(3) The city will utilize sanctions and penalties to enforce upon violations of permit requirements. Progressive enforcement escalation procedures will be used and strictly enforced for recalcitrant or repeat offenders.



## Escalation Process for Drainage Ordinance Violations during the Construction Phase

Mayor Tim Keller

**The City Ordinance includes several specific means of enforcing the City's regulations including but not limited to § 14-5-2-11(C)(3).**

*The city will utilize sanctions and penalties to enforce upon violations of permit requirements.*

*Progressive enforcement escalation procedures will be used and strictly enforced for recalcitrant or repeat offenders.*

**The four levels of escalation apply to each specific violation type (e.g. sediment in the street, BMP maintenance, waste, washout, self-inspection reports, posting, expired permit, stabilization, etc...). Each recalcitrant or repeat offence for a particular violation type results in escalation to the next level.**

### **1<sup>st</sup> Level - Optional Informal Warning w/o Fine (not required by Ordinance) w**

- E-mail with explanation of violation(s) with a corrective action date. Standard mitigation time is seven days. Additional time may be given at the City's discretion<sup>(1)</sup>.
- This step is skipped if land disturbance began without City approval and/or without BMPs, the

### **2<sup>nd</sup> Level - Formal Warning w/o Fine – (1<sup>st</sup>) Notice of Violation (NOV) Letter**

- A NOV letter will be sent to the property owner with an explanation of violation(s), the required mitigation, and an allowance of 7 days (min.) to mitigate. The NOV letter will state that the property owner is subject to a \$500 fine/day if the violations are not mitigated within the specified time frame (escalation to 3<sup>rd</sup> Level). Additional time to mitigate may be given at the discretion of the City<sup>(1)</sup>.
- Level 2 applies to the second time a particular violation type is noted during a City inspection (first repeat violation).
- Level 2 also applies to the first time for either of the following two egregious violation types: either starting land disturbance without approval from the City or starting land disturbance without BMPs.

### **3<sup>rd</sup> Level – Formal Notice of Violation w/ Fine for 1 day - (2<sup>nd</sup> & up) NOV Letter**

- A NOV letter will be sent to the property owner with an explanation of violation(s), the required mitigation, and an allowance of 7 days (min.) to mitigate. A fine will be issued to the property owner(s) per the Penalty provisions of §§ 14-5-2-1 et seq. typically \$500 for the first day of violation. Failure to pay the fine may result in additional sanctions. The NOV letter will state that the property owner is subject to a \$500 fine/day if the violations are not mitigated within the specified time frame (escalation to 4<sup>th</sup> Level). Additional time may be given at the discretion of the City<sup>(1)</sup>.

### **4<sup>th</sup> Level – Formal Notice of Violation w/ Fine for each new day of violation since the last day of fine.**

- A NOV letter will be sent to the property owner with an explanation of violation(s), the required mitigation, and an allowance of 7 days (min.) to mitigate. A fine will be issued to the property owner(s) per the Penalty provisions of §§ 14-5-2-1 et seq. typically \$500/day of violation since the last day of fine. The NOV letter will state that the property owner is subject to a \$500 fine/day and additional sanctions if the violations are not mitigated and the fine paid within the specified time frame.
- The EPA is typically notified when NOVs with fines are sent.

- 1) Additional time is typically not granted unless the owner is cooperative and makes significant progress mitigating the violations within the specified time frame (3 out of 4 violations mitigated).

Revised December 18, 2020