

**STATE OF NEW MEXICO  
BEFORE THE WATER QUALITY CONTROL COMMISSION**

**NEW MEXICO ENVIRONMENT DEPARTMENT  
WATER PROTECTION DIVISION,  
GROUND WATER QUALITY BUREAU,**

**Complainant,**

v.

**No. WQCC 22 - \_\_ (CO)**

**EL PASO WATER,**

**Respondent.**

**ADMINISTRATIVE COMPLIANCE ORDER  
REQUIRING COMPLIANCE AND ASSESSING A CIVIL PENALTY**

Pursuant to the New Mexico Water Quality Act (“Act”), NMSA 1978, Sections 74-6-1 to -17, and the New Mexico Water Quality Control Commission Regulations (“Regulations”), 20.6.2 NMAC, the Director of the Water Protection Division of the New Mexico Environment Department (“NMED”) issues this Administrative Compliance Order (“Order”) on behalf of NMED’s Ground Water Quality Bureau (“Bureau”) to El Paso Water (“Respondent”). The purpose of this Order is to assess civil penalties for the Respondent’s violations of the Act and Regulations.

**I. FINDINGS OF FACT**

1. Pursuant to NMSA 1978, Section 9-7A-4, NMED is an executive agency within the New Mexico state government. Pursuant to NMSA 1978 Section 74-6-2(K)(1), NMED is a constituent agency of the New Mexico Water Quality Control Commission.

2. The Bureau is an organizational unit of NMED within its Water Protection Division. The Bureau was created pursuant to authority granted under NMSA 1978, Section 9-

7A-6(B)(3).

3. Pursuant to NMSA 1978 Section 74-6-10(A)(1), when NMED determines that a person violated or is violating a regulation or permit created pursuant to the Act, NMED may issue a compliance order assessing a civil penalty.

4. Pursuant to a delegation of authority from the Secretary of NMED, the Director of the Water Protection Division of NMED has authority to issue Administrative Compliance Orders on behalf of the Bureau. NMSA 1978, § 9-7A-6(B)(2).

5. Respondent owns and operates a wastewater utility doing business by the name of El Paso Water, which operates in El Paso, Texas.

6. Respondent is a “person” as defined in Section 74-6-2(I) of the Act and 20.6.2.7(P)(2) NMAC.

7. Respondent maintains the sewer collections system, wastewater treatment facilities and is responsible for the treatment and discharge of domestic wastewater to multiple outfalls in the Rio Grande for the City of El Paso, including a temporary discharge site identified as the Donaphin Road Outfall which was used to divert untreated sewage from the failed Frontera Force Main sewer collection infrastructure directly into the Rio Grande near Sunland Park, New Mexico, Doña Ana County.

8. The wastewater in the sewer collection system and wastewater treatment facilities contains water contaminants such as nitrate, chloride, total Kjeldahl nitrogen, and total dissolved solids that may exceed the standards of 20.6.2.3103 NMAC.

9. The temporary discharge site is located near the intersection of Doniphan Drive and Hillside Drive in El Paso, Texas, El Paso County.

10. Due to multiple collection system infrastructure failures and ongoing failed repair

attempts, on August 27, 2021, Respondent began diverting approximately ten million gallons per day of raw, untreated sewage from the inoperative El Paso Frontera Force Main into the Rio Grande just upstream of Corchesne Bridge at the Doniphan Outfall.

11. El Paso Water did not notify NMED of the unauthorized discharge.

12. El Paso Water reported the discharge to the Texas Commission on Environmental Quality (TCEQ), United States Environmental Protection Agency (USEPA) and to the International Boundary and Water Commission (IBWC) stating that the diversion of untreated wastewater was necessary due to multiple collection system infrastructure failures and ongoing failed repair attempts made by Respondent.

13. November 9, 2021, NMED Surface Water Quality Bureau representatives (Susan Lucas Kamat and Davena Crosley) attended the El Paso Frontera Force Main Breaks and Mitigation Sites Tour. The reported findings focused on the reach of the Rio Grande between the Rio Grande Discharge Point and the recently installed American Dam. El Paso Water was discharging raw wastewater into the Rio Grande just upstream of Corchesne Bridge at the Doniphan Outfall. The raw wastewater traveled downstream along the New Mexico-Texas border for approximately 1.7 miles.

14. The Rio Grande in this reach is most likely a losing stream with the groundwater level in winter near the discharge site being approximately 15 to 20 feet below ground surface. Based on the conservatively estimated total volume discharged of 1.1 billion gallons, it is likely that the untreated wastewater infiltrated the shallow groundwater in this reach.

15. Respondent diverted an estimated ten million gallons per day of untreated wastewater through the temporary discharge location for 156 days, ceasing the discharge on January 11, 2022.

16. NMED issued a Notice of Non-Compliance to Respondent on February 7, 2022, notifying El Paso Water of the violations of the WQA and WQCC regulations.

17. After discharging an estimated 1.1 billion gallons of untreated wastewater without a permit to a dry reach of the Rio Grande in New Mexico, Respondent provided NMED with a briefing and presentation on the discharge and proposed remediation efforts on February 17, 2022.

18. As of the date of the issuance of this Administrative Compliance Order, Respondent has not submitted any official notification of an unauthorized discharge or any discharge permit application to NMED.

## **II. VIOLATIONS**

19. The Respondent violated 20.6.2.3104 NMAC by discharging effluent or leachate from a sewerage so that it may move directly or indirectly into groundwater without a discharge permit approved by the Bureau.

20. The Respondent violated 20.6.2.1203.A(1) NMAC for failure to orally notify the Bureau of the discharges of sewage and water contaminants no later than 24 hours after the discharge event.

21. The Respondent violated 20.6.2.1203.A(3) NMAC for failure to send written notification to the Bureau within one week verifying prior oral notification.

22. The Respondent violated 20.6.2.1203.A(5) NMAC for failure to take corrective action to contain and remove or mitigate the damage caused by the discharge as soon as possible after learning of the discharge.

23. The Respondent violated 20.6.2.1203.A(6) NMAC for failure to consult with the Bureau and for failure to send the Bureau a written report within fifteen (15) days after learning

of the discharge describing the proposed corrective actions or actions already taken relative to the discharge.

24. The Respondent violated 20.6.2.3106, 20.6.2.3114.F and Table 2 NMAC by failing to submit a completed Discharge Permit application for the discharge of untreated sewage into the Rio Grande, including a \$100 filing fee, to the Bureau.

### **III. COMPLIANCE ORDER**

25. Based upon the foregoing findings and conclusions, Respondent is hereby ordered to complete the following actions.

26. No later than fifteen (15) calendar days after this Order becomes final, the Respondent shall send a written report to the Bureau describing any corrective actions taken and/or to be taken relative to the discharges pursuant to 20.6.2.1203.A(6) NMAC.

27. NMED may require additional corrective actions if NMED finds that previous corrective actions are insufficient as specified in WQCC Regulation 20.6.2.1203 NMAC.

28. No later than thirty (30) calendar days after this Order becomes final, the Respondent shall submit for Bureau approval an Application for Discharge Permit as specified in 20.6.2.3106 NMAC. The Respondent must include with the application the appropriate fees found in 20.6.2.3114 NMAC.

29. All applications, corrective action, work plans, progress reports, other reports, or other documents or information to be submitted to the Bureau under the terms of this Order shall be sent to:

Jason Herman  
Ground Water Quality Bureau  
New Mexico Environment Department  
P.O. Box 5469  
Santa Fe, New Mexico 87502  
(575) 649-3871

30. Failure to comply may subject Respondent to additional civil penalties. Section 74-6-10(F) of the Act authorizes the additional assessment \$25,000 for each day of continued noncompliance if Respondent fails to submit the plan or evidence of hardship as required by this Order.

#### **IV. CIVIL PENALTY**

31. Section 74-6-10(C)(2) of the Act authorizes a civil penalty of up to \$10,000.00 per day for each violation of a provision of the Act other than those based in Section 74-6-5.

32. NMED hereby assesses a civil penalty in the amount of \$1,284,375.00 for the violations set forth in Paragraphs 17 through 22. The penalties are based upon the penalty calculation narrative attached to this Order. *See Attachment 1.*

33. Payment of the civil penalties is due no later than 30 calendar days after this Order becomes final. The Respondent shall make the payment by certified or cashier's check payable to the State of New Mexico and mailed (certified) or by pre-arranged hand delivery to the Bureau at the following address:

Justin D. Ball, Chief  
Ground Water Quality Bureau  
New Mexico Environment Department  
1190 St. Francis Dr., Suite N-2250  
Santa Fe, NM 87505  
Telephone: 505-231-3773

Written notification of the payment shall also be provided to the following address:

Andrew Knight, Assistant General Counsel  
New Mexico Environment Department  
121 Tijeras Avenue NE, Ste. 1000  
Albuquerque, New Mexico 87102  
Telephone: (505) 470-8215  
Email: [Andrew.knight@state.nm.us](mailto:Andrew.knight@state.nm.us)

## **V. NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING**

34. Pursuant to Section 74-6-10(G) of the Act, Respondent has the right to answer this Order and to request a public hearing.

35. If Respondent: (a) contests any material or legal matter upon which the Order is based; (b) contends that the amount of the penalties proposed in the Order is inappropriate; (c) contends that Respondent is entitled to prevail as a matter of law; or (d) otherwise contests the appropriateness of the Order, Respondent may mail or deliver a written Request for Hearing and Answer to the Order to the WQCC, at the following address:

Commission Administrator  
Water Quality Control Commission  
P.O. Box 5469  
Santa Fe, NM 87502  
Telephone: (505) 827-2425

36. Respondent must file the Request for Hearing and Answer to the Order within 30 days after Respondent's receipt of the Order.

37. Respondent must attach a copy of this Order to its Request for Hearing and Answer to the Order.

38. A copy of the Answer and Request for Hearing must also be served on counsel for NMED at the following address:

Andrew Knight  
Assistant General Counsel  
New Mexico Environment Department  
121 Tijeras Avenue NE, Suite 1000  
Albuquerque, New Mexico 87102  
Email: [Andrew.knight@state.nm.us](mailto:Andrew.knight@state.nm.us)

39. Respondent's Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Order of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, Respondent should so state, and

Respondent may deny the allegation on that basis. Any allegation of the Order not specifically denied shall be deemed admitted. Respondent's Answer shall also include any affirmative defenses upon which Respondent intends to rely. Any affirmative defense not asserted in the Answer, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived.

40. The Water Quality Control Commission's Adjudicatory Procedures, 20.1.3 NMAC, shall govern the hearing if Respondent requests a hearing.

#### **VI. FINALITY OF ORDER**

41. This Order shall become final unless Respondent files a Request for Hearing and Answer to the Order with the WQCC within 30 days of receipt of this Order.

42. The failure to file an Answer constitutes an admission of all facts alleged in the Order and a waiver of the right to a hearing under Section 74-6-10(G) of the Act concerning this Order.

43. Unless Respondent requests a hearing and files an Answer, the penalty proposed in this Order shall become due and payable without further proceedings within 30 days after receipt of this Order.

#### **VII. SETTLEMENT**

44. Whether or not Respondent requests a hearing and files an Answer, Respondent may confer with NMED concerning settlement. NMED encourages settlement consistent with the provisions and objectives of the Act and Regulations. To explore the possibility of settlement in this matter, Respondent may contact the attorney assigned to this case at the following address:

Andrew Knight  
Assistant General Counsel  
New Mexico Environment Department  
121 Tijeras Avenue NE, Ste. 1000

Albuquerque, New Mexico 87102  
Phone: (505) 470-8215  
Email: [Andrew.knight@state.nm.us](mailto:Andrew.knight@state.nm.us)

45. Settlement discussions do not extend the 30-day deadline for filing of Respondent's Request for Hearing and Answer to the Order, nor alter the deadlines for compliance with this Order. Settlement discussions may be pursued as an alternative to and simultaneously with the hearing proceedings.

46. Respondent may appear at the settlement conference alone or represented by legal counsel.

47. Any settlement reached by the parties shall be finalized by written settlement agreement and a stipulated final order. A settlement agreement and stipulated final order must resolve all issues raised in the Order, must be final and binding all parties to the Order, and may not be appealed.

#### **VIII. COMPLIANCE WITH OTHER LAWS AND WAIVER**

48. Compliance with the requirements of this Order does not relieve Respondent of the obligation to comply with all other applicable laws and regulations, including compliance orders or enforcement actions.

#### **IX. TERMINATION**

49. This Order shall terminate when Respondent certifies that all requirements of this Order have been met, and NMED has approved such certification, or when the Secretary approves a stipulated final order.

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John Rhoderick, Acting Director  
Water Protection Division,  
New Mexico Environment Department

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Date

**CERTIFICATE OF SERVICE**

I hereby certify that on June 9, 2022 a true and accurate copy of the Administrative Compliance Order Requiring Compliance and Assessing a Civil Penalty was served by certified mail and email on Respondent at the following address:

John E. Balliew, President and CEO  
El Paso Water  
6400 Boeing Dr  
El Paso, Texas 79925  
[jeballiew@epwater.org](mailto:jeballiew@epwater.org)

/s/ Andrew Knight  
Assistant General Counsel  
New Mexico Environment Department  
121 Tijeras Avenue NE, Ste. 1000  
Albuquerque, New Mexico 87102