

# TCEQ Interoffice Memorandum

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**To:** Mary Smith, General Counsel

**Thru:** *MBC* Melissa Cordell, Interim Deputy Director  
Enforcement Division

**From:** *MP* Michael Parrish, Team Leader  
Special Functions Team

**Date:** October 27, 2022

**Subject:** **Backup Revision**  
**November 2, 2022 Commission Agenda**  
Draft Item No. 12 - Midway Water Utilities, Inc.  
Docket No. 2021-0904-IWD-E

Enclosed please find the following:

**Executive Summary:**

- Page 2, Violation Information: Correct typographical error under permitted effluent limitations.

Please do not hesitate to call Michael Parrish at (512) 239-2548 if you have any questions regarding this matter.

cc: Garrett Arthur, Public Interest Counsel  
Melissa Schmidt, Public Interest Counsel  
Gill Valls, Office of General Counsel  
Katherine McKenzie, Agenda Coordinator, Litigation Division  
Melissa Cordell, Interim Deputy Director, Enforcement Division  
Kristy Deaver, Manager, Water Section, Enforcement Division  
Rebecca Margain-Nunez, Executive Assistant, Enforcement Division  
Cheryl Thompson, Water Section, Enforcement Division

**Executive Summary – Enforcement Matter – Case No. 61027  
Midway Water Utilities, Inc.  
RN102328515  
Docket No. 2021-0904-IWD-E**

***Violation Information***

Failed to comply with permitted effluent limitations for pH, total suspended solids, total dissolved solids, **and** *Escherichia coli*, ~~and~~ [30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121(a)(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002789000, Effluent Limitations and Monitoring Requirements Nos. 1 and 2, for Outfall Nos. 001 and 201].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to, within 130 days, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0002789000, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Cheryl Thompson, Enforcement Division, Enforcement Team 1, MC R-04, (817) 588-5865; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

**Respondent:** Jeffrey McIntyre, President, Midway Water Utilities, Inc., 1620 Grand Avenue Parkway, Suite 140, Pflugerville, Texas 78660

**Respondent's Attorney:** N/A

**Executive Summary – Enforcement Matter – Case No. 61027**  
**Midway Water Utilities, Inc.**  
**RN102328515**  
**Docket No. 2021-0904-IWD-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

IWD

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Double Diamond dba The Cliffs Resort, 922 State Highway 16 South, Graford,  
Palo Pinto County

**Type of Operation:**

Wastewater treatment facility

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** May 6, 2022

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$21,200

**Amount Deferred for Expedited Settlement:** \$4,240

**Total Paid to General Revenue:** \$16,960

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - Satisfactory

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** January 2021

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** May 12, 2021

**Date(s) of NOE(s):** June 23, 2021

**Executive Summary – Enforcement Matter – Case No. 61027  
Midway Water Utilities, Inc.  
RN102328515  
Docket No. 2021-0904-IWD-E**

***Violation Information***

Failed to comply with permitted effluent limitations for pH, total suspended solids, total dissolved solids, *Escherichia coli*, and [30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121(a)(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002789000, Effluent Limitations and Monitoring Requirements Nos. 1 and 2, for Outfall Nos. 001 and 201].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to, within 130 days, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0002789000, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Cheryl Thompson, Enforcement Division, Enforcement Team 1, MC R-04, (817) 588-5865; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

**Respondent:** Jeffrey McIntyre, President, Midway Water Utilities, Inc., 1620 Grand Avenue Parkway, Suite 140, Pflugerville, Texas 78660

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

<b>DATES</b>	<b>Assigned</b>	6-Jul-2021	<b>Screening</b>	9-Jul-2021	<b>EPA Due</b>	
	<b>PCW</b>	19-Jul-2021				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Midway Water Utilities, Inc.
<b>Reg. Ent. Ref. No.</b>	RN102328515
<b>Facility/Site Region</b>	4-Dallas/Fort Worth
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	61027	<b>No. of Violations</b>	3
<b>Docket No.</b>	2021-0904-IWD-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Cheryl Thompson
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$13,250
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	60.0%	Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	\$7,950
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Notes: Enhancement for eight months of self-reported effluent violations and one order containing a denial of liability.

<b>Culpability</b>	No	0.0%	Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0%	Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$2,647  
 Estimated Cost of Compliance: \$25,000  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$21,200
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: [Empty box]

<b>Final Penalty Amount</b>	\$21,200
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$21,200
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<b>DEFERRAL</b>	20.0%	Reduction	<b>Adjustment</b>	-\$4,240
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$16,960
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Screening Date 9-Jul-2021

Docket No. 2021-0904-IWD-E

PCW

Respondent Midway Water Utilities, Inc.

Policy Revision 5 (January 28, 2021)

Case ID No. 61027

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN102328515

Media Water Quality

Enf. Coordinator Cheryl Thompson

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	8	40%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgments or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 60%

#### >> Repeat Violator (Subtotal 3)

No

**Adjustment Percentage (Subtotal 3)** 0%

#### >> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

**Adjustment Percentage (Subtotal 7)** 0%

#### >> Compliance History Summary

Compliance History Notes

Enhancement for eight months of self-reported effluent violations and one order containing a denial of liability.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 60%

#### >> Final Compliance History Adjustment

**Final Adjustment Percentage \*capped at 100%** 60%

Screening Date 9-Jul-2021

Docket No. 2021-0904-IWD-E

PCW

Respondent Midway Water Utilities, Inc.

Policy Revision 5 (January 28, 2021)

Case ID No. 61027

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN102328515

Media Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1), Tex. Water Code § 26.121(a)(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002789000, Effluent Limitations and Monitoring Requirements Nos. 1 and 2, Outfall No. 001

Violation Description Failed to comply with permitted effluent limitations, as shown in the attached effluent violation table.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants that do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 3

274 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$11,250

Three quarterly events are recommended for the quarters containing the months of July, August, September, October, November, and December 2020 and January, February, and March 2021.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$11,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,647

Violation Final Penalty Total \$18,000

This violation Final Assessed Penalty (adjusted for limits) \$18,000

# Economic Benefit Worksheet

**Respondent** Midway Water Utilities, Inc.  
**Case ID No.** 61027  
**Reg. Ent. Reference No.** RN102328515  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$25,000	31-Jul-2020	12-Sep-2022	2.12	\$2,647	n/a	\$2,647

**Notes for DELAYED costs**

Estimated delayed cost to determine the cause of noncompliance, make the necessary repairs/adjustments to the Facility, and achieve compliance with the permitted effluent limitations. The Date Required is the end date of the first month of noncompliance, and the Final Date is the estimated date of compliance.

### Avoided Costs

#### ANNUALIZE avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$25,000

**TOTAL**

\$2,647



**Screening Date** 9-Jul-2021 **Docket No.** 2021-0904-IWD-E **PCW**  
**Respondent** Midway Water Utilities, Inc. *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 61027 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN102328515  
**Media** Water Quality  
**Enf. Coordinator** Cheryl Thompson

**Violation Number** 2  
**Rule Cite(s)** 30 Tex. Admin. Code § 305.125(1), Tex. Water Code § 26.121(a)(1), and TPDES Permit No. WQ0002789000, Effluent Limitations and Monitoring Requirements No. 1, Outfall No. 201  
**Violation Description** Failed to comply with permitted effluent limitations, as shown in the attached effluent violation table.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				5.0%
	Potential		x		

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0.0%

**Matrix Notes** Human health or the environment will or could be exposed to significant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment** \$23,750

\$1,250

**Violation Events**

Number of Violation Events 1 30 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

**Violation Base Penalty** \$1,250

One quarterly event is recommended for the quarter containing the month of September 2020.

**Good Faith Efforts to Comply** 0.0% Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

**Notes** The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal** \$1,250

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$0 **Violation Final Penalty Total** \$2,000

**This violation Final Assessed Penalty (adjusted for limits)** \$2,000

# Economic Benefit Worksheet

**Respondent** Midway Water Utilities, Inc.  
**Case ID No.** 61027  
**Reg. Ent. Reference No.** RN102328515  
**Media** Water Quality  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See Economic Benefit Worksheet for Violation No. 1.

### Avoided Costs

**ANNUALIZE avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$0

**TOTAL** \$0

**Screening Date** 9-Jul-2021 **Docket No.** 2021-0904-IWD-E **PCW**  
**Respondent** Midway Water Utilities, Inc. *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 61027 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN102328515  
**Media** Water Quality  
**Enf. Coordinator** Cheryl Thompson

**Violation Number** 3  
**Rule Cite(s)** 30 Tex. Admin. Code § 305.125(1), Tex. Water Code § 26.121(a)(1), and TPDES Permit No. WQ0002789000, Effluent Limitations and Monitoring Requirements No. 1, Outfall No. 201  
**Violation Description** Failed to comply with permitted effluent limitations, as shown in the attached effluent violation table.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				3.0%
	Potential			x	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0.0%

**Matrix Notes** Human health or the environment will or could be exposed to insignificant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment** \$24,250

\$750

**Violation Events**

Number of Violation Events 1 151 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$750

One single event is recommended.

**Good Faith Efforts to Comply** 0.0% Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

**Notes** The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal** \$750

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$0 **Violation Final Penalty Total** \$1,200

**This violation Final Assessed Penalty (adjusted for limits)** \$1,200

# Economic Benefit Worksheet

**Respondent** Midway Water Utilities, Inc.  
**Case ID No.** 61027  
**Reg. Ent. Reference No.** RN102328515  
**Media** Water Quality  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See Economic Benefit Worksheet for Violation No. 1.

### Avoided Costs

**ANNUALIZE avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$0

**TOTAL** \$0

Midway Water Utilities, Inc.  
 TPDES Permit No. WQ0002789000  
 Docket No. 2021-0904-IWD-E  
 Case No. 61027

Effluent Violation Table								
Monitoring Period	Outfall No. 001			Outfall No. 201				
	pH	Total Dissolved Solids		<i>Escherichia coli</i>		pH	Total Suspended Solids	
	Daily Minimum Limit = 6 SU	Daily Avg. Conc. Limit = 2000 mg/L	Daily Max. Conc. Limit = 2500 mg/L	Daily Avg. Conc. Limit = 126 CFU/100	Daily Max. Conc. Limit = 399 CFU/100	Daily Minimum Limit = 6 SU	Daily Avg. Conc. Limit = 20 mg/L	Daily Max. Conc. Limit = 45 mg/L
July 2020	c	2877	3208	c	c	c	c	c
August 2020	c	2680	2980	c	c	c	c	c
September 2020	c	3261	3727	485	2420	c	c	64
October 2020	c	3304	3444	c	c	c	c	c
November 2020	5.07	2637	3324	c	c	5.4	c	c
December 2020	5.4	2161	2688	c	c	5.4	55.17	93
January 2021	c	2497	2672	c	c	c	36.29	54
February 2021	c	2643	2840	c	c	c	33.18	56
March 2021	c	2214	c	c	c	c	47.65	68

Max. = maximum  
 milliliters  
 Avg. = average  
 SU = standard units

CFU/100 = colony forming units per 100  
 Conc. = Concentration  
 c = compliant  
 mg/L = milligrams per liter

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# Compliance History Report

Compliance History Report for CN600663579, RN102328515, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

**Customer, Respondent, or Owner/Operator:** CN600663579, Midway Water Utilities, Inc. **Classification:** SATISFACTORY **Rating:** 2.92

**Regulated Entity:** RN102328515, DOUBLE DIAMOND DBA THE CLIFFS RESORT **Classification:** SATISFACTORY **Rating:** 17.00

**Complexity Points:** 7 **Repeat Violator:** NO

**CH Group:** 14 - Other

**Location:** 922 State Highway 16 South, Graford, Palo Pinto County, Texas

**TCEQ Region:** REGION 04 - DFW METROPLEX

**ID Number(s):**

**WASTEWATER LICENSING** LICENSE WQ0002789000 **WASTEWATER PERMIT** WQ0002789000  
**WASTEWATER EPA ID** TX0099015

**Compliance History Period:** September 01, 2016 to August 31, 2021 **Rating Year:** 2021 **Rating Date:** 09/01/2021

**Date Compliance History Report Prepared:** December 16, 2021

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** December 16, 2016 to December 16, 2021

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** Cheryl Thompson

**Phone:** (817) 588-5865

**Site and Owner/Operator History:**

- 1) Has the site been in existence and/or operation for the full five-year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

**Components (Multimedia) for the Site Are Listed in Sections A - J**

**A. Final Orders, court judgments, and consent decrees:**

- 1 Effective Date: 08/04/2020 ADMINORDER 2019-1178-IWD-E (1660 Order-Agreed Order With Denial)
  - Classification: Major
  - Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 305, SubChapter F 305.125(5)
  - Rqmt Prov: WQ0002789000 PERMIT
  - Description: Failure to prevent the unauthorized discharge of wastewater.
  - Classification: Major
  - Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 305, SubChapter F 305.125(5)
  - Rqmt Prov: WQ0002789000 PERMIT
  - Description: Failure to provide notification of any noncompliance which may endanger human health or safety, or the environment.

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**

Item 1	December 19, 2016	(1391942)			
Item 2	January 23, 2017	(1398548)	Item 20	February 19, 2019	(1563871)
Item 3	February 20, 2017	(1405455)	Item 21	March 19, 2019	(1563872)
Item 4	April 12, 2017	(1419034)	Item 22	April 18, 2019	(1573219)
Item 5	June 13, 2017	(1426681)	Item 23	May 07, 2019	(1586045)
Item 6	August 29, 2017	(1444917)	Item 24	July 16, 2019	(1594567)
Item 7	November 13, 2017	(1457380)	Item 25	August 19, 2019	(1600867)
Item 8	November 14, 2017	(1457383)	Item 26	September 17, 2019	(1607784)
Item 9	November 20, 2017	(1462823)	Item 27	October 18, 2019	(1614646)
Item 10	December 19, 2017	(1469242)	Item 28	November 19, 2019	(1620436)
Item 11	February 07, 2018	(1488122)	Item 29	December 19, 2019	(1627787)
Item 12	May 18, 2018	(1502001)	Item 31	January 20, 2020	(1635414)
Item 13	June 19, 2018	(1509116)	Item 32	March 18, 2020	(1648545)
Item 14	August 20, 2018	(1521478)	Item 33	April 20, 2020	(1654896)
Item 15	September 18, 2018	(1528663)	Item 34	May 20, 2020	(1661460)
Item 16	October 16, 2018	(1534991)	Item 35	June 12, 2020	(1667989)
Item 17	November 20, 2018	(1542845)	Item 36	September 17, 2021	(1767741)
Item 18	December 19, 2018	(1546587)	Item 37	October 15, 2021	(1778307)
Item 19	January 16, 2019	(1563873)			

**E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

- 1 Date: 12/31/2020 (1716524)  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter
- 2 Date: 01/31/2021 (1729604)  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter
- 3 Date: 02/28/2021 (1729605)  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter
- 4 Date: 03/31/2021 (1729606)  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter
- 5 Date: 04/30/2021 (1742100)  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter
- 6 Date: 05/31/2021 (1748276)  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet the limit for one or more permit parameter

7 Date: 06/30/2021 (1753049)  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

8 Date: 07/31/2021 (1758455)  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

**F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
MIDWAY WATER UTILITIES,  
INC.  
RN102328515**

§  
§  
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§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2021-0904-IWD-E**

**I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Midway Water Utilities, Inc. (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a wastewater treatment facility located at 922 State Highway 16 South in Graford, Palo Pinto County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$21,200 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$16,960 of the penalty and \$4,240 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order. The deferred amount shall be waived only upon full compliance with all the terms and conditions contained in this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms or requirements contained in this Order, the Executive Director may demand payment of all or part of the deferred penalty amount.
5. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). Any notice and procedures, which might otherwise be authorized or

required in this action, are waived in the interest of a more timely resolution of the matter.

6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Order.
7. This Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.

## **II. ALLEGATIONS**

During a record review conducted on May 12, 2021, an investigator documented that the Respondent failed to comply with permitted effluent limitations, in violation of 30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121(a)(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002789000, Effluent Limitations and Monitoring Requirements Nos. 1 and 2, for Outfall Nos. 001 and 201, as shown in the effluent violation table below:

Effluent Violation Table								
Monitoring Period	Outfall No. 001			Outfall No. 201				
	pH	Total Dissolved Solids		<i>Escherichia coli</i>		pH	Total Suspended Solids	
	Daily Minimum Limit = 6 SU	Daily Avg. Conc. Limit = 2000 mg/L	Daily Max. Conc. Limit = 2500 mg/L	Daily Avg. Conc. Limit = 126 CFU/100	Daily Max. Conc. Limit = 399 CFU/100	Daily Minimum Limit = 6 SU	Daily Avg. Conc. Limit = 20 mg/L	Daily Max. Conc. Limit = 45 mg/L
July 2020	c	2877	3208	c	c	c	c	c
August 2020	c	2680	2980	c	c	c	c	c
September 2020	c	3261	3727	485	2420	c	c	64
October 2020	c	3304	3444	c	c	c	c	c
November 2020	5.07	2637	3324	c	c	5.4	c	c
December 2020	5.4	2161	2688	c	c	5.4	55.17	93
January 2021	c	2497	2672	c	c	c	36.29	54
February 2021	c	2643	2840	c	c	c	33.18	56
March 2021	c	2214	c	c	c	c	47.65	68

Max. = maximum  
Conc. = Concentration  
c = compliant  
mg/L = milligrams per liter

CFU/100 = colony forming units per 100 milliliters  
Avg. = average  
SU = standard units

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph No. 4. The payment of this penalty and the Respondent's compliance with all of the requirements set forth in this Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Midway Water Utilities, Inc., Docket No. 2021-0904-IWD-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The Respondent shall, within 130 days after the effective date of this Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0002789000, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall include detailed supporting documentation including photographs, receipts, or other records to demonstrate compliance with the permitted effluent limitations. The certification shall be signed by the Respondent and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

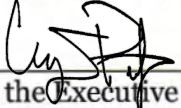
3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively,

the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

9. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

### SIGNATURE PAGE

#### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

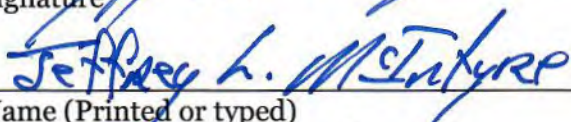
_____ For the Commission	_____ Date
 _____ For the Executive Director	9/14/2022 _____ Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this Order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

_____ Signature	_____ Date
 _____ Name (Printed or typed) Authorized Representative of Midway Water Utilities, Inc.	August 12, 2022 _____ President Title

If mailing address has changed, please check this box and provide the new address below:

**Instructions:** Send the original, signed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Ordering Provision 1 of this Order.