

D.2016.016

**CITY OF ALBUQUERQUE
CITY COUNCIL**

INTEROFFICE MEMORANDUM

TO: Richard J. Berry, Mayor

FROM: Jon K. Zaman, Director of Council Services

Jon 6/28/16

SUBJECT: Transmittal of Legislation

Transmitted herewith is Bill No. C/S O-16-16 Adopting A Stormwater Quality Ordinance, Creating A New Article 11 To Chapter 6 Of The Albuquerque Code Of Ordinances (Jones, by request), which was passed at the Council meeting of June 20, 2016 by a vote of 9 FOR AND 0 AGAINST.

In accordance with the provisions of the City Charter, your action is respectfully requested.

JKZ:mh
Attachment

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1 **Discharge.** The introduction or addition of any pollutant, stormwater, or
2 other substance into the MS4, or to allow, permit, or suffer any such
3 introduction or addition that is not specifically allowed by the City of
4 Albuquerque’s current MS4 permit.

5 **Discharger.** A person who allows, causes, permits, suffers, or threatens to
6 cause a discharge.

7 **Illicit discharge.** Any discharge to the MS4 that is not composed entirely of
8 stormwater except discharges pursuant to a NPDES permit or those allowed in
9 Section 6-11-6(C).

10 **Impervious.** Surfaces that are mainly artificial structures that are the result
11 of design, construction, and maintenance – such as pavements (roads,
12 sidewalks, driveways and parking lots) that are covered by impenetrable
13 materials such as asphalt, concrete, brick, and stone – and rooftops; soils
14 compacted by urban development are also highly impervious.

15 **Industrial activity certification (IAC).** A certification submitted to the
16 stormwater engineer showing compliance with EPA industrial activity
17 regulations.

18 **Industrial facility.** A property that has discharges associated with
19 industrial activity as defined by federal regulations in 40 C.F.R. 122.26(b)(14)I-
20 XI).

21 **MS4 or municipal separate storm sewer system.** The system of
22 conveyances owned or operated by the City or any co-permittee of the City
23 under the Permit issued by the U.S. Environmental Protection Agency, that is
24 designed or used for collecting, detention, storage, or conveying storm water.

25 **NPDES.** The national pollutant discharge elimination system.

26 **NPDES permit.** A permit issued by the EPA under Title 33 of the United
27 States code that authorizes the discharge or pollutants to waters of the United
28 States, whether the permit is applicable on an individual, group, or general
29 basis.

30 **Parcel.** A contiguous piece of land that is under common ownership or
31 control or that is part of a larger common plan of development or sale.

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1 **Person.** An individual, corporation, organization, governmental entity,
2 business trust, partnership, association, or other legal entity, or an agent or an
3 employee thereof.

4 **Point source.** Any discernible and discrete conveyance, including but not
5 limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure,
6 container, rolling stock, concentrated animal feeding operation, landfill
7 leachate collection system, vessel or other floating craft from which pollutants
8 are or may be discharged. This term does not include return flows from
9 irrigated agriculture or agricultural stormwater runoff.

10 **Pollutant.** The term “pollutant” includes but is not limited to, dredged soil,
11 solid waste, incinerator residue, sewage, garbage, sewage sludge, filter
12 backwash, munitions, chemical wastes, biological materials, radioactive
13 materials, wrecked or discarded equipment, sediment, and other material, or
14 any combination thereof discharged into the MS4 or any water of the United
15 States.

16 **Pollution.** The alteration of the physical, chemical, or biological quality of,
17 or the contamination of, any waters of the United States that renders the water
18 harmful, detrimental or injurious to humans, animal life, vegetation, or
19 property or to public health, safety, or welfare, or otherwise impairs the quality
20 of the water.

21 **Stormwater.** Rainwater runoff, snow melt runoff, and surface runoff and
22 drainage.

23 **Stormwater discharge associated with industrial activity.** The discharge
24 from any conveyance which is used for collecting and conveying stormwater
25 and which is directly related to manufacturing, processing, or raw materials
26 storage areas at an industrial plant, (see 40 cfr 122.26(b)(14) for specifics of
27 this definition).

28 **Stormwater engineer.** The person responsible for enforcement of this
29 ordinance as designated through §6-11-3 ROA 1994.

30 **Stormwater control permit for erosion and sediment control or SWP.** The
31 permit issued pursuant to the drainage control ordinance.

32

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1 **Structure.** That which is built or constructed, an edifice or building of any
2 kind, or any piece of work, including, but not limited to, a paved surface, that
3 is artificially built up or composed of parts joined together in some definite
4 manner. The term does not include a street, a channel, or a public utility.

5 **Structural control.** Any structure built and maintained to prevent, reduce,
6 or mitigate the potential of stormwater runoff contact with pollution-causing
7 activities.

8 **Threat or Threatens.** A written or oral threat that is accompanied by a
9 specific action to introduce a pollutant into the MS4.

10 **§6-11-3 Stormwater Engineer.** The Director of the Department of Municipal
11 Development shall appoint a stormwater engineer who, once so appointed, is
12 vested with the authority to enforce this ordinance and all the other powers
13 and duties as may be provided in this Stormwater Quality Ordinance.

14 **§6-11-4 Applicability**

15 **(A)** A person who owns an industrial facility or causes a discharge is
16 governed by this ordinance.

17 **(B)** If a parcel is located outside the corporate boundaries of the city and
18 stormwater from any portion of the parcel drains into the MS4, then the owner
19 of such parcel is subject to this ordinance unless the owner elects not to
20 discharge any stormwater into the MS4.

21 **§6-11-5 Industrial Activity Certification.** At any facility with activity covered
22 by the EPA's standard industrial codes that requires a multi-sector general
23 permit, the operator shall submit to the city an industrial activity certification
24 (IAC) when requested by the stormwater engineer. Upon reasonable notice,
25 the stormwater engineer may perform site inspections of these facilities. The
26 IAC may include any one of the following:

27 **(A)** A copy of the application for an individual permit from the EPA for
28 stormwater discharges from industrial activity at the facility;

29 **(B)** A copy of the permit issued by the EPA for stormwater discharges
30 from industrial activity at the facility;

31 **(C)** A copy of the notice of intent (NOI) for coverage under a multi-sector
32 general permit for stormwater discharges associated with industrial activity

1 issued by the EPA, or a copy of the “no exposure certification” submitted to
2 EPA;

3 (D) A statement of commitment to file an application for an individual
4 permit from the EPA for stormwater discharges from industrial activity at the
5 facility by a date certain agreed to by the stormwater engineer; or

6 (E) A statement of commitment to file a NOI for coverage under a
7 general permit for stormwater discharges associated with industrial activity
8 regulating the stormwater quality and prohibiting illicit discharges into the
9 MS4 issued by the EPA by a date certain agreed to by the stormwater
10 engineer.

11 **§6-11-6 Illicit Discharges and Connections.**

12 (A) **Illicit Discharge to MS4 Prohibited:** A person who commits a
13 violation as prescribed under subsection ‘B’ below is subject to the penalties
14 set forth in §6-11-8 and §6-11-9 of this article.

15 (B) **Violations.** No person shall:

16 (1) Attempt to introduce, introduce, or causes to be introduced
17 into the MS4 any discharge that is not composed entirely of pollutant-free
18 storm water;

19 (2) Leave, accumulate, discharge, or allow animal waste on a
20 publicly owned property or on private property that will drain to the MS4;

21 (3) Allow any fluids from motor vehicles to drip or flow onto
22 public property or into the MS4;

23 (4) Blow or otherwise cause dirt, leaves or other organic or
24 inorganic material to move from any private property to any public property or
25 into the MS4;

26 (5) Allow sanitary sewer overflows from private property to enter
27 publicly owned property. Sanitary sewer overflows shall be contained to the
28 property of origin and the owner of the property shall bear the cost of proper
29 disposal and cleanup. Disposal and cleanup shall be initiated and completed
30 as expeditiously as possible, and in no case shall exceed 48 hours from the
31 time of detection;

32 (6) Allow sanitary sewer from private property to enter the MS4
33 through an underground cross-connection of sanitary sewer pipe into storm

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1 sewer pipe. Should such a cross-connection be detected, the owner of the
2 property that is the origin of the sanitary sewer discharge shall bear the cost
3 of removing the cross-connection. Proper permitting must be obtained prior
4 to performing the work;

5 (7) Allow any other non-authorized, non-stormwater discharge to
6 enter the MS4; or

7 (8) Continue a discharge if:

8 (a) The discharge or flow in question has been determined by the
9 City Engineer to be a source of a pollutant or pollutants to the MS4.

10 (b) Written notice of such determination has been provided to the
11 discharger; and,

12 (c) The discharge has continued after the expiration of the time
13 given in the notice to cease the discharge.

14 (C) Exceptions. Notwithstanding the activities proscribed under
15 subsection 6-11-1(B) above, the following do not constitute violations:

16 (1) A discharge authorized by, and in compliance with, a current NPDES
17 permit (other than the City of Albuquerque's NPDES permit for discharges
18 from the MS4);

19 (2) Any discharge in compliance with a SWP if required in the Drainage
20 Ordinance;

21 (3) Any non-prohibited discharge from an exempt parcel;

22 (4) Any discharge or flow resulting from firefighting by the fire
23 department if that discharge is not reasonably expected to be a significant
24 source of pollutants to the MS4;

25 (5) Water line flushing, provided that the water is not significantly
26 chlorinated when reaching a receiving water;

27 (6) Rising ground waters;

28 (7) Ground water infiltration;

29 (8) Irrigation water from agricultural operations;

30 (9) Flows from riparian habitats and wetlands;

31 (10) Dechlorinated discharges of potable water; or

32 (11) Materials resulting from a spill where the discharge is necessary to
33 prevent loss of life; personal injury, or property damage provided that the

1 party responsible for the spill takes all reasonable steps to minimize or
2 prevent any adverse effects to human health or the environment.

3 (12) Any stormwater flows from property in a native undisturbed state.

4 §6-11-7 Industrial Activity Discharge Permit. A person who is the
5 owner or operator of an industrial facility that has discharges associated with
6 industrial activity as defined by federal regulations must apply for and acquire
7 an EPA Multi Sector General Permit. The owner or operator shall notify the
8 stormwater engineer of such application and any federal notice of intent or
9 notice of termination.

10 §6-11-8 Compliance and Enforcement

11 (A) *Compliance Monitoring Methods.* At any facility that discharges
12 stormwater to the MS4, the stormwater engineer is authorized to execute the
13 following methods, or any other reasonable methods, to enforce compliance
14 with this stormwater ordinance:

15 (1) Install, or to require the installation of, such devices as are
16 necessary to conduct sampling or metering of the discharger's operations at
17 the expense of the City;

18 (2) Require any facility that is reasonably determined to have
19 discharged a pollutant or any substance that causes, continues to cause, or
20 will cause pollution, to conduct specified sampling, testing, analysis, and
21 other monitoring of its stormwater discharges. The stormwater engineer may
22 specify the frequency and parameters or any required sampling or monitoring;

23 (3) Require any facility that has been found to have violated this
24 ordinance to install monitoring equipment as necessary at the discharger's
25 expense. The discharger, at its own expense, shall at all times maintain the
26 facility's sampling and monitoring equipment in a safe and operating
27 condition. Each device used to measure storm water flow and quality must be
28 calibrated regularly to ensure accuracy;

29 (4) Require monitoring of non-storm water discharges if the stormwater
30 engineer reasonably believes that such discharges violate the City's MS4
31 permit requirements;

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1 (5) Upon request of the stormwater engineer, a facility shall submit in
2 writing the results of any sampling or monitoring undertaken pursuant to the
3 requirements of this article;

4 (6) Facility owners or operators shall maintain the results of any
5 monitoring and any supporting documentation undertaken pursuant to this
6 Ordinance for three (3) years; or

7 (7) All monitoring required by this Ordinance must be performed in
8 accordance with the established methodologies and protocols of the EPA or
9 New Mexico Environmental Department.

10 §6-11-9 Enforcement Provisions

11 (A) *Enforcement.*

12 (1) The stormwater engineer or any City police officer is hereby
13 authorized to undertake the enforcement activities authorized by this section.

14 (2) The City may issue a Notice of Violation to any person who violates
15 any provision of this article. The violator may be given an opportunity to
16 respond to the Notice and propose corrective actions in a reasonable amount
17 of time as determined by the stormwater engineer.

18 (B) *Penalties.*

19 (1) *Criminal Penalties.* Any person who violates any provision of this
20 article is guilty of a petty misdemeanor and upon conviction thereof, shall be
21 punished by a fine of not less than \$250.00 nor more than \$500.00 and up to
22 thirty (30) days in jail for each violation. Each day in which any violation shall
23 occur shall constitute a separate offense. Prosecution or conviction under
24 this section shall not preclude any civil remedy or relief for a violation of this
25 article. Once cited for an offense, an additional citation may be issued for
26 each day the violation continues unless the violator has entered into an
27 agreement with the City for mitigation, correction, and any other necessary
28 action and is acting in conformity with the agreement and the schedule in the
29 agreement.

30 (2) *Civil Penalties.* In addition to or instead of criminal prosecution,
31 where applicable, the City acting through the City Attorney, is hereby
32 authorized to file an action in a court of competent jurisdiction to:

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1 (a) Enjoin any person from violating or threatening to violate the
2 terms, conditions and restrictions of this article;

3 (b) Enjoin the violation or threatened violation of the provisions of
4 this Ordinance;

5 (c) Recover civil penalties for violation of the terms, conditions
6 and restrictions of this article;

7 (d) Recover civil penalties for violation of the provisions of this
8 Ordinance; or

9 (e) Recover damages from the owner of a parcel in an amount
10 adequate for the City to undertake any construction remediation, cleanup, or
11 other activity necessary to bring about compliance with this chapter. In
12 addition to judicial remedies, such damages are recoverable through the
13 imposition of a municipal lien on the parcel under NMSA 1978, § § 3-36-1 to 3-
14 36-5.

15 (C) The City, acting through the City Attorney, is hereby authorized to
16 enter into agreements in lieu of litigation to achieve compliance with the
17 provisions of this article.

18 (D) The City's authority in §6-11-8 (A) and (B) is in addition to all
19 provisions of these Ordinances relative to the definition of offenses and the
20 provision of penalties for violations of such offenses.

21 §6-11-10 Private Cause of Action Prohibited. Nothing in this Ordinance
22 shall provide for a private cause of action.

23 §6-11-11 Regulations and Forms Authorized. The stormwater engineer
24 shall promulgate regulations and forms regarding compliance with the
25 requirements of this article. Such regulations and forms shall be available at
26 the office of the city engineer, the office of the stormwater engineer; and on
27 the City website. The regulations and forms established hereunder may be
28 amended or supplemented from time to time.

29 §6-11-12 Cumulative Effect

30 (A) This Ordinance is cumulative of other requirements imposed by
31 Ordinances and Regulations of the City. To the extent of any inconsistency,
32 the more restrictive provision shall govern.

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1 (B) Any authorization granted by this Ordinance does not excuse
2 compliance with federal or state law or any other provisions of this Code or
3 any other City ordinance relating to the activities regulated by this article.

4 §6-11-13 Remedies Not Exclusive.

5 The remedies listed in this article are not exclusive of any other remedies
6 available under any applicable federal, state, or local law. It is within
7 discretion of the City to seek cumulative remedies.

8 §6-11-14 Access to Facilities and Records.

9 (A) When it is necessary to make an inspection to enforce the provisions
10 of this article or to inspect or investigate conditions related to water quality,
11 an authorized City official may enter a building or premises at reasonable
12 times to inspect or to perform the duties imposed by this article or to inspect
13 or review records, reports, data, plans, or other documents relating to
14 compliance with this article or with any NPDES storm water permit. If the
15 building or premises is occupied, credentials must be presented to the
16 occupant and entry requested. If the building or premises is unoccupied, the
17 authorized City official shall first make a reasonable effort to locate the owner
18 or other person having charge or control of the building or premises and
19 request entry. If refused, the authorized City official shall have recourse to the
20 remedies provided by law to secure entry.

21 (B) When, due to emergency, immediate entry is necessary to protect life
22 or property, or when the authorized City official shall have first obtained a
23 proper inspection warrant or other remedy provided by law to secure entry, no
24 owner, occupant or any other person having charge, care or control of any
25 building or premises shall fail or neglect, after proper request is made as
26 herein provided, to promptly permit entry therein by the authorized City official
27 for the purpose of inspection and investigation pursuant to this article or other
28 laws relating to storm water quality.

29 (C) Any temporary or permanent obstruction to safe and easy access to
30 a facility that is to be inspected or sampled must be promptly removed upon
31 the written request of the authorized City official or Stormwater Engineer and
32 may not be replaced. The cost of clearing access to the facility shall be borne
33 by the discharger.

1 **Section 2. Severability Clause.** If any section, paragraph, sentence,
2 clause, word or phrase of this Ordinance is for any reason held to be invalid or
3 unenforceable by any court of competent jurisdiction, such decision shall not
4 affect the validity of the remaining provisions of this Ordinance. The Council
5 hereby declares that it would have passed this Ordinance and each section,
6 paragraph, sentence, clause, word or phrase thereof irrespective of any
7 provision being declared unconstitutional or otherwise invalid.

8 **Section 3. Compilation.** The ordinance set forth in Section 1 above shall
9 be incorporated in and made part of the Revised Ordinances of Albuquerque,
10 New Mexico, 1994.

11 **Section 4. Effective Date.** This Ordinance takes effect five days after
12 publication by title and general summary.

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1 PASSED AND ADOPTED THIS 20th DAY OF June, 2016
2 BY A VOTE OF: 9 FOR 0 AGAINST.

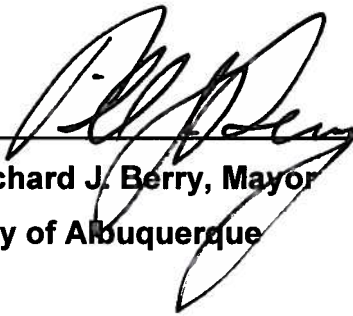
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Dan Lewis, President
City Council

APPROVED THIS 6th DAY OF July, 2016

Bill No. C/S O-16-16



Richard J. Berry, Mayor
City of Albuquerque

ATTEST:



Natalie Y. Howard, City Clerk

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Mayor Richard J. Berry

CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

INTER-OFFICE MEMORANDUM

March 25, 2016

TO: Dan Lewis, President, City Council

FROM: Richard J. Berry, Mayor 

SUBJECT: Proposed Stormwater Quality Ordinance

This proposed ordinance will regulate some stormwater discharges and discharges to the City Municipal separate stormwater sewer system (MS4) in accordance with the City National Pollution Discharge Elimination System (NPDES) permit issued by the EPA. The ordinance will prohibit illicit discharges and provide for industrial and other inspections and provides enforcement mechanisms.

This Ordinance is being forwarded to City Council for approval.

Page 2 of 2
March 25, 2016
SUBJECT: Proposed Stormwater Quality Ordinance

Approved:



Robert J. Perry 4/19/16
Chief Administrative Officer Date

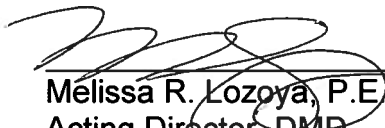
Approved as to Legal Form:



Jessica M. Hernandez 4/12/16
City Attorney Date

Recommended:

GIS



Melissa R. Lozoya, P.E.
Acting Director, DMD 3/31/16
Date

FISCAL IMPACT ANALYSIS

TITLE: Storm Water R: O: XXX
 FUND:
 DEPT:

- No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

		2016	Fiscal Years 2017	2018	Total
Base Salary/Wages					-
Fringe Benefits at	35.54%	-	-	-	-
Subtotal Personnel		-	-	-	-
Operating Expenses					-
Property					-
Indirect Costs	2.50%	-	-	-	-
Total Expenses		\$ -	\$ -	\$ -	\$ -
[] Estimated revenues not affected					
[x] Estimated revenue impact					
Revenue from program					0
Amount of Grant			-	-	
City Cash Match					
City Inkind Match					
City IDOH		-	-	-	-
Total Revenue		\$ -	\$ -	\$ -	\$ -

These estimates do not include any adjustment for inflation.
 * Range if not easily quantifiable.

Number of Positions created

COMMENTS:

COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:



PREPARED BY:

C. Cheng
 FISCAL ANALYST

APPROVED:

[Signature] 3/29/16
 DIRECTOR (date)

REVIEWED BY:

EXECUTIVE BUDGET ANALYST BUDGET OFFICER (date) CITY ECONOMIST

Cover Analysis Stormwater Quality

1. What is it?

A new ordinance related to Stormwater Quality.

2. What will this piece of legislation do?

This ordinance will continue the City's compliance with the EPA NPDES Stormwater Permit. The ordinance will prohibit discharge of pollutants into the stormwater collection system and provide a system for inspection and enforcement for noncompliant dischargers.

3. Why is this project needed?

Adoption of this ordinance is needed for compliance with the NPDES permit.

4. How much will it cost and what is the funding source?

Compliance monitoring and enforcement will be done initially by existing personnel. There is no other expected cost.

5. Is there a revenue source associated with this contract? If so, what level of income is projected?

No Revenue is anticipated.