

# CITY of ALBUQUERQUE

## TWENTY SECOND COUNCIL

COUNCIL BILL NO. O-16-16 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Trudy E. Jones, by request

1 **ORDINANCE**

2 **ADOPTING A NEW CITY OF ALBUQUERQUE CODE OF ORDINANCES**  
3 **PERTAINING TO STORMWATER QUALITY.**

4 **WHEREAS, the Clean Water Act was enacted by congress in 1972; and**

5 **WHEREAS, the City has been subject to stormwater regulation through its**  
6 **municipal separate stormwater system (MS4) permit since 2003; and**

7 **WHEREAS, the City was issued a new watershed based MS4 permit on**  
8 **December 22, 2014, that increased regulatory requirements; and**

9 **WHEREAS, enhanced water quality in the Rio Grande is a community**  
10 **value; and**

11 **WHEREAS, enacting this ordinance will further compliance with an**  
12 **unfunded federal mandate and will reduce stormwater contaminants; and**

13 **WHEREAS, this ordinance is a significant step toward addressing issues**  
14 **with the existing development environment relating to stormwater.**

15 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**  
16 **ALBUQUERQUE:**

17 **Section 1. Definitions**

18 **As used in this article, the following terms shall have the meanings ascribed in**  
19 **this section unless the context of their usage clearly indicates another**  
20 **meaning.**

21 ***Discharge* shall mean the introduction or addition of any pollutant,**  
22 **stormwater, or other substance into the MS4, or to allow, permit, or suffer any**  
23 **such introduction or addition that is not specifically allowed by the City of**  
24 **Albuquerque's current MS4 permit.**

25 ***Discharger* shall mean a person who allows, causes, permits, suffers, or**  
26 **threatens to cause a discharge.**

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- 1 ***Illicit discharge*** means any discharge to the MS4 that is not composed entirely  
2 of stormwater except discharges pursuant to a NPDES permit or those allowed  
3 in Section 10(b)
- 4 ***Impervious*** – pertaining to surfaces that are mainly artificial structures that are  
5 the result of design, construction, and maintenance – such as pavements  
6 (roads, sidewalks, driveways and parking lots) that are covered by  
7 impenetrable materials such as asphalt, concrete, brick, and stone – and  
8 rooftops. soils compacted by urban development are also highly impervious.
- 9 ***Industrial activity certification (IAC)*** means a certification submitted to the  
10 stormwater engineer showing compliance with EPA industrial activity  
11 regulations.
- 12 ***Industrial facility*** means a property that has discharges associated with  
13 industrial activity as defined by federal regulations in 40 C.F.R. 122.26(B)(14)I-  
14 XI).
- 15 ***MS4 or municipal separate storm sewer system*** shall mean the system of  
16 conveyances owned or operated by the City or any co-permittee of the city  
17 that is designed or used for collecting, retention, storage, or conveying storm  
18 water.
- 19 ***NPDES*** shall mean national pollutant discharge elimination system.
- 20 ***NPDES permit*** shall mean a permit issued by the EPA under Title 33 of the  
21 United States code that authorizes the discharge or pollutants to waters of the  
22 United States, whether the permit is applicable on an individual, group, or  
23 general basis.
- 24 ***Parcel*** shall mean a contiguous piece of land that is under common ownership  
25 or control or that is part of a larger common plan of development or sale.
- 26 ***Person*** shall mean an individual, corporation, organization, governmental  
27 entity, business trust, partnership, association, or other legal entity, or an  
28 agent or an employee thereof.
- 29 ***Point source*** means any discernible and discrete conveyance, including but  
30 not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure,  
31 container, rolling stock, concentrated animal feeding operation, landfill  
32 leachate collection system, vessel or other floating craft from which pollutants

1 are or may be discharged. this term does not include return flows from  
2 irrigated agriculture or agricultural stormwater runoff.

3 *Pollutant* shall mean. but shall not be limited to, dredged soil, solid waste,  
4 incinerator residue, sewage, garbage, sewage sludge, filter backwash,  
5 munitions, chemical wastes, biological materials, radioactive materials,  
6 wrecked or discarded equipment, sediment, and other material, or any  
7 combination thereof, discharged into the MS4 or any water of the United  
8 States.

9 *Pollution* shall mean the alteration of the physical, chemical, or biological  
10 quality of, or the contamination of, any waters of the United States that  
11 renders the water harmful, detrimental or injurious to humans, animal life,  
12 vegetation, or property or to public health, safety, or welfare, or otherwise  
13 impairs the quality of the water.

14 *Stormwater* means stormwater runoff, snow melt runoff, and surface runoff  
15 and drainage.

16 *Stormwater discharge associated with industrial activity* means the discharge  
17 from any conveyance which is used for collecting and conveying stormwater  
18 and which is directly related to manufacturing, processing, or raw materials  
19 storage areas at an industrial plant (see 40 cfr 122.26(b)(14) for specifics of  
20 this definition).

21 *Stormwater engineer* means the individual who is responsible for enforcement  
22 of this ordinance as designated by the director of the department of municipal  
23 development.

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

26 *Structure* shall mean that which is built or constructed, an edifice or building  
27 of any kind, or any piece of work, including, but not limited to, a paved  
28 surface, that is artificially built up or composed of parts joined together in  
29 some definite manner. the term does not include a street, a channel, or a  
30 public utility.

31 *Structural control*, any structure built and maintained to prevent, reduce, or  
32 mitigate the potential of stormwater runoff contact with pollution-causing  
33 activities.

**Threat or Threatens** – means a person making a written or oral threat that is accompanied by a specific action to introduce a pollutant into the MS4.

## **Section 2. General Requirements**

(A) A person who owns an industrial facility or causes an illicit discharge is governed by this ordinance.

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

## **Section 3. Industrial Activity Certification**

At any facility with activity covered by the EPA's standard industrial codes that requires a multi-sector general permit, the operator shall submit to the city an industrial activity certification (IAC) when requested by the stormwater engineer. In addition, upon reasonable notice, the stormwater engineer may perform site inspections of these facilities. The IAC may include any one of the following:

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

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

(C) a copy of the notice of intent (NOI) for coverage under a multi-sector general permit for stormwater discharges associated with industrial activity issued by the EPA, or a copy of the "no exposure certification" submitted to EPA;

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

(E) A statement of commitment to file a NOI for coverage under a general permit for stormwater discharges associated with industrial activity issued by the EPA by a date certain agreed to by the stormwater engineer.

regulating the stormwater quality and prohibiting illicit discharges into the City's stormwater drainage facilities

## **Illicit Discharges and Connections**

1       Section 4.   Discharge to MS4 Prohibited

2   (A) A person commits an offense if the person attempts to introduce,  
3 introduces, or causes to be introduced into the MS4 any discharge that is not  
4 composed entirely of storm water except:

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

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

10   (3) Any nonprohibited discharge from an exempt parcel

11   (4) A discharge or flow resulting from firefighting by the fire department if  
12 that discharge is not reasonably expected to be a significant source of  
13 pollutants to the MS4;

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

16   (6) Rising ground waters;

17   (7) Ground water infiltration;

18   (8) Irrigation water from agricultural operations;

19   (9) Flows from riparian habitats and wetlands;

20   (10) Dechlorinated discharges of potable water; or

21   (11) Materials resulting from a spill where the discharge is necessary to  
22 prevent loss of life; personal injury, or property damage provided that the  
23 party responsible for the spill takes all reasonable steps to minimize or  
24 prevent any adverse effects to human health or the environment.

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

26   (B) Notwithstanding the exceptions above, no discharge shall be allowed if:

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

29   (2) Written notice of such determination has been provided to the discharger;  
30 and,

31   (3) The discharge has continued after the expiration of the time given in the  
32 notice to cease the discharge.

33       Section 5.   Express Prohibitions

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- 1 No person shall:
- 2 (A) Leave, accumulate, discharge, or allow animal waste on a publicly owned
- 3 property or on private property that will drain to the MS4;
- 4 (B) Allow any fluids from motor vehicles to drip or flow on public property or
- 5 in the MS4;
- 6 (C) Blow or cause dirt, leaves or other organic or inorganic material to leave
- 7 private property and be located on any public property or in the MS4;
- 8 (D) Allow sanitary sewer overflows from private property to enter publicly
- 9 owned property. Sanitary sewer overflows shall be contained to the property
- 10 of origin and the owner of the property shall bear the cost of proper disposal
- 11 and cleanup. Disposal and cleanup shall be initiated and completed as
- 12 expeditiously as possible, and in no case shall exceed 48 hours from the time
- 13 of detection.
- 14 (E) Allow sanitary sewer from private property to enter the MS4 through an
- 15 underground cross-connection of sanitary sewer pipe into storm sewer pipe.
- 16 Should such a cross-connection be detected, the owner of the property that is
- 17 the origin of the sanitary sewer discharge shall bear the cost of removing the
- 18 cross-connection. Proper permitting must be obtained prior to performing the
- 19 work.
- 20 (F) Allow any other non-authorized, non-stormwater discharge to enter the
- 21 MS4.

22 Section 6. Unpermitted Discharges Associated with Industrial Activity

23 Prohibited.

24 A person who is the owner or operator of an industrial facility that has

25 discharges associated with industrial activity as defined by federal regulations

26 must apply for and acquire an EPA Multi Sector General Permit. The owner or

27 operator shall notify the Stormwater Engineer of such application and any

28 federal notice of intent or notice of termination.

29 Compliance and Enforcement

30 Section 7. Compliance Monitoring: Methods

31 (A) At any facility that discharges stormwater to the MS4, the Stormwater

32 Engineer shall have the right to install, or to require the installation of, such

1 devices as are necessary to conduct sampling or metering of the discharger's  
2 operations at the expense of the City.

3 (B) The Stormwater Engineer may require any facility that is reasonable  
4 determined to have discharged, a pollutant or any substance that causes,  
5 continues to cause, or will cause pollution, to conduct specified sampling,  
6 testing, analysis, and other monitoring of its stormwater discharges. The  
7 Stormwater Engineer may specify the frequency and parameters or any  
8 required sampling or monitoring.

9 (C) The Stormwater Engineer may require any facility that has been found to  
10 have violated this ordinance to install monitoring equipment as necessary at  
11 the discharger's expense. The discharger, at its own expense, shall at all  
12 times maintain the facility's sampling and monitoring equipment in a safe and  
13 operating condition. Each device used to measure storm water flow and  
14 quality must be calibrated regularly to ensure accuracy. The Stormwater  
15 Engineer may also require monitoring of non-storm water discharges if the  
16 Stormwater Engineer reasonably believes that such discharges violate the  
17 City's MS4 permit requirements.

18 (D) Upon request of the Stormwater Engineer, a facility shall submit in writing  
19 the results of any sampling or monitoring undertaken pursuant to the  
20 requirements of this article.

21 (E) Facilities shall maintain the results of any monitoring and any supporting  
22 documentation undertaken pursuant to this Ordinance for three (3) years.

23 (F) All monitoring required by this Ordinance shall be performed in  
24 accordance with the established methodologies and protocols of the EPA or  
25 New Mexico Environmental Department.

#### 26 Section 8. Regulations and Forms Authorized

27 The Stormwater Engineer shall promulgate regulations and forms regarding  
28 compliance with the requirements of this article. Such regulations and forms  
29 shall be available at the office of the City Engineer, the office of the  
30 Stormwater Engineer; and on the City website. The regulations and forms  
31 established hereunder may be amended or supplemented from time to time.

#### 32 Section 9. Cumulative Effect

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

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

7 Section 10. Remedies Not Exclusive

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

11 Section 11. Access to Facilities and Records

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

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

32 (C) Any temporary or permanent obstruction to safe and easy access to a  
33 facility that is to be inspected or sampled must be promptly removed upon the



1 written request of the authorized City Official or Stormwater Engineer and may  
2 not be replaced. The cost of clearing access to the facility shall be borne by  
3 the discharger

4 (D) The Stormwater Engineer or any City police officer is hereby authorized  
5 to undertake the activities authorized by this section.

6 Section 12. Criminal Enforcement Provisions Provide

7 (A) The City may issue a Notice of Violation to any person who violates any  
8 provision of this article. The violator may be given an opportunity to respond  
9 to the Notice and propose corrective actions in a reasonable amount of time.

10 (B) If any person violates the provision of this article is guilty of a petty  
11 misdemeanor and upon conviction thereof, shall be punished by a fine of not  
12 less than \$250.00 nor more than \$500.00 and up to thirty (30) days in jail for  
13 each violation. Each day in which any violation shall occur shall constitute a  
14 separate offense. Prosecution or conviction under this section shall not  
15 preclude any civil remedy or relief for a violation of this article. Once cited for  
16 an offense, an additional citation may be issued for each day the violation  
17 continues unless the violator has entered into an agreement with the City for  
18 mitigation, correction, and any other necessary action and is acting in  
19 conformity with the agreement and the schedule in the agreement,.

20 (C) In addition to criminal prosecution, where applicable, the City shall have  
21 the right to seek the judicial remedies provided in section 18 of this Ordinance  
22 for any violation of this article.

23 Section 13. Civil Enforcement Provisions Applicable

24 (A) The City, acting through the City Attorney, is hereby authorized to file an  
25 action in a court of competent jurisdiction to:

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

28 (2) Enjoin the violation or threatened violation of the provisions of this  
29 Ordinance; or

30 (3) Recover civil penalties for violation of the terms, conditions and  
31 restrictions of this article;

32 (4) Recover civil penalties for violation of the provisions of this Ordinance; or

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

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

(C) The City's authority in subsections (A) and (B) in addition to all provisions of these Ordinances relative to the definition of offenses and the provision of penalties for violations of such offenses.

(D) Nothing in this Ordinance shall provide for a private cause of action.

#### Section 14. Severability

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

#### Section 15. Compilation

This ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, NM, 1994.

#### Section 16. Effective Date

This Ordinance shall take effect five days after publication by title and general summary.



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

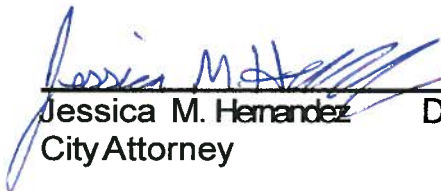
SUBJECT: Proposed Stormwater Quality Ordinance

Approved:

  
\_\_\_\_\_  
Robert J. Perry  
Chief Administrative Officer

4/19/16  
Date

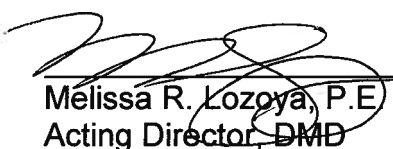
Approved as to Legal Form:

  
\_\_\_\_\_  
Jessica M. Hernandez  
City Attorney

4/12/16  
Date

Recommended:

GIP

  
\_\_\_\_\_  
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		\$ -	\$ -	\$ -	\$ -
<hr/>					
[ ] 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. Chung  
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.