

**Executive Summary – Enforcement Matter – Case No. 62097**  
**El Paso Water Utilities Public Service Board**  
**RN103870341**  
**Docket No. 2022-0310-MWD-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

**Media:**

MWD

**Small Business:**

No

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

El Paso Water Utilities Northwest WWTP, 701 Executive Center Boulevard, El Paso, El Paso County

**Type of Operation:**

Wastewater treatment facility with an associated wastewater collection system

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

**Texas Register Publication Date:** July 21, 2023

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$2,016,000

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

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

Payment Plan: N/A

**Supplemental Environmental Project (“SEP”) Conditional Offset:** \$2,016,000

Name of SEP: Wastewater Discharge Remediation Project (Compliance)

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - Satisfactory

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** January 2021

***Investigation Information***

**Complaint Date(s):** August 13, 2021, August 24, 2021, and August 27, 2021

**Complaint Information:** Alleged unauthorized discharge of 350,000 gallons of raw sewage, 450,000 gallons of raw sewage, and 310,000 gallons of raw sewage.

**Date(s) of Investigation:** December 10, 2021

**Date(s) of NOE(s):** December 17, 2021

**Executive Summary – Enforcement Matter – Case No. 62097**  
**El Paso Water Utilities Public Service Board**  
**RN103870341**  
**Docket No. 2022-0310-MWD-E**

***Violation Information***

Failed to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state [30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121(a)(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010408009, Permit Conditions Nos. 2.d and 2.g].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Respondent implemented the following corrective measures:

- a. Ceased the unauthorized discharge near 1045 Sunland Park Drive by September 3, 2021;
- b. Ceased the unauthorized discharge near 3817 Constitution Drive by September 17, 2021;
- c. Ceased the unauthorized discharge near 3820 Constitution Drive by September 17, 2021;
- d. Ceased the unauthorized discharge near 4134 Doniphan Drive, and resulting diversion of raw sewage from the wastewater collection system into the storm sewer system, thence into the Rio Grande River by January 10, 2022;
- e. Properly cleaned and disinfected the areas around the location of the SSOs located at:
  - i. 1045 Sunland Park Drive by June 21, 2022; and
  - ii. 4134 Doniphan Drive by December 2022.
- f. Cleaned and disinfected the area along the Rio Grande from upstream of the Doniphan outfall to the American Dam, including removal and transport of impacted material from the Rio Grande flood plain, by June 4, 2022.
- g. Cleaned and disinfected the American Canal from the American Dam to the temporary bypass pumps by April 27, 2022.
- h. Completed the Wastewater Discharge Remediation SEP by December 22, 2022; and
- i. By April 17, 2023, the Respondent submitted documentation demonstrating the areas located at 3817 and 3820 Constitution Drive were cleaned and disinfected.

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**Technical Requirements:**

The Order will require the Respondent to implement and complete a SEP (see SEP Attachment A).

***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

**TCEQ SEP Coordinator:** Adena Crider, SEP Coordinator, Litigation Division, MC 175, (512) 239-0648

**Respondent:** John E. Balliew, President and Chief Executive Officer, El Paso Water Utilities Public Service Board, 1154 Hawkins Boulevard, El Paso, Texas 79925

**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 PCW</b>	20-Dec-2021	<b>Screening</b>	23-Dec-2021	<b>EPA Due</b>	
		4-Oct-2022				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	El Paso Water Utilities Public Service Board
<b>Reg. Ent. Ref. No.</b>	RN103870341
<b>Facility/Site Region</b>	6-El Paso
<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	62097	<b>No. of Violations</b>	4
<b>Docket No.</b>	2022-0310-MWD-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Steven Van Landingham
		<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>	\$1,800,000
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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>	12.0%	Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	\$216,000
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Notes: Enhancement for two months of self-reported effluent violations and one NOV with dissimilar violations.

<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: \$269,662  
 Estimated Cost of Compliance: \$7,343,434  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$2,016,000
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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:

<b>Final Penalty Amount</b>	\$2,016,000
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$2,016,000
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<b>DEFERRAL</b>	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	\$2,016,000
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**Screening Date** 23-Dec-2021

**Docket No.** 2022-0310-MWD-E

**PCW**

**Respondent** El Paso Water Utilities Public Service Board

*Policy Revision 5 (January 28, 2021)*

**Case ID No.** 62097

*PCW Revision February 11, 2021*

**Reg. Ent. Reference No.** RN103870341

**Media** Water Quality

**Enf. Coordinator** Steven Van Landingham

### 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> )	2	10%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	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)** 12%

**>> 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 two months of self-reported effluent violations and one NOV with dissimilar violations.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 12%

**>> Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** 12%

**Screening Date** 23-Dec-2021 **Docket No.** 2022-0310-MWD-E **PCW**  
**Respondent** El Paso Water Utilities Public Service Board *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 62097 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN103870341  
**Media** Water Quality  
**Enf. Coordinator** Steven Van Landingham

**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. WQ0010408009, Permit Conditions Nos. 2.d and 2.g  
**Violation Description** Failed to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state. Specifically, on August 13, 2021, an unauthorized discharge caused by three adjacent sewer main breaks occurred near 1045 Sunland Park Drive, discharging raw sewage into the surrounding area, and then into the Doniphan Park Stormwater Ponds. Additionally, from August 14, 2021 through August 23, 2021, wastewater overflowed from the Doniphan Park Stormwater Ponds into the stormwater conveyance system thence to the storm sewer system which eventually discharges into the Rio Grande River at the Doniphan Outfall, resulting in the discharge of approximately 73,370,000 gallons of raw sewage into the Rio Grande River.

**Base Penalty** \$25,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	X			100.0%
	Potential				

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0.0%

**Matrix Notes** Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment** \$0

\$25,000

**Violation Events**

Number of Violation Events: 19      132 Number of violation days

daily	
weekly	X
monthly	
quarterly	
semiannual	
annual	
single event	

**Violation Base Penalty** \$475,000

Nineteen weekly events are recommended from the date the unauthorized discharge began (August 13, 2021) to the screening date (December 23, 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 criteria for good faith efforts.

**Violation Subtotal** \$475,000

**Economic Benefit (EB) for this violation**      **Statutory Limit Test**  
**Estimated EB Amount** \$247,325      **Violation Final Penalty Total** \$532,000  
**This violation Final Assessed Penalty (adjusted for limits)** \$532,000

## Economic Benefit Worksheet

**Respondent** El Paso Water Utilities Public Service Board  
**Case ID No.** 62097  
**Reg. Ent. Reference No.** RN103870341  
**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	\$6,000,000	14-Aug-2021	4-Jun-2022	0.81	\$241,644	n/a	\$241,644
Permit Costs				0.00	\$0	n/a	\$0
Other (1)	\$489,217	13-Aug-2021	3-Sep-2021	0.06	\$1,407	n/a	\$1,407
Other (2)	\$100,000	13-Aug-2021	21-Jun-2022	0.85	\$4,274	n/a	\$4,274

#### Notes for DELAYED costs

Remediation/Disposal delayed cost is the estimated amount to properly clean and disinfect the affected portions of the storm sewer system, the Rio Grande River from immediately upstream of the Doniphan Outfall to the American Dam, and the American Canal from the American Dam to the temporary bypass pumps installed to discharge mixed river water into a nearby manhole for treatment at the Haskell Wastewater Treatment Plant. Date required is the date the discharges into the storm sewer system began. Final date is the date of compliance.

Other (1) delayed cost is the estimated amount to cease the unauthorized discharge near 1045 Sunland Park Drive. Date required is the date the SSO began. Final date is the date the SSO ceased.

Other (2) delayed cost is the estimated amount to properly clean and disinfect the affected area. Date required is the date the SSO began. Final date is the 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

\$6,589,217

**TOTAL**

\$247,325

<b>Screening Date</b>	23-Dec-2021	<b>Docket No.</b>	2022-0310-MWD-E	<b>PCW</b>
<b>Respondent</b>	El Paso Water Utilities Public Service Board			<i>Policy Revision 5 (January 28, 2021)</i>
<b>Case ID No.</b>	62097			<i>PCW Revision February 11, 2021</i>
<b>Reg. Ent. Reference No.</b>	RN103870341			
<b>Media</b>	Water Quality			
<b>Enf. Coordinator</b>	Steven Van Landingham			
<b>Violation Number</b>	2			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 305.125(1), Tex. Water Code § 26.121(a)(1), and TPDES Permit No. WQ0010408009, Permit Conditions Nos. 2.d and 2.g			
<b>Violation Description</b>	Failed to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state. Specifically, on August 23, 2021, an unauthorized discharge caused by a sewer main break occurred near 3817 Constitution Drive, discharging raw sewage into the surrounding area and an adjacent arroyo which leads into the storm sewer system thence into the Rio Grande River at the Doniphan Outfall.			
	<b>Base Penalty</b>	\$25,000		

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

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual	X			<b>Percent</b> 100.0%
Potential					

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
					<b>Percent</b> 0.0%

Matrix Notes: Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment** \$0

\$25,000

**Violation Events**

Number of Violation Events: 18      122 Number of violation days

daily	
weekly	X
monthly	
quarterly	
semiannual	
annual	
single event	

**Violation Base Penalty** \$450,000

Eighteen weekly events are recommended from the date the unauthorized discharge began (August 23, 2021) to the screening date (December 23, 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** \$450,000

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

**Estimated EB Amount** \$4,663      **Violation Final Penalty Total** \$504,000

**This violation Final Assessed Penalty (adjusted for limits)** \$504,000



# Economic Benefit Worksheet

**Respondent** El Paso Water Utilities Public Service Board  
**Case ID No.** 62097  
**Reg. Ent. Reference No.** RN103870341  
**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 (1)	\$157,765	23-Aug-2021	17-Sep-2021	0.07	\$540	n/a	\$540
Other (2)	\$50,000	23-Aug-2021	17-Apr-2023	1.65	\$4,123	n/a	\$4,123

**Notes for DELAYED costs**

Remediation/Disposal delayed cost captured in Economic Benefit Worksheet No. 1.

Other (1) delayed cost is the estimated amount to cease the unauthorized discharge near 3817 Constitution Drive. Date required is the date the SSO began. Final date is the date the SSO ceased.

Other (2) delayed cost is the estimated amount to properly clean and disinfect the affected area. Date required is the date the SSO began. Final date is the 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

\$207,765

**TOTAL**

\$4,663

**Screening Date** 23-Dec-2021 **Docket No.** 2022-0310-MWD-E **PCW**  
**Respondent** El Paso Water Utilities Public Service Board *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 62097 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN103870341  
**Media** Water Quality  
**Enf. Coordinator** Steven Van Landingham

**Violation Number** 3

**Rule Cite(s)** 30 Tex. Admin. Code § 305.125(1), Tex. Water Code § 26.121(a)(1), and TPDES Permit No. WQ0010408009, Permit Conditions Nos. 2.d and 2.g

**Violation Description** Failed to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state. Specifically, on August 25, 2021, an unauthorized discharge caused by a sewer main break occurred near 3820 Constitution Drive, discharging raw sewage into the surrounding area, and then into the Doniphan Park Stormwater Pond 1 thence into the storm sewer system thence into the Rio Grande River at the Doniphan Outfall.

**Base Penalty** \$25,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	X			100.0%
	Potential				

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0.0%

**Matrix Notes** Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment** \$0

\$25,000

**Violation Events**

Number of Violation Events 18 120 Number of violation days

daily	
weekly	X
monthly	
quarterly	
semiannual	
annual	
single event	

**Violation Base Penalty** \$450,000

Eighteen weekly events are recommended from the date the unauthorized discharge began (August 25, 2021) to the screening date (December 23, 2021).

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

	Before NOE/NOV	NOE/NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	

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

**Violation Subtotal** \$450,000

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

**Estimated EB Amount** \$6,948 **Violation Final Penalty Total** \$504,000

**This violation Final Assessed Penalty (adjusted for limits)** \$504,000

## Economic Benefit Worksheet

**Respondent** El Paso Water Utilities Public Service Board  
**Case ID No.** 62097  
**Reg. Ent. Reference No.** RN103870341  
**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
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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)	\$65,922	25-Aug-2021	17-Sep-2021	0.06	\$208	n/a	\$208
Other (as needed)	\$100,000	25-Aug-2021	30-Dec-2022	1.35	\$6,740	n/a	\$6,740

#### Notes for DELAYED costs

Remediation/Disposal delayed cost captured in Economic Benefit Worksheet No. 1.

Other (1) delayed cost is the estimated amount to cease the unauthorized discharge near 3820 Constitution Drive. Date required is the date the SSO began. Final date is the date the SSO ceased.

Other (2) delayed cost is the estimated amount to properly clean and disinfect the affected area. Date required is the date the SSO began. Final date is the 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

\$165,922

**TOTAL**

\$6,948

**Screening Date** 23-Dec-2021 **Docket No.** 2022-0310-MWD-E **PCW**  
**Respondent** El Paso Water Utilities Public Service Board *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 62097 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN103870341  
**Media** Water Quality  
**Enf. Coordinator** Steven Van Landingham

**Violation Number**

**Rule Cite(s)** 30 Tex. Admin. Code § 305.125(1), Tex. Water Code § 26.121(a)(1), and TPDES Permit No. WQ0010408009, Permit Conditions Nos. 2.d and 2.g

**Violation Description**

Failed to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state. Specifically, on August 27, 2021, an unauthorized discharge caused by a sewer main break occurred near 4134 Doniphan Drive, discharging raw sewage into the surrounding area. Additionally, from August 27, 2021 through January 10, 2022, the Respondent diverted all raw sewage from the wastewater collection system at the Frontera Lift Station into the storm sewer system thence into the Rio Grande at the Doniphan Outfall at an estimated rate of 9 million gallons per day. During this time period of diversion, approximately 1.2 billion gallons of raw sewage into the Rio Grande River.

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input checked="" type="checkbox"/>			<input type="text" value="100.0%"/>
	Potential				

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="0.0%"/>

Matrix Notes

Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

daily	<input type="checkbox"/>
weekly	<input checked="" type="checkbox"/>
monthly	<input type="checkbox"/>
quarterly	<input type="checkbox"/>
semiannual	<input type="checkbox"/>
annual	<input type="checkbox"/>
single event	<input type="checkbox"/>

**Violation Base Penalty**

Seventeen weekly events are recommended from the date the unauthorized discharge began (August 27, 2021) to the screening date (December 23, 2021).

**Good Faith Efforts to Comply**  Reduction

	Before NOE/NOV	NOE/NOV to EDRP/ Settlement Offer
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>
N/A	<input checked="" type="checkbox"/>	

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

**Violation Subtotal**

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

**Estimated EB Amount**  **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

# Economic Benefit Worksheet

**Respondent** El Paso Water Utilities Public Service Board  
**Case ID No.** 62097  
**Reg. Ent. Reference No.** RN103870341  
**Media** Water Quality  
**Violation No.** 4

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)	\$305,530	27-Aug-2021	10-Jan-2022	0.37	\$5,692	n/a	\$5,692
Other (as needed)	\$75,000	27-Aug-2021	30-Dec-2022	1.34	\$5,034	n/a	\$5,034

**Notes for DELAYED costs**

Remediation/Disposal delayed cost captured in Economic Benefit Worksheet No. 1.

Other (1) delayed cost is the estimated amount to cease the unauthorized discharge near 4134 Doniphan Drive. Date required is the date the SSO began. Final date is the date the SSO ceased.

Other (2) delayed cost is the estimated amount to properly clean and disinfect the affected area. Date required is the date the SSO began. Final date is the 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

\$380,530

**TOTAL**

\$10,726



# Compliance History Report

Compliance History Report for CN600745392, RN103870341, Rating Year 2022 which includes Compliance History (CH) components from September 1, 2017, through August 31, 2022.

**Customer, Respondent, or Owner/Operator:** CN600745392, El Paso Water Utilities Public Service Board **Classification:** SATISFACTORY **Rating:** 0.56

**Regulated Entity:** RN103870341, EL PASO WATER UTILITIES NORTHWEST WWTP **Classification:** SATISFACTORY **Rating:** 0.76

**Complexity Points:** 12 **Repeat Violator:** NO

**CH Group:** 08 - Sewage Treatment Facilities

**Location:** 701 Executive Center Boulevard in El Paso, El Paso County, Texas

**TCEQ Region:** REGION 06 - EL PASO

**ID Number(s):**

**AIR NEW SOURCE PERMITS** ACCOUNT NUMBER EE0406L **AIR NEW SOURCE PERMITS** REGISTRATION 75169  
**STORMWATER PERMIT** TXR05DO22 **WASTEWATER AUTHORIZATION** R10408009  
**WASTEWATER PERMIT** WQ0010408009 **WASTEWATER EPA ID** TX0087149

**Compliance History Period:** September 01, 2017 to August 31, 2022 **Rating Year:** 2022 **Rating Date:** 09/01/2022

**Date Compliance History Report Prepared:** October 04, 2022

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** October 04, 2017 to October 04, 2022

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

**Name:** Steven Van Landingham **Phone:** (512) 239-5717

**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:**

N/A

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

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

Item 1	October 17, 2017	(1451276)	Item 21	June 18, 2019	(1585573)
Item 2	October 30, 2017	(1438273)	Item 22	September 13, 2019	(1607542)
Item 3	November 13, 2017	(1457148)	Item 23	September 27, 2019	(1600637)
Item 4	January 08, 2018	(1469000)	Item 24	October 21, 2019	(1614421)
Item 5	February 12, 2018	(1487884)	Item 25	November 21, 2019	(1620211)
Item 6	March 19, 2018	(1477770)	Item 26	December 13, 2019	(1609709)
Item 7	April 18, 2018	(1494820)	Item 27	December 19, 2019	(1627558)
Item 8	April 27, 2018	(1491572)	Item 28	January 21, 2020	(1635191)
Item 9	April 30, 2018	(1479387)	Item 29	January 27, 2020	(1618079)
Item 10	May 20, 2018	(1501772)	Item 30	February 19, 2020	(1624407)
Item 11	June 15, 2018	(1508875)	Item 31	February 20, 2020	(1629716)
Item 12	June 22, 2018	(1515193)	Item 32	February 24, 2020	(1641806)
Item 13	August 13, 2018	(1521247)	Item 33	March 03, 2020	(1632331)
Item 14	September 10, 2018	(1534767)	Item 34	March 16, 2020	(1648320)
Item 15	September 17, 2018	(1528428)	Item 35	March 17, 2020	(1654672)
Item 16	November 15, 2018	(1542602)	Item 36	April 30, 2020	(1637755)
Item 17	December 03, 2018	(1525675)	Item 37	May 20, 2020	(1661238)
Item 18	December 20, 2018	(1546362)	Item 38	June 12, 2020	(1667766)
Item 19	January 27, 2019	(1563165)	Item 39	August 06, 2020	(1665705)
Item 20	May 20, 2019	(1585572)	Item 40	August 27, 2020	(1671348)

Item 41	September 04, 2020	(1670984)	Item 69	December 20, 2021	(1791793)
Item 42	September 21, 2020	(1688061)	Item 70	December 30, 2021	(1776250)
Item 43	September 28, 2020	(1681484)	Item 71	January 04, 2022	(1782549)
Item 44	December 21, 2020	(1715860)	Item 72	January 13, 2022	(1782548)
Item 45	January 21, 2021	(1697732)	Item 73	January 14, 2022	(1776349)
Item 46	January 26, 2021	(1699487)	Item 74	January 20, 2022	(1799642)
Item 47	February 08, 2021	(1698241)	Item 75	February 11, 2022	(1782942)
Item 48	February 15, 2021	(1728932)	Item 76	February 17, 2022	(1790189)
Item 49	March 02, 2021	(1703772)	Item 77	March 03, 2022	(1794563)
Item 50	March 04, 2021	(1702277)	Item 78	March 09, 2022	(1794091)
Item 51	March 11, 2021	(1728933)	Item 79	March 10, 2022	(1790439)
Item 52	March 17, 2021	(1703737)	Item 80	March 22, 2022	(1794698)
Item 53	April 12, 2021	(1706546)	Item 81	April 15, 2022	(1821087)
Item 54	April 19, 2021	(1706161)	Item 82	April 20, 2022	(1805611)
Item 55	May 20, 2021	(1741770)	Item 83	April 22, 2022	(1806164)
Item 56	June 30, 2021	(1737043)	Item 84	May 05, 2022	(1809821)
Item 58	August 05, 2021	(1739191)	Item 85	May 06, 2022	(1809786)
Item 59	September 09, 2021	(1756056)	Item 86	May 24, 2022	(1829924)
Item 60	September 17, 2021	(1756113)	Item 87	May 26, 2022	(1805150)
Item 61	September 28, 2021	(1756360)	Item 88	June 21, 2022	(1836234)
Item 62	October 05, 2021	(1756427)	Item 89	July 05, 2022	(1819041)
Item 63	October 08, 2021	(1762326)	Item 90	July 06, 2022	(1824833)
Item 64	October 12, 2021	(1762081)	Item 91	July 07, 2022	(1824430)
Item 65	October 15, 2021	(1762078)	Item 92	July 20, 2022	(1843420)
Item 66	October 21, 2021	(1778030)	Item 93	August 22, 2022	(1838758)
Item 67	October 25, 2021	(1763716)	Item 94	August 29, 2022	(1832761)
Item 68	November 20, 2021	(1784761)			

#### 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: 01/31/2022 (1807478)  
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: 02/28/2022 (1814519)  
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: 05/24/2022 (1805750)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
WQ0010408009 PERMIT  
Description: Failure to maintain the capability of chlorinating the effluent in the event of an emergency situation if the ultraviolet light disinfection system is not functioning for any reason. The permittee shall assure that requirements within the permit are met. At the time of the investigation, the regulated entity failed to maintain the capability of chlorinating the effluent in the event of an emergency situation.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
WQ0010408009 PERMIT  
Description: Failure to maintain quality assurance for wastewater analyses - Shall comply with Table 1 of this section. The permittee shall assure the quality of all measurements through the use of laboratory control samples, and duplicate analyses. At a minimum, the quality assurance requirements for wastewater analyses shall comply with Table 1 of this section. At the time of the investigation, the regulated entity failed to maintain quality assurance for wastewater analyses.

#### 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:**

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
EL PASO WATER UTILITIES PUBLIC  
SERVICE BOARD  
RN103870341

§           BEFORE THE  
§  
§           TEXAS COMMISSION ON  
§  
§           ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2022-0310-MWD-E

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding El Paso Water Utilities Public Service Board (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 presented this Order to the Commission.

The Respondent understands that it has procedural rights at certain points in the enforcement process, including the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that 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. The duties and responsibilities imposed by this Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

### I. FINDINGS OF FACT

1. The Respondent is a municipally owned utility and a component unit of the City of El Paso, Texas, a political subdivision of the State of Texas. The El Paso City Council vested the Respondent with complete authority and control of the management and operation of the water, wastewater, and stormwater systems of the city via municipal bond ordinances. The Respondent owns and operates a wastewater treatment facility with an associated wastewater collection system located at 701 Executive Center Boulevard in El Paso, El Paso 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. During an on-site investigation conducted at the Facility's collection system on August 14, 2021, and record reviews conducted for the Facility on December 10, 2021 and February 15, 2022, an investigator documented that:
  - a. On August 13, 2021, a sanitary sewer overflow ("SSO") caused by three adjacent sewer main breaks occurred near 1045 Sunland Park Drive. Raw sewage discharged to the surrounding area, and then into two Doniphan Park Stormwater Ponds. Additionally, from August 14, 2021 through August 23, 2021, wastewater overflowed from the Doniphan Park Stormwater Ponds into the

stormwater conveyance system, thence to the storm sewer system which eventually discharged into the Rio Grande River at the Doniphan Outfall. Approximately 73,370,000 gallons of raw sewage was discharged into the Rio Grande River.

- b. On August 23, 2021, an SSO caused by a sewer main break occurred near 3817 Constitution Drive. Raw sewage discharged to the surrounding area and an adjacent arroyo which led into the storm sewer system, thence into the Rio Grande River at the Doniphan Outfall.
  - c. On August 25, 2021, an SSO caused by a sewer main break occurred near 3820 Constitution Drive. Raw sewage discharged to the surrounding area, and then into the Doniphan Park Stormwater Pond 1 which led into the storm sewer system, thence into the Rio Grande River at the Doniphan Outfall.
  - d. On August 27, 2021, an SSO caused by a sewer main break occurred near 4134 Doniphan Drive. Raw sewage discharged to the surrounding area. Additionally, from August 27, 2021 through January 10, 2022, the Respondent diverted all raw sewage from the wastewater collection system at the Frontera Lift Station into the storm sewer system, thence into the Rio Grande River at the Doniphan Outfall at an estimated rate of 9 million gallons per day. During this time period of diversion, approximately 1.2 billion gallons of raw sewage discharged into the Rio Grande River.
3. The Executive Director recognizes that the Respondent implemented the following corrective measures at the Facility:
- a. Ceased the unauthorized discharge near 1045 Sunland Park Drive by September 3, 2021;
  - b. Ceased the unauthorized discharge near 3817 Constitution Drive by September 17, 2021;
  - c. Ceased the unauthorized discharge near 3820 Constitution Drive by September 17, 2021;
  - d. Ceased the unauthorized discharge near 4134 Doniphan Drive, and resulting diversion of raw sewage from the wastewater collection system into the storm sewer system, thence into the Rio Grande River by January 10, 2022;
  - e. Properly cleaned and disinfected the areas around the location of the SSOs located at:
    - i. 1045 Sunland Park Drive by June 21, 2022; and
    - ii. 4134 Doniphan Drive by December 2022.

- f. Cleaned and disinfected the area along the Rio Grande from upstream of the Doniphan outfall to the American Dam, including removal and transport of impacted material from the Rio Grande flood plain, by June 4, 2022.
- g. Cleaned and disinfected the American Canal from the American Dam to the temporary bypass pumps by April 27, 2022.
- h. Completed the Wastewater Discharge Remediation Supplemental Environmental Project by December 22, 2022; and
- i. By April 17, 2023, the Respondent submitted documentation demonstrating the areas located at 3817 and 3820 Constitution Drive were cleaned and disinfected.

## II. CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, the Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact Nos. 2.a through 2.d, the Respondent failed to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state, 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. WQ0010408009, Permit Conditions Nos. 2.d and 2.g.
3. Pursuant to TEX. WATER CODE § 7.051, the TCEQ has the authority to assess an administrative penalty against the Respondent for violations of state statutes within the TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of \$2,016,000 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Pursuant to TEX. WATER CODE § 7.067, \$2,016,000 of the penalty shall be conditionally offset by the Respondents' timely and satisfactory completion of a Supplemental Environmental Project ("SEP") as defined in the attached SEP Agreement ("Attachment A" - incorporated herein by reference). The Respondents' obligation to pay the conditionally offset portion of the penalty shall be discharged upon full compliance with all the terms and conditions of this Order, which includes the timely and satisfactory completion of all provisions of the SEP Agreement, as determined by the Executive Director.

## III. ORDERING PROVISIONS

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

1. The Respondent is assessed a penalty as set forth in Conclusion of Law No. 4 for violations of state statutes and rules of the TCEQ. The payment of this penalty and the Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be

constrained in any manner from requiring corrective actions or penalties for violations that are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: El Paso Water Utilities Public Service Board, Docket No. 2022-0310-MWD-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 Respondents are jointly and severally liable for the violations documented in this Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Order.
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. 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 Enforcement Division at the address listed above.
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 in this Order.
7. 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.
8. 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.
9. 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.

10. 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



-----  
For the Executive Director

-----  
Date

7/25/2023

-----  
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 OAG 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 OAG 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

John E. Balliew

-----  
Name (Printed or typed)

Authorized Representative of  
El Paso Water Utilities Public Service Board

-----  
Date

6/29/23  
President/CEO

-----  
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.

**Attachment A**

**Docket Number: 2022-0310-MWD-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	El Paso Water Utilities Public Service Board
<b>Penalty Amount:</b>	\$2,016,000
<b>SEP Offset Amount:</b>	\$2,016,000
<b>Type of SEP:</b>	Compliance
<b>Project Name:</b>	<i>Wastewater Discharge Remediation Project</i>
<b>Location of SEP:</b>	El Paso County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the administrative Penalty Amount assessed in this Agreed Order in exchange for Respondent’s performance of a Supplemental Environmental Project (“SEP”).

Respondent is a Local Government that qualifies under Texas Water Code § 7.067 to apply the SEP Offset Amount set forth above to correct violations at its wastewater treatment facility (“Facility”), or remediate the environmental harm caused by one or more violations described in this Agreed Order.

**1. Project Description**

*A. Project*

Respondent hired a qualified contractor to excavate, remove, and properly dispose of sludge and impacted sediments from the Rio Grande River and structures of the International Boundary and Water Commission, beginning at the discharge point at the river and extending to the American Dam. The contractor properly disposed of the excavated sediment at the Camino Real Landfill in New Mexico. Specifically, Respondent used the SEP Offset Amount for materials, supplies, and equipment for sludge and sediment removal and disposal (the “Project”). The SEP was performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent used the SEP Offset Amount only for the direct cost of implementing the Project, including supplies, materials, and equipment rentals, as listed below in Subsection C. Expenses. No portion of the SEP Offset Amount was spent on administrative costs, including operating costs, reporting expenses, handling of expenses, project coordination, liability, or equipment breakdowns.

Respondent’s signature affixed to the attached Agreed Order certifies that Respondent had no prior commitment to perform this Project and that the SEP was performed solely as part of the terms of settlement in this enforcement action.

*B. Environmental Benefit*

This SEP provided a discernible environmental benefit by cleaning up wastewater discharges released into the local environment.

Unauthorized wastewater discharges not adequately treated can potentially carry harmful bacteria, viruses, protozoa (parasitic organisms), helminths (intestinal worms), and bioaerosols (inhalable molds and fungi). The diseases they may cause range in severity from mild gastroenteritis to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis. Additional risks include occurrences of low dissolved oxygen, fish kills, algal bloom, and bacterial contamination in waterways.

*C. Expenses*

Respondent spent at least the SEP Offset Amount to complete the Project described above in Section 1.A., and it complied with all other provisions of this SEP. Respondent understood that it may have costs more than the SEP Offset Amount to complete the Project.

**Expenses**

<b>Item</b>	<b>Quantity</b>	<b>Units</b>	<b>Total</b>
Disposal	73,720.59	Tons	\$2,078,469.51
<b>Total</b>			\$2,078,469.51

**2. Records**

As of December 22, 2022, Respondent provided TCEQ the following documentation as proof of completion of the proposed SEP:

1. An itemized list of expenditures and total cost of the Project;
2. Copies of invoices or receipts corresponding to the itemized list in paragraph 2.1., above;
3. Copies of cleared checks or payment records corresponding to the itemized list in paragraph 2.1., above;
4. A certified statement of SEP completion and document authentication;
5. Copies of all engineering plans related to work performed pursuant to the Project, if applicable;
6. Manifests sufficient to show proof of proper disposal of the collected materials;
7. A detailed map showing the specific location of the project site(s); and
8. Dated photographs of the purchased materials and supplies; before and after work being performed during the Project; and of the completed Project.

**3. Additional Information and Access**

Respondent shall provide additional information as requested by TCEQ staff and shall allow immediate (*i.e.*, within 24 hours) access to all records related to the SEP Offset Amount. Respondent shall also allow representatives of TCEQ access to the site of any work financed in whole or in part by the SEP Offset Amount. This provision shall survive the termination of this Agreed Order.

**4. Failure to Fully Perform**

If Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director (“ED”) may require immediate payment of all or part of the SEP Offset Amount as set forth in the attached Agreed Order.

In the event the ED determines that Respondent failed to fully implement and complete the Project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for reimbursement of a SEP, shall make the check payable to “Texas Commission on Environmental Quality,” and shall mail it to the SEP Coordinator at the address provided below:



Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087

**5. Publicity**

Any public statements concerning this Project made by or on behalf of Respondent must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by TCEQ**. Such statements include advertising, public relations, and press releases.

**6. Recognition**

Respondent may not seek recognition for this project in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this Attachment A and in the attached Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with TCEQ or any other agency of the state or federal government.