



Legislation Text

File #: O-16-16, Version: 3

CITY of ALBUQUERQUE
TWENTY SECOND COUNCIL

COUNCIL BILL NO. C/S O-16-16 ENACTMENT NO. _____

SPONSORED BY: Trudy E. Jones, by request

ORDINANCE

C/S Adopting A Stormwater Quality Ordinance, Creating A New Article 11 To Chapter 6 Of The
Albuquerque Code Of Ordinances (Jones, by request)

ADOPTING A STORMWATER QUALITY ORDINANCE, CREATING A NEW ARTICLE 11 TO
CHAPTER 6 OF THE ALBUQUERQUE CODE OF ORDINANCES.

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

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

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

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

WHEREAS, enacting this ordinance will further comply with an unfunded federal mandate and
will reduce stormwater contaminants; and

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

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

Section 1. Chapter 6 ROA 1994 is amended to insert a new Article 11 "Storm Water Quality" as
follows:

§6-11-1 Short Title.

This Article shall be known as the “Storm Water Quality Ordinance”.

§6-11-2 DEFINITIONS

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

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

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

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

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

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

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

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

NPDES. The national pollutant discharge elimination system.

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

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

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

Point source. Any discernible and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal

feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

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

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

Stormwater. Rainwater runoff, snow melt runoff, and surface runoff and drainage.

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

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

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

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

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

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

§6-11-3 Stormwater Engineer. The Director of the Department of Municipal Development shall appoint a stormwater engineer who, once so appointed, is vested with the authority to enforce this

ordinance and all the other powers and duties as may be provided in this Stormwater Quality Ordinance.

§6-11-4 Applicability

(A) A person who owns an industrial facility or causes a 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 the owner of such parcel is subject to this ordinance unless the owner elects not to discharge any stormwater into the MS4.

§6-11-5 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. 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 regulating the stormwater quality and prohibiting illicit discharges into the MS4 issued by the EPA by a date certain agreed to by the stormwater engineer.

§6-11-6 Illicit Discharges and Connections.

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

(B) Violations. No person shall:

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

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

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

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

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

(6) Allow sanitary sewer from private property to enter the MS4 through an underground cross-connection of sanitary sewer pipe into storm sewer pipe. Should such a cross-connection be detected, the owner of the property that is the origin of the sanitary sewer discharge shall bear the cost of removing the cross-connection. Proper permitting must be obtained prior to performing the work;

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

(8) Continue a discharge if:

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

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

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

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

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

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

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

(4) Any discharge or flow resulting from firefighting by the fire department if that

discharge is not reasonably expected to be a significant source of pollutants to the MS4;

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

(6) Rising ground waters;

(7) Ground water infiltration;

(8) Irrigation water from agricultural operations;

(9) Flows from riparian habitats and wetlands;

(10) Dechlorinated discharges of potable water; or

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

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

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

§6-11-8 Compliance and Enforcement

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

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

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

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

calibrated regularly to ensure accuracy;

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

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

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

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

§6-11-9 Enforcement Provisions

(A) *Enforcement.*

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

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

(B) *Penalties.*

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

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

(a) Enjoin any person from violating or threatening to violate the terms, conditions

and restrictions of this article;

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

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

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

(e) 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.

(C) 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.

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

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

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

§6-11-12 Cumulative Effect

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

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

§6-11-13 Remedies Not Exclusive.

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

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

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

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

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

Section 2. Severability Clause. 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 3. Compilation. The ordinance set forth in Section 1 above shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

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

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