

DOÑA ANA COUNTY STORM WATER MANAGEMENT ORDINANCE

Section 1 Authority and Purpose.

This Ordinance is adopted in accordance with the authority granted by the New Mexico Water Quality Act and the United States Clean Water Act. Under the National Pollutant Discharge Elimination System (NPDES) established by the Clean Water Act (33 USC §1342), the County is required to obtain a permit for storm water discharges from its Municipal Separate Storm Sewer System (MS4). In 2007 the U.S. Environmental Protection Agency (EPA) issued an NPDES Final General Permit (Federal Register Volume 72, Number 113, Page 32654) for Small Municipal Separate Storm Sewer Systems in New Mexico under which the County has obtained permit authorization for its storm water discharges. The permit requires the County to adopt an ordinance that prohibits non-storm water discharges into the MS4 and requires construction site operators to control erosion, sediment and wastes.

The purpose of this Ordinance is to promote the elimination or reduction of pollutants that enter the MS4 and to establish control over discharges to and from the MS4. It shall also be the purpose of this Ordinance to:

- A. Maintain and improve the quality of surface water and groundwater within the County limits;
- B. Prevent the discharge of contaminated storm water runoff from industrial, commercial, residential, and construction sites into the MS4, channels, watercourses, water, and waters of the U.S.;
- C. Promote public awareness of the hazards involved in the improper discharge of hazardous substances, petroleum products, household hazardous waste, industrial waste, sediment from construction sites, and other contaminants into the MS4, channels, watercourses, water, and waters of the U.S.;
- D. Minimize destruction of the natural landscape by reducing erosion and sedimentation;
- E. Control the adverse impacts associated with accelerated storm water runoff on natural channels and watercourses and all MS4 structures due to increased development and creation of new impervious surfaces;
- F. Minimize erosion and degradation of channels and watercourses and improve their condition where possible;

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- G. Respect, protect, maintain, and restore natural channels and watercourses, wetlands, bosques, floodplains, steep slopes, riparian vegetation, and wildlife habitat areas;
- H. Facilitate compliance with state and federal standards and permits by owners and operators of construction sites;
- I. Enable the County to comply with all federal and state laws, regulations and permits applicable to storm water discharge; and
- J. Protect the health and welfare of and improve the quality of life for the citizens and residents of the County.

Section 2 Applicability.

This Ordinance shall apply to any human activity, operation and/or practices, or any condition caused by human activity, that results in a discharge to the MS4 or a channel, water course, water or waters of the U.S.

Section 3 Administration.

The Director of Public Works or designee shall administer and coordinate the implementation and enforcement of the provisions of this Ordinance.

Section 4 Duties and Responsibilities of Director of Public Works.

Duties and responsibilities of the Director of Public Works or designee shall include, but are not limited to the following:

- A. Be the guardian of the MS4, including but not limited to dams, detention and retention basins, storm drains, outlet, pumping stations, channels, watercourses, water, and waters of the U.S. within the County;
- B. Maintain and hold open for public inspection all records pertaining to the provisions of this Ordinance;
- C. Review and approve or disapprove Storm Water Pollution Prevention Plans (SWPPP) required by this Ordinance;
- D. Supervise the operation and maintenance of the MS4 to ensure its safe and effective functioning and notify the appropriate staff of any required maintenance and/or repair work;
- E. Establish and implement a program to locate and eliminate illicit discharges and improper disposals to the MS4; and

- F. Establish and implement a program to control pollutants in storm water discharges from construction activities.

Section 5 Definitions.

- A. For the purpose of this Ordinance, the following words shall have the meaning set forth in this Section. The following terms, when used in this Ordinance, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning.

B. TERMS

1. AGRICULTURAL STORM WATER RUNOFF: Any storm water runoff from orchards, cultivated crops, pastures, range lands, and other non-point source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 CFR Section 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 CFR Section 122.24.
2. APPROVE, APPROVED OR APPROVAL: Approve, approved, or approval, when used in the context of the County approving a SWPPP, only means the County accepts the SWPPP as meeting the minimum requirements of this Ordinance. No other representation shall be implied.
3. BEST MANAGEMENT PRACTICES (BMPs): Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to the MS4 and waters of the U.S. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
4. BMPs: See Best Management Practices.
5. CERTIFIED PROFESSIONAL IN EROSION AND SEDIMENT CONTROL: a Certified Professional in Erosion and Sediment Control (CPESC).
6. CFR: See Code of Federal Regulations.
7. CHANNEL: A natural or artificial watercourse, including arroyos, streams, swales, ditches and diversions with a definite

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bed and banks that conveys flowing water continuously or periodically.

8. CLEAN WATER ACT: The Federal Water Pollution Control Act originally enacted in 1948, amended numerous times, including substantial amendments called the Federal Water Pollution Control Act Amendments of 1972 and the Water Quality Act of 1987, and other subsequent amendments collectively known as the Clean Water Act (CWA). The CWA establishes the basic structure for regulating discharges of pollutants into the waters of the U.S. and regulating quality standards for surface waters.
9. CLEARING: The removal of surface vegetation without disturbance of the root system.
10. CODE OF FEDERAL REGULATIONS: The codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government. All references to "CFR" are to specific Parts, Sections, Tables, or Appendices of the Code of Federal Regulations, as amended.
11. COMMENCEMENT OF CONSTRUCTION ACTIVITIES: The initial disturbance of soils associated with clearing, grading, or excavating activities or other construction-related activities (e.g. stockpiling of fill material).
12. COMMON PLAN OF DEVELOPMENT: A construction activity that is completed in separate stages, separate phases, or in combination with other construction activities. A common plan of development (also known as a "common plan of development or sale") is identified by the documentation for the construction project that identifies the scope of the project and may include plats, construction drawings, marketing plans, contracts, building permits, a public notice or hearing, zoning requests, or similar documentation and activities.
13. CONSTRUCTION ACTIVITY: Any activity that:
 - a. Disturbs equal to or greater than one (1) acre of total land area; or
 - b. Disturbs less than one (1) acre of total land area but is part of a larger common plan of development that will ultimately disturb equal to or greater than one (1) acre of

area (For example, construction of a single-family residence on one lot in a subdivision where the developer and all builders combined will disturb one acre or more); or

- c. Disturbs at least 5000 square feet but less than one (1) acre of total land area and is for a non-residential development.

The following land disturbing activities shall be included in calculating the area disturbed by a construction activity:

- a. Off-site extensions of utilities and roads to serve the development being constructed; and
- b. Batch plants, borrow areas, spoil areas and contractor laydown and parking areas that are used solely to support the construction activity and do not support multiple construction activities for which a separate NPDES permit would be required.

Construction activity does not include routine maintenance that is performed to maintain the original line, grade, hydraulic capacity, or original purpose of the site.

- 14. CONTAMINATED: Containing a harmful quantity of pollutant.
- 15. CPESC: See Certified Professional in Erosion and Sediment Control.
- 16. CWA: See Clean Water Act.
- 17. DETENTION BASIN (DETENTION POND): A water-storage facility that gradually releases water by means of an outlet with the goals of controlling peak discharge and providing gravity settling of pollutants.
- 18. DEVELOPMENT: An activity involving property improvement and, usually, a change in land use character and storm water runoff characteristics.
- 19. DISCHARGE: Any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the MS4, channels, watercourses, water, or waters of the U.S.

20. DISCHARGER: Any person who causes, allows, permits, or is otherwise responsible for, a discharge, including, without limitation, any operator of a construction site.
21. DISTURBED AREA: An area of land where the soil surface is or will be altered by grading, leveling, scraping, cut and fill activities, excavation, brush and timber clearing, grubbing and construction vehicle operations and/or movement.
22. DOMESTIC SEWAGE: Human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences free from industrial waste, to include commercial enterprise.
23. ENVIRONMENTAL PROTECTION AGENCY: The United States Environmental Protection Agency, the regional office thereof, any federal department, agency, or commission that may succeed to the authority of the EPA, and any duly authorized official of EPA or such successor agency.
24. EPA: See Environmental Protection Agency.
25. EROSION: The dislodging and transport of soil particles, or mass movement of soil (mass wasting), by water, wind, gravity or other mechanical means.
26. EROSION AND SEDIMENT CONTROL PLAN: A plan indicating the specific measures and sequencing to be used controlling sediment and erosion on a development site both before, during and after construction.
27. EROSION CONTROL: Measures that prevent, reduce, or mitigate erosion.
28. EXTREMELY HAZARDOUS SUBSTANCE: Any substance listed in the Appendices to 40 CFR Part 355, Emergency Planning and Notification.
29. FINAL STABILIZATION: Means that:
 - a. All soil disturbing activities at the site have been completed and either of the following two criteria is met:

- (1) A uniform (e.g. evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures; or
 - (2) Equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
- b. Or, all soil disturbing activities at the site have been completed and all of the following criteria have been met:
- (1) Temporary erosion control measures (e.g. degradable erosion control product) are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years without active maintenance;
 - (2) Temporary erosion control measures are selected, designed, and installed to achieve 70 percent vegetative cover within three years;
 - (3) The NMED Surface Water Quality Bureau is notified by submitting the information required in the NPDES Construction General Permit Conditions Applicable to the State of New Mexico; and
 - (4) The temporary erosion control measures are inspected and properly maintained a minimum of once per year and in accordance with the NPDES Construction General Permit Conditions Applicable to the State of New Mexico until the criteria of Subsection a (above) for final stabilization has been met.
- c. Since the County is in an arid area, the 70 percent coverage criteria is adjusted as follows: if the native vegetation covers 50 percent of the ground, 70 percent of 50 percent ($0.70 \times 0.50 = 0.35$) would require 35 percent total cover for final stabilization.
- d. For individual lots in residential construction, final stabilization means that either:

- (1) The homebuilder has completed final stabilization as described in Subsections a, b, and c above; or
 - (2) The homebuilder has established temporary stabilization, including perimeter controls for an individual lot, prior to occupation of the home by the homeowner and informs the homeowner of the need for and benefits of final stabilization.
- e. For construction projects on land used for agricultural purposes (e.g. pipelines across crop or range land, staging areas for road construction, etc.), final stabilization may be accomplished by returning the land to its preconstruction agricultural use. Disturbed areas that were not previously used for agricultural activities, such as buffers strips immediately adjacent to open channels, watercourses, water, or waters of the U.S., and areas that are not being returned to their preconstruction agricultural use must meet the final stabilization criteria in the above Subsections.
- 30. FIRE DEPARTMENT: The County Fire Marshal or Fire Services Department, or any duly authorized representative thereof.
 - 31. GARBAGE: Animal and vegetable waste resulting from the handling, storage, sale, preparation, cooking and serving of foods.
 - 32. GRADING: An excavation, fill or combination thereof, including clearing and grading.
 - 33. GRUBBING: The removal of stumps and roots.
 - 34. HARMFUL QUANTITY: For purposes of this Ordinance, discharges of any substance in a quantity determined to be harmful to the public health, public welfare, or the environment. To include discharges of such products of sufficient quantity to:
 - a. Violate applicable water quality standards;
 - b. Cause a film or sheen upon or discoloration of the surface of the water or bordering ground or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining banks;

- c. Cause any damage to the MS4;
 - d. Interfere with the operation of the MS4, such as sediment.
35. HAZARDOUS SUBSTANCE: Any substance designated as hazardous in 40 CFR Part 302.4.
 36. HAZARDOUS WASTE: Any substance identified or listed as a hazardous waste by the EPA in 40 CFR Part 261.
 37. HOUSEHOLD HAZARDOUS WASTE (HHW): Any material generated in a household (including single and multiple residences, hotels and motels, bunk houses, ranger stations, crew quarters, camp grounds, picnic grounds, and day use recreational areas) by a consumer which, except for the exclusion provided in 40 CFR Section 261.4(b) (1), would be classified as a hazardous waste under 40 CFR Part 261.
 38. ILLICIT DISCHARGE: Any discharge to the MS4 that is not composed entirely of storm water, except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the MS4) and discharges resulting from fire fighting activities.
 39. MINIMIZE: Means reduce and/or eliminate to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of best industry practice, as established in the NPDES Construction General Permit and Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category (40 CFR Part 450, published in Federal Register, Vol. 74, No. 229, page 62996 on December 1, 2009).
 40. MOTOR VEHICLE FLUID: Any vehicle crankcase oil, antifreeze, transmission fluid, brake fluid, differential lubricant, gasoline, diesel fuel, gasoline/alcohol blend, and any other fluid used in a motor vehicle.
 41. MS4: See Municipal Separate Storm Sewer System
 42. MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): The system of conveyances (including roads with drainage systems, municipal streets, flood control dams, retention and detention basins, grate and/or curb inlets, curbs, gutters, ditches,

man-made channels, arroyos, agriculture drains, storm drains or designated flow paths) owned, operated or controlled by the County and designed or used for collecting or conveying storm water, and which is not used for collecting or conveying sewage.

43. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM: The permitting system established by the Clean Water Act for all discharges to waters of the U.S. and administered by the EPA.
44. NEW MEXICO ENVIRONMENT DEPARTMENT (NMED): The state department that is responsible for promoting a safe, clean and productive environment through implementing environmental programs and regulations within the State of New Mexico.
45. NMED: See New Mexico Environment Department.
46. NOI: See Notice of Intent
47. NOT: See Notice of Termination
48. NOTICE OF INTENT (NOI): The document that must be filed with EPA, when required, for the construction general permit.
49. NOTICE OF TERMINATION (NOT): The document that must be filed with EPA, when required, for the construction general permit.
50. NPDES: See National Pollutant Discharge Elimination System.
51. NPDES GENERAL PERMIT FOR STORM WATER DISCHARGES FROM CONSTRUCTION SITES (OR NPDES CONSTRUCTION GENERAL PERMIT): is the permit issued by the EPA under the authority of the CWA to regulate the discharge of pollutants from construction activities. The permit is revised and reissued by the EPA at regular intervals. Construction Site Operators obtain authorization under the permit to discharge storm water from their construction activity by preparing a Storm Water Pollution Prevention Plan and submitting a Notice of Intent to the EPA.
52. NPDES PERMIT: A permit issued by EPA (or by the state under authority delegated pursuant to 33 USCS Section 1342

(b)) that authorizes the discharge of pollutants to waters of the U.S., whether the permit is applicable to an individual, group, or general basis.

53. OPERATOR: In general, the person operating a facility or activity that is subject to this Ordinance. In the context of storm water discharges from construction activities, any and all persons associated with a construction project that meet either of the following two criteria;
- a. The person has operational control over construction plans and specifications (including the ability to make modifications to those plans and specifications), typically but not always the owner or developer of the project; or
 - b. The person has the day-to-day operational control of those activities at a construction project that are necessary to ensure compliance with a Storm Water Pollution Prevention Plan for the site or other permit conditions (e.g. they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions), typically but not always the contractor.

For a construction activity, the Operator may be one person that meets both of the above criteria or may be two persons, each of which meets one of the above criteria.

54. OWNER: The person who owns a facility or activity or part of a facility or activity that is subject to this Ordinance.
55. PERMIT: Any duly authorized permit for construction issued by the County or any authorization that includes soil disturbance.
56. PERSON: Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns or individual who has control over day to day activities. This definition includes all federal, state, and local governmental entities.
57. PETROLEUM PRODUCT: A product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol blended fuels,

aviation gasoline, kerosene distillate fuel oil, and No. 1 and No. 2 diesel.

58. PETROLEUM STORAGE TANK (PST): Any one, or combination of, aboveground or underground storage tanks that contain petroleum products and any connecting underground pipes.
59. PHASING: A construction BMP that is sequencing construction activities to disturb areas of the site, on parcels of land in distinct areas of the project, with the stabilization of each area before the disturbing the next.
60. POLLUTANT: Generally, any substance introduced into the environment that adversely affects the usefulness of a resource or the health of humans, animals or ecosystems. Pollutants may be, but are not limited to dredged spoil, solid waste, incinerator residue, sewage, garbage, rubbish, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, dirt, and industrial, municipal, and agricultural waste discharged into water. The term "pollutant" does not include tail water or runoff water from irrigation or storm water runoff from cultivated or uncultivated range land, pasture land, and farm land.
61. POLLUTION: The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.
62. PROFESSIONAL ENGINEER: A person who has been duly licensed and registered by the State Board of Licensure for Professional Engineers to engage in the practice of engineering in the state of New Mexico.
63. PST: See Petroleum Storage Tank.
64. QUALIFIED PERSONNEL: Persons who possess the appropriate competence, skills, and ability (as demonstrated by sufficient education, training, experience, and, when applicable, any required certification or licensing) to perform a specific activity in a timely and complete manner consistent with the

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applicable regulatory requirements and generally-accepted industry standards for such activity.

65. RCRA: See Resource Conservation and Recovery Act.
66. RELEASE: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the MS4, channels, watercourses, water, or the waters of the U.S. or onto the ground that is not authorized by an NPDES or RCRA permit.
67. REPORTABLE QUANTITY (RQ): For any "hazardous substance," the quantity established and listed in Table 302.4 of 40 CFR Part 302 and for any "extremely hazardous substance," the quantity established in 40 CFR Part 355 and listed in Appendix A thereto.
68. RESOURCE CONSERVATION AND RECOVERY ACT (RCRA): The congressional Act under which the Environmental Protection Agency issues rules, regulations and permits to address municipal, industrial, hazardous, medical and special wastes and underground storage tanks that store petroleum or certain chemical products.
69. RETENTION BASIN (OR RETENTION POND): A water-storage facility that has no outlet for storm events with a 100-year return period or more frequent.
70. RUBBISH: Solid waste, excluding food waste and ashes, from homes, institutions and workplaces.
71. RUNOFF: Water from rain, snowmelt or irrigation that flows over the land surface and does not infiltrate into the ground.
72. SANITARY SEWER (OR SEWER): The system of pipes, conduits, and other conveyances which carry waste sewage to a sewage treatment plant (and to which storm water, surface water, and groundwater are not intentionally admitted).
73. SEPTIC TANK WASTE: Any domestic sewage removed from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.
74. SEWAGE (OR SANITARY SEWAGE): The waste that is discharged into sanitary sewer systems and flows to a sewage treatment plant for treatment.

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- 75. SHALL: A term that means an action is mandatory.
- 76. SITE: The land or water area where any facility or activity is physically located or conducted, including land used in connection with the facility or activity such as borrow pits and storage areas and may include land adjacent to the site when utilized by the operator.
- 77. SOLID WASTE: Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including, solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, from community and institutional activities.
- 78. STOP WORK ORDER: An order issued by the County that requires all construction or building activity on a site be halted.
- 79. STORM DRAIN: A system and series of pipes (separate from sanitary sewers) used to convey runoff from precipitation that falls on buildings and land surfaces.
- 80. STORM WATER (OR STORM WATER RUNOFF): Precipitation runoff, snow melt runoff, and surface runoff and drainage.
- 81. STORM WATER POLLUTION PREVENTION PLAN (SWPPP): A document required by the NPDES Construction General Permit and which describes and ensures the implementation of controls and practices to reduce the pollution resulting from construction activity.
- 82. SWPPP: See Storm Water Pollution Prevention Plan.
- 83. TEMPORARY (OR INTERIM) STABILIZATION: Means a condition where exposed soils or disturbed areas are provided a protective cover or other structural controls to prevent the erosion of soil when construction has halted for at least fourteen days and is anticipated to resume at some time in the future.
- 84. UNCONTAMINATED: Not containing a harmful quantity of any pollutant.
- 85. USED MOTOR OIL: Any oil that has been refined from crude oil or synthetic oil that, as a result of use, storage, or handling,

has become unsuitable for its original purpose because of impurities or the loss of original properties. It may be suitable for other use and is recyclable in compliance with state and federal law.

- 86. WATERCOURSE: A permanent, intermittent or occasional river, arroyo, stream, creek or other depression, either natural or man-made, having definite limits and evidence of the gathering and conveying surface water.

- 87. WATER IN THE STATE (OR WATER): Any groundwater, percolating or otherwise, lakes, ponds, impounding reservoirs, springs, rivers, canals, streams, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state. This includes dry washes or arroyos.

- 88. WATERS OF THE UNITED STATES: Also called "waters of the U.S." All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce including all waters which are subject to the ebb and flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the U.S. under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters within the federal definition of "waters of the United States", at 40 CFR Section 122.2, including the Rio Grande, dry washes, arroyos, but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water Act.

- 89. WATER QUALITY STANDARD: The designation of a body or segment of surface water in the state for desirable uses and the narrative and numerical criteria deemed by the EPA to be necessary to protect those uses.

- 90. WETLAND: An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated

soil conditions. Wetland generally includes swamps, marshes, bogs, and similar areas.

91. YARD WASTE: Leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

Section 6 General Prohibitions.

- A. No person shall introduce or cause to be introduced into the MS4, channels, watercourse, water, or waters of the U.S. within the County any discharge that is not composed entirely of storm water.
- B. It is an affirmative defense to any enforcement action for violation of Subsection A of this Section that the discharge was composed entirely of one or more of the following categories of discharges:
1. A discharge authorized by and in full compliance with an NPDES permit (other than the NPDES permit for discharges from the MS4);
 2. A discharge resulting from emergency firefighting activities;
 3. Agricultural storm water runoff;
 4. A discharge from water line flushing, but not including discharge from a water line disinfected by super chlorination or other means, unless it contains no harmful quantity of chlorine or any other chemical used in line disinfection;
 5. A discharge from residential lawn watering, residential landscape irrigation, or crop irrigation water;
 6. A discharge from a diverted stream flow or natural spring;
 7. A discharge from uncontaminated pumped groundwater or rising groundwater;
 8. Uncontaminated groundwater infiltration (as defined in 40 CFR Section 35.2005 (20)) to the MS4;
 9. Uncontaminated discharge from a foundation drain, crawl space pump, footing drain, or sump pump;

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10. A discharge from a potable water source not containing any pollutant or material from the cleaning or draining of a storage tank or other container;
 11. A discharge from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant;
 12. A discharge from individual residential vehicle washing;
 13. An uncontaminated discharge from riparian habitat or wetland;
 14. A discharge from water used in street washing provided that the water is not contaminated with a pollutant or cleaning substance; or
 15. A discharge of de-chlorinated swimming pool water.
- C. No affirmative defense shall be available under Subsection B of this Section if the discharge or flow in question has been determined by the County to be a source of a pollutant or pollutants to the MS4, channels, watercourses, water, or waters of the U.S. and written notice of such determination has been provided to the discharger.
- D. The burden of proof that a discharge was composed entirely of one or more of the categories in Subsection B and that it was not a source of a pollutant or pollutants to the MS4, channels, watercourses, water, or waters of the U.S. is upon the person responsible for the discharge.

Section 7 Specific Prohibitions and Requirements.

- A. The specific prohibitions and requirements in this Section are within but do not limit the general prohibition of all the discharges prohibited by the general prohibitions in Section 6.
- B. No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the County to violate a water quality standard, the County's NPDES permit, or any state or federal issued discharge permit for discharges from the County's MS4.
- C. No person shall release or cause, allow, or permit the introduction of any of the following substances into the MS4 or the channels, watercourses, water or groundwater within the jurisdiction of the County:

1. Any used motor oil, antifreeze, hydraulic fluid, or any other motor vehicle fluid;
2. Any industrial waste or wastewater;
3. Any hazardous waste, including household hazardous waste;
4. Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
5. Any wastewater from a commercial carwash facility, and from any commercial vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility;
6. Any wastewater from the commercial washing, cleaning, de-icing, or other maintenance of aircraft;
7. Any wastewater from a commercial mobile power washer or from the washing or other cleaning of building a exterior where the wastewater contains any soap, detergent, degreaser, solvent, other cleaning substance, or a pollutant from the surface that is being cleaned, or that has been produced by wash water applied at pressures elevated above the distribution system pressure, or that is at a temperature that has been elevated by induced heating;
8. Any wastewater from commercial floor, rug, or carpet cleaning;
9. Any wastewater from the wash down or other cleaning of pavement that contains any soap, detergent, degreaser, solvent, other cleaning substance, or a pollutant from the surface that is being cleaned, or that has been produced by wash water applied at pressures elevated above the distribution system pressure, or that is at a temperature that has been elevated by induced heating; or any wastewater from the wash down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all quantities of such released material have been previously removed;
10. Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blow down from a boiler;

11. Any ready-mixed concrete, mortar, ceramic, asphalt base material, hydro mulch material, or soil stabilizers, or runoff from the cleaning of commercial vehicles or equipment containing, or used in transporting or applying, such material;
 12. Any contaminated filter backwash from a swimming pool, fountain, or spa;
 13. Any fountain, swimming pool, or spa water that is chlorinated (containing 0.1 milligrams/liter or more chlorine when tested with a standard pool chlorine test kit) or contains pollutants, to include any filter backwash water;
 14. Any discharge from water line disinfected by super chlorination or other means, if it contains any harmful quantity of chlorine or any other chemical used in line disinfection;
 15. Any water from a water curtain in a spray room used for painting vehicles or equipment;
 16. Any contaminated runoff from a vehicle wrecking yard;
 17. Any substance or material that will damage, block, or clog the MS4;
 18. Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by a leaking PST, or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge complies with all state and federal standards and requirements;
 19. Any garbage, rubbish, yard waste, or other floatable material;
 20. Any runoff, wash-down or other discharge from an animal pen, kennel, or fowl or livestock containment area, unless the discharge is authorized by an NPDES permit for a Concentrated Animal Feeding Operation; or
 21. Any rubble, debris, tile, concrete, brick, asphalt or other building material.
- D. No person shall introduce or cause to be introduced into the MS4, channels, watercourses, water or waters of the U.S. any quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities, or associated with land filling or other placement or disposal of soil, rock, or other earth

materials, in excess of what could be retained on site or captured by employing sediment and erosion control measures to the maximum extent practicable under prevailing circumstances.

- E. No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4, or allow such a connection to continue.
- F. Parking lot storm drain inlets shall be maintained free of garbage, rubbish, yard waste, and other debris. Such material removed from the inlets shall be disposed of in a container and shall not be allowed to enter the MS4.

Section 8 Release Reporting and Cleanup.

- A. The person operating any facility, vehicle, or other source of spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, dumping, disposing, or any other release of any of the following quantities of any of the following substances that may flow, leach, enter, or otherwise be introduced into the MS4, channels, watercourses, water, or waters of the U.S., shall notify the Mesilla Valley Regional Dispatch Center at (575) 526-0795, or 911 within 24 hours and the County Public Works Department and the County's Flood Commission on the next business day:
 - 1. An amount equal to or in excess of a reportable quantity of any hazardous substance, as established in 40 CFR Part 302;
 - 2. An amount equal to or in excess of a reportable quantity of any extremely hazardous substance, as established under 40 CFR Part 355;
 - 3. An amount of oil that either (a) violates applicable water quality standards, or (b) causes a film or discoloration of the surface of the water or a bordering ground or causes a sludge or emulsion to be deposited beneath the surface of the water or upon a bordering ground; or
 - 4. Any harmful quantity of any pollutant as defined in Section 5.
- B. The immediate notification required by Subsection A of this Section shall include the following information:
 - 1. The identity or chemical name of the substance released, chemical classification, and whether the substance is an extremely hazardous substance;

2. The exact location of the release, including any known name of the waters involved or threatened and any other environmental media affected;
3. The time and duration (thus far) of the release;
4. An estimate of the quantity and concentration (if known) of the substance released;
5. The source of the release;
6. Any known or anticipated health risks associated with the release and, where appropriate, advice regarding medical attention that may be necessary for exposed individuals;
7. Any precautions that should be taken as a result of the release;
8. Any steps that have been taken to contain and clean up the released material and minimize its impacts; and
9. The names and telephone numbers of the person or persons to be contacted for further information.

C. Within fourteen days following such release, the person operating the facility, vehicle, or other source of the release shall submit a written report to the County Public Works Department containing each of the items of information specified above in Subsection B of this Section, as well as the following additional information:

1. The ultimate duration, concentration, and quantity of the release;
2. All actions taken to respond, contain, and clean up the released substances, and all precautions taken to minimize the impacts;
3. Any known or anticipated acute or chronic health risks associated with the release;
4. Where appropriate, advice regarding medical attention necessary for exposed individuals;
5. The identity of any governmental/private sector representatives responding to the release; and
6. The measures taken or to be taken by the responsible person(s) to prevent similar future occurrences.

- D. Any release report required by a state or federal authority containing the information described in Subsections B and C of this Section shall be adequate to meet the reporting requirements of Subsection C of this Section upon submittal to the County.
- E. The notifications required by Subsections B, C, and D of this Section shall not relieve the responsible person of any expense, loss, damage, or other liability which may be incurred as a result of the release, including any liability for damage to the County, to natural resources, or to any other person or property; nor shall such notification relieve the responsible person of any fine, penalty, or other liability which may be imposed pursuant to this Ordinance or to state or federal law.
- F. Any person responsible for any release as described in Subsection A of this Section shall comply with all state, federal, and any other local law requiring reporting, cleanup, containment and any other appropriate remedial action in response to the release.
- G. Any person responsible for a release described in Subsection A of this Section shall reimburse the County for any cost incurred by the County in responding to the release, within thirty days of being invoiced by the County.

Section 9 Storm Water Discharges from Construction Activities.

Except for small construction activities with the waiver described in Subsection 9.K, all operators of a construction activity shall prepare a Storm Water Pollution Prevention Plan (SWPPP) for review and approval by the County. In cases where more than one person meets the definition of Operator, the persons may cooperate to prepare and implement a single, comprehensive SWPPP for the entire construction site and all phases of construction activity. The SWPPP shall be submitted to the County a minimum of 30 days prior to any land disturbance. For Subdivision Plans, a SWPPP must be included with the Final Subdivision Plan submittal. The County will review a SWPPP submittal or re-submittal and either accept it or provide a written notice of deficiencies within 30 days of the County receiving the SWPPP.

- A. **Contents of the SWPPP.** The SWPPP shall be in accordance with the requirements for a SWPPP, the effluent limits, and the conditions applicable to the State of New Mexico in the NPDES General Permit for Stormwater Discharges from Construction Activities that is effective at the time the SWPPP is submitted to the County for review. The Site Map (sometimes referred to as an Erosion and Sediment Control Plan) required by the NPDES Construction General Permit shall consist of drawings that are a minimum of 11" x 17" and sealed

by a Professional Engineer in the State of New Mexico or a Certified Professional in Erosion and Sediment Control. At a minimum, the SWPPP shall contain but is not limited to the following:

1. Name, address, phone number, fax number, e-mail address and SWPPP responsibilities of all Operators using the SWPPP;
2. Name, address, phone number, fax number, and e-mail address of the property owner(s);
3. Site map;
4. Sequence and timing of activities that disturb soil, including phasing to minimize the amount of area disturbed at one time;
5. Delineation and fencing or other protective measures for existing vegetation and natural resources to be preserved;
6. Controls to minimize the disturbance of natural channels and watercourses and steep slopes;
7. Controls to minimize water and wind erosion during construction;
8. Controls to minimize sediment discharges in storm water runoff during construction;
9. Pollution prevention measures to minimize the discharge of pollutants from on-site materials and wastes, including but not limited to concrete truck washout, water from equipment and vehicle washing, wheel wash water, washout of stucco or paint, any other wash water, fuels, oils, other equipment and vehicle maintenance fluids, chemicals, building materials, building products, construction wastes, rubbish, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and spills and leaks;
10. Controls to minimize off-site vehicle tracking of sediment onto paved surfaces;
11. Sediment basins and/or turbidity treatment processes for drainage locations that serve an area with 10 or more acres disturbed at one time, as required by the NPDES Construction General Permit;

12. Temporary and permanent outlet structures and velocity dissipation devices at storm water discharge locations to protect against erosive velocities during and after construction;
 13. Practices to stabilize all disturbed areas, including off-site areas that were disturbed in support of the construction activity, when construction activity is completed (final stabilization) or has halted (temporary stabilization) and will not resume within fourteen calendar days;
 14. Controls to remove suspended soil particles and other pollutants in water discharged from dewatering activities, including discharges from dewatering of trenches and excavations;
 15. Using soil loss prediction models or equivalent generally accepted soil loss prediction tools, documentation that implementation of the site specific practices in the SWPPP will result in sediment yields and flow velocities that, to the maximum extent practicable, will not be greater than the sediment yield levels and flow velocities from pre-construction, pre-development conditions.
 16. Inspection and maintenance procedures for Best Management Practices and other control measures; and
 17. Signature and certification of each Operator using the SWPPP, in accordance with the NPDES Construction General Permit requirements for who is authorized to sign and certify for the Operator.
- B. **SWPPP Inspection.** Qualified personnel (provided by the operator of the construction site) shall inspect all disturbed areas of the construction site that are not stabilized and areas used for storage of materials that are exposed to precipitation at the frequency required in the NPDES Construction General Permit and its Permit Conditions for the State of New Mexico. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the MS4, channels, watercourses, water or waters of the U.S. Erosion and sediment control measures identified in the SWPPP shall be observed by the operator to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters or the MS4. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking. A

report shall be prepared for each inspection and maintained with the SWPPP.

- C. **SWPPP Maintenance.** BMPs and other controls shall be maintained in effective operating condition. If inspections described in Subsection 9.B identify BMPs that are not operating effectively, the BMPs shall be repaired or replaced within fourteen days and before the next storm event whenever practicable. Sediment shall be removed from sediment traps, silt fence, sedimentation basins, and other sediment controls before it reaches half the height of the control or reduces the control capacity by 50%, or more frequently if specified in the SWPPP or by the control's manufacturer.

- D. **Stabilization.** Within fourteen days of stopping or completing construction activities, the construction site operator shall initiate stabilization in accordance with this Ordinance and the NPDES Construction General Permit. Temporary stabilization measures may be used if construction activity is anticipated to resume in the future. If temporary stabilization measures are used, inspection and maintenance requirements remain in effect until the criteria for final stabilization are met, regardless of whether construction activity resumes. A Notice of Termination (Subsection 9.H) will not be accepted by the County unless final stabilization is implemented.

If the construction project is completed, the final stabilization shall meet the requirements in this Ordinance and the NPDES Construction General Permit, including the Permit Conditions for the State of New Mexico.

Temporary stabilization measures in the SWPPP shall be appropriate for and include, but are not limited to, the following:

1. Size of the disturbed area;
2. Soil type and susceptibility to wind and water erosion;
3. Slope steepness and slope stability;
4. Conveyance of storm water runoff around or through the site without causing erosion on the site or downstream;
5. Velocity dissipaters and other protection for temporary discharge points to prevent erosion and damage to the downstream MS4, channel, or watercourse;

6. Effective life of temporary stabilization measures in comparison to length of time the disturbed area is anticipated to be without construction activity; and
7. Inspection and maintenance procedures, at least monthly, to ensure effectiveness of the stabilization measures until construction resumes or final stabilization is established.

Final stabilization measures in the SWPPP shall be appropriate for and include, but are not limited to, the following:

1. Soil type and susceptibility to wind and water erosion;
2. Slope steepness and its effect on erosion potential;
3. Structural measures to provide slope stability for any cut/fill slope or natural slope disturbed by construction that is steeper than three horizontal on one vertical;
4. Permanent structures to convey storm water around and across slopes in a non-erosive manner;
5. For vegetative stabilization methods using live plantings (e.g. landscaping), inspection and maintenance procedures until stabilization is established and shown to be effective in satisfying the criteria for final stabilization;
6. For vegetative stabilization methods using seed, (Refer to "Final Stabilization" in Definitions Section),
 - a. Temporary controls (turf reinforcement mats, erosion control blankets, etc.) with a minimum life of three years to stabilize the surface until establishment of vegetation;
 - b. Seed mix appropriate for the climate and soil conditions;
 - c. Soil amendments and fertilizers as appropriate for soil conditions;
 - d. Annual (at a minimum) inspection and maintenance procedures until criteria for final stabilization are met; and
 - e. An inspection report form in accordance with the Permit Conditions for the State of New Mexico in the NPDES Construction General Permit;

- 7. For individual lots transferring from a developer or builder to a homeowner,
 - a. Perimeter controls in good, effective condition; and
 - b. Copy of the letter to be given to the homeowner informing the homeowner of the need for and benefits of final stabilization.

- E. **SWPPP Revisions.** The SWPPP shall be revised to provide different or additional controls whenever a control is determined by the operator or County to be ineffective in controlling its targeted pollutant.

- F. **Notice of Intent (NOI).** All operators of construction activities shall submit to the County a copy of the signed NOI and EPA's acknowledgement of its receipt at least seven (7) calendar days before commencing any soil disturbing activities at the construction site. A copy of the completed NOI must also be posted conspicuously near the main entrance of the construction site. For linear projects, the NOI must be posted at a publicly accessible location near the active part of the construction project.

- G. **Operator Changes.** When the construction activity operator changes, the new operator shall submit a revised SWPPP, signed certification statement, and a copy of the NOI to the County before starting work at the site.

- H. **Notice of Termination (NOT):** All operators that submitted an NOI for construction activities shall submit to the County a copy of the signed NOT within 30 days of one of the following conditions:
 - 1. Final stabilization has been achieved on all portions of the site for which the operator is responsible;
 - 2. BMPs and other controls are in place and have passed to another operator who has submitted an NOI and SWPPP to the County, in accordance with the NPDES Construction General Permit and Sections 9.F and 9.G of this Ordinance;
 - 3. Coverage under an individual or alternative general NPDES permit has been obtained; or
 - 4. For residential construction only, the operator has established temporary stabilization, including perimeter controls of the individual lot, the lot has been transferred to the homeowner,

and the operator has given the homeowner written notification of the need for and benefits of final stabilization.

The County will not accept a NOT without evidence of one of the above conditions.

- I. **Appeal.** An operator who submits a SWPPP for County review and approval under this Ordinance and is denied approval may administratively appeal a decision of the Director of Public Works to the Board of County Commissioners. The appeal shall be initiated by filing a written notice of appeal with the Director of Public Works within ten (10) working days from the date of the final written determination by the Director of Public Works. The notice of appeal shall cite the factual basis for the appeal and the relief sought, and shall be accompanied by relevant supporting documents and any required fee. The Board of County Commissioners may affirm, reverse, or modify the decision of the Director of Public Works.
- J. **SWPPP and Permit Denial.** The County may deny approval of a SWPPP if it does not meet the requirements of this Ordinance or the NPDES Construction General Permit in effect at the time the SWPPP is submitted to the County. In addition, the County may deny approval of any County building permit, grading permit, subdivision plat, site development plan, or any other County permit, inspection or approval necessary to commence or continue construction, or to assume occupancy, in the absence of an approved SWPPP required by this Ordinance, or whenever Best Management Practices, controls and stabilization measures described in a SWPPP, or observed upon a site inspection, are determined not to control and minimize erosion, the discharge of sediment, or other materials and pollutants associated with the construction activities.
- K. **Waivers.** If the construction activity qualifies for an EPA waiver of the NPDES Construction General Permit (Refer to http://www.epa.gov/npdes/pubs/construction_waiver_form.pdf) and is for a residential development, the County may waive the requirements of this Ordinance Section; however, the construction site must still comply with the General and Specific Prohibitions. Specifically, the operator must ensure no harmful substances are introduced into the MS4, channels, watercourses, water, or waters of the U.S. It is the operator's sole responsibility to meet the requirements of the EPA waiver. To qualify for the County waiver of this Section, the operator must submit a copy of the EPA Waiver Certification and acknowledgement of its receipt by EPA to the County for review and acceptance. The County reserves the right to require the construction activity to have a SWPPP even if an EPA waiver is obtained. If the operator fails to meet the conditions of a

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waiver, the operator shall be required to immediately comply with this Section. Failure to do so will constitute a knowing violation of this Section.

- L. **Fees.** A Schedule of Fees reasonably calculated to help defray the costs of administering and enforcing this Ordinance may be established and adopted by Resolution of the Board of County Commissioners of Doña Ana County. A Schedule of Fees may include, but shall not be limited to, a fee for reviewing and processing a SWPPP.

Section 10 Authority to Pursue Administrative Remedies.

Administrative remedies may be pursued by a law enforcement officer, a code enforcement officer of the County, or any employee or employees of the County authorized to enforce this Ordinance. An administrative remedy will be pursued before the criminal or other remedies specified in Section 11 are pursued.

- A. **Warning Notice.** The County may serve a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this Subsection shall require the County to issue a Warning Notice prior to taking any action, including emergency action or any other enforcement action. Issuance of a Warning Notice shall not be a bar against taking any other action against any responsible party.
- B. **Notice of Violation.** The County may serve a written Notice of Violation. Within seven calendar days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention of reoccurrence thereof, to include specific required actions, shall be submitted by the alleged violator to the County. If the alleged violator denies that any violation occurred and/or contends that no corrective action is necessary, an explanation of the basis of any such denial or contention shall be submitted to the Director within seven calendar days of receipt of the notice. Submission of an explanation and/or plan in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this Subsection shall require the County to issue a Notice of Violation prior to taking any action, including emergency action or any other enforcement action. Issuance of a Notice of Violation shall not be a bar against taking any other action against any responsible party.

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C. **Compliance Orders.** When the County finds that any person has violated, continues to violate, or threatens to violate, any provision of this Ordinance, or any order issued hereunder, the County may issue an order to the violator directing that the violator come into compliance within a specified time limit, prior to commencement or continuance of operation, or immediately. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the MS4, channels, watercourses, water, and waters of the U.S. A compliance order may not extend the deadline for compliance established by a state or federal standard or requirement, nor does a compliance order relieve the person of liability for any violation, including any continuing violation. Nothing in this Subsection shall require the County to issue a Compliance Order prior to taking any action, including emergency action or any other enforcement action. Issuance of a compliance order shall not be a bar against taking any other action against any responsible party.

D. **Remediation, Abatement, and Restoration Orders.** When the County finds that a person has violated, or continues to violate, any provision of this Ordinance, or any order issued hereunder, and that such violation has adversely affected the MS4, channels, watercourses, water, or the waters of the U.S., the County may issue an order to the violator directing him/her to undertake and implement any appropriate action to remediate and/or abate any adverse effects of the violation upon the MS4, channels, watercourses, water, or the waters of the U.S., and/or to restore any part of the MS4, channels, watercourses, water, or the waters of the U.S. Such remedial, abatement, and restoration action may include, but not be limited to: monitoring, assessment, and evaluation of the adverse effects and determination of the appropriate remedial, abatement, and/or restoration action; confinement, removal, cleanup, treatment, and disposal of any discharged or released pollution or contamination; prevention, minimization, and/or mitigation of any damage to the public health, welfare, or the environment that may result from the violation; restoration or replacement of County property or natural resources damaged by the violation. The order may direct that the remediation, abatement, and/or restoration be accomplished on a specified compliance schedule and/or be completed within a specified period of time. An order issued under this Subsection does not relieve the violator of liability for any violation, including any continuing violation. Nothing in this Subsection shall require the County to issue an Order under this Subsection prior to taking any action, including emergency action or any other enforcement action. Issuance of an order under this Subsection shall not be a bar against taking any other action against any responsible party.

- F. **Stop Work Orders.** Whenever the County finds that any operator of a construction site has violated, threatens to violate, or continues to violate, any provision of Section 9 of this Ordinance, or any order issued hereunder, the County may issue a Stop Work Order to the operator, and require that a copy of the Stop Work Order be posted at the construction site and distributed to all County departments and divisions whose decisions affect any activity at the site. Unless express written exception is made by the County, the Stop Work Order shall prohibit any further construction activity, or any commencement of construction activity, at the site and shall bar any further inspection or approval by the County associated with a building permit, grading permit, or any other County approval necessary to commence or continue construction or to assume occupancy at the site. Nothing in this Subsection shall require the County to issue a Stop Work Order prior to taking any action, including emergency action or any other enforcement action. Issuance of a Stop Work Order shall not be a bar against taking any other action against any responsible party .

The County shall re-inspect the construction site within three County business days of being notified that corrective actions to remedy the problems have been implemented.

Section 11 Criminal Penalties and Other Remedies.

- A. In this Section "violation of this Ordinance" means any of the following:
1. Doing an act that is prohibited, or made or declared unlawful, an offense, or a misdemeanor by this Ordinance or by rule or regulation authorized by this Ordinance;
 2. Failure to perform an act that is required to be performed by this Ordinance or by rule or regulation authorized by this Ordinance; or
 3. Failure to perform an act if the failure is prohibited, or made or declared unlawful, an offense or a misdemeanor by this Ordinance or by rule or regulation authorized by this Ordinance.
- B. In this Section "violation of this Ordinance" does not include the failure of a County officer or a County employee to perform an official duty unless it is specifically provided that failure to perform the duty is to be punished as provided in this Section.
- C. Any person convicted of a violation of this Ordinance shall be punished by a fine not exceeding \$300.00, imprisonment for a term not exceeding 90 days, or by both such fine and imprisonment. Each

violation of a provision of this Ordinance shall constitute a separate offense, and each day an offense continues shall be considered a new violation for purposes of enforcing this Ordinance.

- D. The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise, or other administrative actions or equitable relief.
- E. Violations of this Ordinance that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent the granting of equitable relief.

Section 12 Authority to Issue Criminal Citations.

Prosecution of violations under this Ordinance may be commenced by the issuance of a criminal citation charging the violation. Citations may be issued by a law enforcement officer, a code enforcement officer of the County, or any employee or employees of the County authorized by the Board of County Commissioners to issue such citations.

Section 13 Severability

If any part of this Ordinance is found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, the remainder of the Ordinance shall remain in full force and effect.

APPROVED AND ADOPTED this 27TH day of APRIL, 2010.

BOARD OF COUNTY COMMISSIONERS OF
DOÑA ANA COUNTY, NEW MEXICO

[Signature]
Oscar Vasquez Butler, Chair, District 1 For/ Against

[Signature]
Dolores Saldana-Caviness, Vice-Chair, District 2 For/ Against

[Signature]
Karen G. Perez, District 3 For/ Against

[Signature]
Scott Krahling, District 4 For/ Against

[Signature]
Leticia Duarte Benavidez, District 5 For/ Against



ATTEST:

[Signature]
Lynn Ellis
County Clerk

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**APPENDIX A
ACRONYMS**

BMP	Best Management Practice
CFR	Code of Federal Regulations
CPESC	Certified Professional in Erosion and Sediment Control
CWA	Clean Water Act
EPA	United States Environmental Protection Agency
MS4	Municipal Separate Storm Sewer System
NMED	New Mexico Environment Department
NOI	Notice of Intent
NOT	Notice of Termination
NPDES	National Pollutant Discharge Elimination System
PST	Petroleum Storage Tank
RCRA	Resource Conservation and Recovery Act
RQ	Reportable Quantity
SWPPP	Storm Water Pollution Prevention Plan
USC	United States Code

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LAS CRUCES SUN-NEWS

PROOF OF PUBLICATION

I, being duly sworn, Lou Hendren deposes and says that he is the Advertising Manager of the Las Cruces Sun-News, a newspaper published daily in the county of Dona Ana, State of New Mexico; that the notice 43404 is an exact duplicate of the notice that was published once a week/day in regular and entire issue of said newspaper and not in any supplement thereof for 1 consecutive week(s)/day(s), the first publication was in the issue dated February 28th, and the last publication was February 28th, 2010.

Despondent further states this newspaper is duly qualified to publish legal notice or advertisements within the meaning of Sec. Chapter 167, Laws of 1937.

Signed

[Signature]
Advertising Manager
Official Position

STATE OF NEW MEXICO

ss.

County of Dona Ana

Subscribed and sworn before me this

03 day of March 2010

[Signature]

Notary Public in and for

Dona Ana County, New Mexico

September 15, 2013

My Term Expires



OFFICIAL SEAL
ADOLPH NOTTA
NOTARY PUBLIC - STATE OF NEW MEXICO

My commission expires: 9-15-13

NOTICE OF PUBLIC HEARING

On February 23, 2010, the Board of County Commissioners of Doña Ana County directed that a public hearing be conducted at a regularly scheduled Commission meeting on Tuesday, March 23, 2010, at 9:00 a.m. on the question of whether to adopt a Storm Water Management Ordinance, as summarized below. The public hearing will be held at the Doña Ana County Government Center located at 845 N. Motel Blvd., Las Cruces, New Mexico. Should you require special accommodations as a result of a disability, please contact County ADA Coordinator at 525-5884 (voice), 525-5951 (TTY), or write to ADA Coordinator, 845 N. Motel Blvd., Las Cruces, New Mexico 88007.

Title of the proposed Ordinance: Storm Water Management Ordinance.

General Summary: The proposed Ordinance is authorized by the New Mexico Water Quality Act and the Federal Clean Water Act. Under the National Pollutant Discharge Elimination System (NPDES) established by the Federal Clean Water Act, the County is required to obtain a permit for storm water discharges from its Municipal Separate Storm Sewer System (MS4). The permit requires the County to adopt an ordinance regulating non-storm water discharges into the Municipal Separate Storm Sewer System (MS4), and requiring construction site operators to control erosion, sediment,

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LAS CRUCES SUN-NEWS

and wastes. The contents of the proposed ordinance are as follows:

- Section 1. Authority and Purpose
- Section 2. Applicability
- Section 3. Administration
- Section 4. Duties and Responsibilities of Director of Public Works
- Section 5. Definitions
- Section 6. General Prohibitions
- Section 7. Specific Prohibitions and Requirements
- Section 8. Release, Reporting, and Cleanup
- Section 9. Storm Water Discharges from Construction Activities
- Section 10. Authority to Issue Administrative Remedies
- Section 11. Criminal Penalties and Other Remedies
- Section 12. Authority to Issue Criminal Citations
- Section 13. Severability

A copy of the proposed ordinance is available for inspection at the Office of the County Clerk, Doña Ana County Government Center, 845 N. Motel Blvd, Las Cruces, New Mexico during regular business hours.

Pub No. 43404
Pub Date: February 28, 2010

Recorded 04/28/2010 DAC



COUNTY OF DONA ANA)
STATE OF NEW MEXICO) ss

ORDINANCE/DAC
PAGES: 36

I Heraby Certify That This Instrument Was Filed for Record On The 28TH Day Of April, 2010 at 09:21:08 AM And Was Duly Recorded as Instrument #1010424 Of The Records Of Dona Ana County

Deputy *Shuella* Witness My Hand And Seal Of Office
Lynn J. Ellins
County Clerk, Dona Ana, NM