

RULES AND REGULATIONS NO. 2

RULES AND REGULATIONS
GOVERNING THE FURNISHING OF STORMWATER SERVICE
WITHIN THE CORPORATE LIMITS OF THE
CITY OF EL PASO BY
THE EL PASO WATER UTILITIES PUBLIC SERVICE BOARD

BY THE AUTHORITY GRANTED TO THE PUBLIC SERVICE BOARD BY VIRTUE OF CHAPTER 552, SUBCHAPTER A OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED (THE ACT), AUTHORIZING THE CITY TO ESTABLISH A MUNICIPAL DRAINAGE UTILITY SYSTEM, AND ORDINANCE 16668, PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS ON JUNE 19, 2007, DECLARING THE DRAINAGE SYSTEM OF THE CITY TO BE A PUBLIC UTILITY AND AUTHORIZING THE PUBLIC SERVICE BOARD TO HAVE COMPLETE AUTHORITY AND CONTROL OF THE MANAGEMENT AND OPERATION OF THE SYSTEM ON BEHALF OF THE SYSTEM; THEREFORE BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF THE CITY OF EL PASO, THAT THE FOLLOWING RULES FOR THE FURNISHING OF STORMWATER SERVICE WITHIN THE CITY OF EL PASO ARE HEREBY ESTABLISHED.

SECTION I GENERAL PROVISIONS

The following headings or captions are adopted as the Table of Contents for Public Service Board Rules and Regulations No. 2.

A. TABLE OF CONTENTS

The headings or captions following are adopted as the Table of Contents for Public Service Board Rules and Regulations No. 1.

SECTION I	GENERAL PROVISIONS	1
A.	TABLE OF CONTENTS	1
B.	ABBREVIATIONS AND DEFINITIONS	2
C.	NEUTRAL GENDER.....	13
D.	CONDITIONS OF SERVICE	13
SECTION II	PURPOSE AND ADMINISTRATION	13
A.	PURPOSE AND SCOPE	13
B.	ADMINISTRATION.....	14
SECTION III	GENERAL STORMWATER SYSTEM USE REQUIREMENTS	14
A.	GENERAL PROHIBITIONS	14
B.	SPECIFIC PROHIBITIONS	15
C.	RELEASE REPORTING AND CLEANUP	17
SECTION IV	STORMWATER PERMITS.....	19
A.	ADOPTION OF TPDES PERMITS.....	19
B.	UNPERMITTED DISCHARGES PROHIBITED	19
C.	SMALL CONSTRUCTION ACTIVITIES.....	19

D.	LARGE CONSTRUCTION ACTIVITIES	20
E.	INDUSTRIAL ACTIVITIES	21
F.	COMPLIANCE WITH PERMIT	22
G.	MODIFICATION OF SWP3.....	22
H.	BEST MANAGEMENT PRACTICES	23
SECTION V REPORTING AND MONITORING		23
A.	MONITORING OF DISCHARGES	23
B.	ACCESS TO FACILITIES	23
C.	CITIZEN PARTICIPATION.....	24
D.	CONFIDENTIAL INFORMATION	24
E.	DISCHARGE MONITORING REPORTS	25
F.	NOTICES	25
SECTION VI ENFORCEMENT.....		25
A.	AUTHORITY TO ISSUE CITATIONS	25
B.	SUSPENSION OF MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) ACCESS ..	25
C.	JUDICIAL RELIEF.....	26
D.	CRIMINAL PENALTIES	26
E.	CIVIL PENALTIES	26
F.	REMEDIES NONEXCLUSIVE.....	26
SECTION VII CUSTOMER'S RIGHTS AND RESPONSIBILITIES		26
A.	CUSTOMER FACILITIES	26
B.	DAMAGE TO CUSTOMER.....	26
C.	DAMAGE TO UTILITY	26
SECTION VIII DESIGN AND OWNERSHIP OF FACILITIES.....		27
A.	OPERATIONS, MAINTENANCE AND OWNERSHIP	27
B.	UTILITY FURNISHED EQUIPMENT	27
SECTION IX SEVERABILITY CLAUSE.....		27
SECTION X SAVINGS.....		27
SECTION XI EFFECTIVE DATE		27

B. ABBREVIATIONS AND DEFINITIONS

The following abbreviations, when used in this rule, shall have the designated meanings as follows:

- BMP – Best Management Practice
- CFR – Code of Federal Regulations
- EPA – Environmental Protection Agency
- HHW – Household Hazardous Waste
- MS4 – Municipal separate storm sewer system

NOC – Notice of change
NOI – Notice of intent
NOT – Notice of termination
NPDES – National Pollutant Discharge Elimination System
PMF – Probable Maximum Flood
PMP – Probable Maximum Precipitation
PSB – Public Service Board
SWP3 – Stormwater Pollution Prevention Plan
TCEQ – Texas Commission on Environmental Quality
TPDES – Texas Pollutant Discharge Elimination System

Unless the context specifically indicates otherwise, the following terms and phrases, as used in this Rules and Regulations No. 2, shall have the following meanings:

Agricultural Stormwater Runoff:

Any stormwater runoff from orchards, cultivated crops, pastures, range lands, and other non-point source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 CFR Section 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 CFR Section 122.24.

Best Management Practices (BMP):

Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to control, prevent or reduce the discharge of pollutants. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Benefited Property:

An improved lot or tract to which drainage service is made available under the establishing Drainage Ordinance and in accordance with applicable Rules and Regulations.

Board:

Certain board of trustees known as the “Public Service Board” established by the City pursuant to Section 1502.070 of the Texas Government Code and charged with having complete authority and control of the management and operation of the water, wastewater and stormwater systems of the City, as represented by the various persons appointed to such board from time.

City:

The City of El Paso, Texas, a Texas Home Rule Municipality.

Commencement of Construction:

Exposure of soils from activities such as clearing, grading or excavating activities or other construction activities.

Compacted Soil:

Any amount of compaction above the soil’s natural state caused by any means. This includes but is not limited to soil that has been compressed by vehicles that have driven over it.

Detention Pond:

Excavated area that protects against flooding by storing water for a pre-determined period of time. Detention ponds have an outlet structure.

Discharge:

Any addition or introduction of any pollutant, stormwater, or any other liquid, gas or solid substance whatsoever into the MS4 or into waters of the United States.

Discharger:

Any person who causes, allows, permits, or is otherwise responsible for, a discharge, including, without limitation, any Operator of a construction site or industrial facility.

Domestic Sewage:

Human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences free from industrial waste.

Drainage:

Bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses.

Drainage Ordinance:

Ordinance 16668 passed and approved by the City Council of the City of El Paso, Texas on June 19, 2007 authorizing the Public Service Board to have authority and control of the management and operation of the stormwater system.

Environmental Protection Agency (EPA):

The United States Environmental Protection Agency, the regional office thereof, any federal department, agency, or commission that may succeed to the authority of the EPA, and any duly authorized official of EPA or such successor agency.

Extremely Hazardous Substance:

Any substance listed in the Appendices to 40 CFR Part 355, Emergency Planning and Notification.

Facility:

The property, either real, personal, or mixed, that is used in providing drainage and included in the system.

Fertilizer:

A solid or non-solid substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of

a crop, or a mixture of two or more fertilizers. The term does not include the excreta of an animal, plant remains, or a mixture of those substances, for which no claim of essential plant nutrients is made.

Final Stabilization:

The status when all soil disturbing activities at a site have been completed, and a uniform perennial vegetative cover with a density of seventy percent of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of rip-rap, gabions, or geotextiles) have been employed.

Fire Department:

The fire department of the City or any duly authorized representative thereof.

Garbage:

Putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

General Permit:

A permit issued to authorize discharge into or adjacent to water in the state for one or more categories of waste discharge within a geographical area of the state or the entire state as provided by Section 26.040 of the Texas Water Code, or into waters of the United States according to Section 402 of the Federal Water Pollution Control Act Amendments.

Harmful Quantity:

Discharges of substances in such quantities that the PSB has determined may be harmful to the public health or the environment including substances that are of sufficient quantity to:

- a. Violate applicable water quality standards;
- b. Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines;
- c. Cause any damage to the MS4; or
- d. Interfere with the operation of the MS4.

Hazardous Household Waste (HHW):

Any material generated in a household (including single and multiple residences, hotels and motels, bunk houses, ranger stations, crew quarters, camp grounds, picnic grounds, and day use recreational areas) by a consumer which, except for the exclusion provided in 40 CFR Section 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261, as amended from time to time.

Hazardous Substance:

Any substance listed in Table 302.4 of 40 CFR Part 302.

Hazardous Waste:

Any substance identified or listed as a hazardous waste by EPA in 40 CFR Part 261.

Herbicide:

A substance or mixture of substances used to destroy a plant or to inhibit plant growth.

Industrial Waste:

Any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or business, including transportation related activities.

Industrial Activity:

The categories of industries and activities identified in TPDES General Permit pursuant to Chapter 26 of the Texas Water Code and Section 402 of the Clean Water Act, as amended, including, without limitation, construction activity including clearing, grading and excavation activities (except for operations that result in the disturbance of less than one (1) acre of total land area which are not part of a larger plan of development or sale).

Impervious Area:

Any area that has been disturbed from its natural condition in such a way as to reduce the ability of the surface to absorb and infiltrate water into the soil, by regrading, placement of any material underlaid by plastic, placement of millings or any other drivable material. Impervious areas include, but are not limited to, compacted soils, buildings, pavement, parking lots, driveways, sidewalks, and any other man-made structure or surface that is built or laid on the natural surface of the land which has the effect of increasing, concentrating, or otherwise altering stormwater runoff so that flows are increased. Xeriscaped properties and turf are considered pervious.

Improved Lot or Tract:

A lot or tract that has a structure or other improvement on it that causes an impervious coverage of the soil under the structure or improvement.

Large Construction Activity:

Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than five (5) acres of land. Large construction activity also includes the disturbance of less than five (5) acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than five (5) acres of land. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, and original purpose of a ditch, channel, or other similar stormwater conveyance. Large construction activity does not include the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities.

Motor Vehicle fluid:

Any vehicle crankcase oil, antifreeze, transmission fluid, brake fluid, differential lubricant, gasoline, diesel fuel, gasoline/alcohol blend, and any other fluid used in a motor vehicle.

Municipal Drainage Utility Systems Act:

Section 552.001, et seq., Texas Local Government Code, as it may be amended by the

Texas Legislature from time to time to include, but not by way of limitation, the applicable definitions in the Act.

Municipal Landfill (or landfill):

An area of land or an excavation in which municipal solid waste is placed for permanent disposal, and which is not a land treatment facility, a surface impoundment, an injection well, or a pile (as these terms are defined in regulations promulgated by the TCEQ).

Municipal Separate Storm Sewer System (“MS4”):

The system of conveyances (including roads with drainage systems, municipal streets, flood control dams, retention and detention basins, grate and/or curb inlets, curbs, gutters, ditches, man-made channels, arroyos, agriculture drains, storm drains or designated flow paths) owned, operated or controlled by the city and/or PSB and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.

National Pollutant Discharge Elimination System (NPDES):

The federal program under which the administrator of the United States Environmental Protection Agency can authorize discharges of waste to waters of the United States according to Section 402 of the Federal Water Pollution Control Act, and may also delegate this permitting authority to the State of Texas.

Non-point Source:

Any source of any discharge of a pollutant that is not a "point source."

Notice of Change (“NOC”):

The notice of change that is required by either the industrial general permit or the construction general permit.

Notice of Intent (“NOI”):

The notice of intent that is required by either the industrial general permit or the construction general permit.

Notice of Termination (“NOT”):

The notice of termination that is required by either the industrial general permit or the construction general permit.

Oil:

Any kind of oil in any form, including, but not limited to petroleum, fuel oil, crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure, sludge, oil refuse, and oil mixed with waste

Operator:

The person or persons who, either individually or taken together, meet either of the following two criteria: (a) they have operational control over the facility specifications (including the ability to make modifications in specifications); and (b) they have the day-to-day operational control over those activities at the facility necessary to ensure compliance with pollution prevention requirements and any permit conditions.

Owner:

The person who owns a facility or part of a facility or who has control over day-to-day activities.

Person:

Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns or person who has control over day to day activities. This definition includes all federal, state, and local governmental entities.

Pesticide:

A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant (as these terms are defined in Section 76.001 of the Texas Agriculture Code).

Petroleum Product:

A petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene distillate fuel oil, and No. 1 and No. 2 diesel.

Petroleum Storage Tank (PST):

Any one or combination of aboveground or underground storage tanks that contain petroleum products and any connecting underground pipes.

Point Source:

Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

Pollutant:

Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farm land.

Pollution:

The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

Probable Maximum Flood (PMF):

The largest flood that could occur at a particular location, usually estimated from probable maximum precipitation, and where applicable, snow melt, coupled with the worst flood producing conditions in the water shed.

Probable Maximum Precipitation (PMP):

Defined by the National Weather Service as "theoretically, the greatest depth of precipitation for a given duration that is physically possible over a given storm area at a particular geographical location at a certain time of the year".

Properly Maintained System:

A drainage system must be kept as originally designed and constructed. Examples of a properly maintained system include but are not limited to regularly inspected, cleared of debris, trash, silt accumulation and sediment build up; be cleaned and any visible signs of erosion must be repaired.

Public Service Board:

The Public Service Board of the City of El Paso, Texas acting on its own behalf or through the authorized acts of the El Paso Water Utilities (EPWU), which is charged with the day-to-day operation of El Paso's water, wastewater, and stormwater system.

Public Utility:

A stormwater service that is regularly provided by the municipality through municipal property dedicated to that service to the users of benefited property within the service area and that is based on:

- a. An established schedule of charges;
- b. The use of the police power to implement the service; and
- c. Nondiscriminatory, reasonable, and equitable terms.

Release:

Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the MS4 or the waters of the United States onto the ground in such a manner that a pollutant may be discharged in the MS4.

Reportable Quantity (RQ):

For any "hazardous substance," the quantity established and listed in Table 302.4 of 40 CFR Part 302; for any "extremely hazardous substance," the quantity established in 40 CFR Part 355 and listed in Appendix A or B thereto and as amended from time to time.

Retention Pond:

Excavated area that protects against flooding by storing water for an indefinite period of time. Retention ponds do not have an outlet structure. Release of water happens through infiltration and/or evaporation.

Sanitary Sewer (or sewer):

The system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the City sewage treatment plant (and to which stormwater, surface water, and groundwater are not intentionally admitted).

Septic Tank Waste:

Any domestic sewage removed from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

Service Area:

All that area of land located within the city limits of the City and any other land areas in the City's extraterritorial jurisdiction as provided by the Municipal Drainage Utility Systems Act or other applicable law which, as a result of topography or hydraulics, contribute to overland flow into the watersheds served by the drainage system of the City. Upon the effective dates of completed annexation of additional lands into the City, each such annexed additional land shall become part of the service area. Land annexed for limited purposes shall become a part of the service area upon annexation for full purposes. The Service Area may be extended by written resolution of the Board, to the extent permitted by the Act at the time of adoption of such resolution, to include other land areas outside the city limits of the City which, as a result of topography or hydraulics, contribute overland flow into the watersheds served by the system provided, however, in no event may the Service Area extend farther than the boundaries of the City's then current extraterritorial jurisdiction, nor, except as expressly provided by the Act, may the Service Area extend into the boundaries of another municipality.

Sewage (or sanitary sewage):

The domestic sewage and industrial waste that is discharged into the City sanitary sewer systems and passes through the sanitary sewer system to the City sewage treatment plant for treatment.

Site:

The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

Small Construction Activity:

Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one (1) acre and less than five (5) acres of land. Small construction activity also includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one (1) and less than five (5) acres of land. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, and original purpose of a ditch, channel, or other similar stormwater conveyance. Small construction activity does not include the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities.

State:

The State of Texas.

Stormwater:

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

Stormwater Associated with Construction Activity:

Stormwater runoff from a construction activity where soil disturbing activities (including clearing, grading, excavating) result in the disturbance of one (1) or more acres of total land area, or are part of a larger common plan of development or sale that will result in disturbance of one (1) or more acres of total land area.

Stormwater Discharges Associated with Industrial Activity:

Stormwater runoff that exits any system that is used for collecting and conveying stormwater that originates from manufacturing, processing, material storage, and waste material disposal areas (and similar areas where stormwater can contact industrial pollutants related to the industrial activity) at an industrial facility described by one or more of Sectors A through AD of the TPDES general permit providing authorization for point source discharges of stormwater associated with industrial activity to water in the state or the NPDES general permit providing authorization for point source discharges of stormwater associated with industrial activity to waters of the United States. The definition is restricted, for the purposes of this Rule, to those stormwater discharges that qualify for authorization under the provisions of the TPDES or NPDES general permits (on an outfall by outfall consideration).

Stormwater Pollution Prevention Plan (SWP3-):

A plan required by a TPDES general permit that describes and ensures the implementation of practices that are to be used to reduce the pollutants in stormwater discharges associated with the facility.

System:

The Municipal Drainage Utility System established by this Ordinance and encompassing the complete drainage system of the City as it now exists and may be improved, added to, or extended hereafter, there being included in such term all drainage facilities now or hereafter owned or operated by the City, lying within and without the boundaries of the City, and including all real estate and real and personal property of every kind and nature comprising any part of or used or useful in the operation of the system but excluding parks, roads, streets and bridges.

Texas Pollutant Discharge Elimination System (TPDES):

The state program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under Clean Water Act §§307, 402, 318 and 405, the Texas Water Code and Texas Administrative Code regulations as amended from time to time.

TPDES General Permit:

A permit issued by the TCEQ under the provisions of Section 402 of the Clean Water Act and/or Chapter 26 of the Texas Water Code.

Uncontaminated:

Not containing a harmful quantity of any pollutant.

Used Oil (or used motor oil):

Any oil that has been refined from crude oil or a synthetic oil that, as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties but that may be suitable for further use and is recyclable in compliance with state and federal law.

User:

The person or entity that owns or occupies a benefited property.

Water In The State (or water):

Any groundwater, percolating or otherwise, lakes, ponds, impounding reservoirs, springs, rivers, canals, streams, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

Water Quality Standard:

The designation of a body or segment of surface water in the state for desirable uses and the narrative and numerical criteria deemed by the state to be necessary to protect those uses, as specified in Chapter 307 of Title 31 of the Texas Administrative Code as amended from time to time.

Waters of the United States:

All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce including all waters which are subject to the ebb and flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters within the federal definition of "waters of the United States": at 40 CFR Section 122.2; including the Rio Grande River, but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water Act.60.

Wetland:

An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

C. NEUTRAL GENDER

When the context requires, all nouns and pronouns in the masculine gender shall also include the feminine gender.

D. CONDITIONS OF SERVICE

It is the intent of these Rules and Regulations No. 2 that stormwater service be provided only to property that is within the Service Area as defined in Section I of this Rule. For the purpose of this Rules and Regulations No. 2, property shall be considered as being within the Corporate limits of the City of El Paso and eligible for stormwater service if it is located and improved in such a manner that all of the conditions for service, as defined in Rules and Regulations No. 1, Section II.A.4., are satisfied.

SECTION II PURPOSE AND ADMINISTRATION

A. PURPOSE AND SCOPE

The purpose of this chapter is to comply with all applicable local, state and federal stormwater discharge laws for the control, elimination or reduction of pollutants from entering El Paso's municipal separate storm sewer system (MS4) and for control over discharges to and from the system. The provisions of this chapter are to complement the El Paso Municipal Code Ordinances and all agreements with the City. This chapter shall apply to all discharges to the MS4 generated on any developed and undeveloped land. The purposes of this Rules and Regulations No. 2 are as follows:

1. To maintain and improve the quality of stormwater, surface water and groundwater within the jurisdiction of the City.
2. To prevent the discharge of contaminated stormwater runoff from industrial, commercial, residential, and construction sites into the MS4 and waters of the state and U.S.
3. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.
4. To promote public awareness of the hazards involved in the improper discharge of hazardous substances, petroleum products, household hazardous waste, industrial waste, sediment from construction sites, pesticides, herbicides, fertilizers, and other contaminants into the storm drains and natural waters of the City.
5. To facilitate compliance with state and federal standards and permits by Owners and Operators of facilities engaged in industrial and construction activities within the City.
6. To enable the City to comply with all federal and state laws, regulations and permits applicable to stormwater discharge.

B. ADMINISTRATION

El Paso Water Utilities, under the direction of its President & CEO and acting through its employees and agents, is hereby authorized to administer this Rules and Regulations No. 2, and to take all steps necessary to implement them. Unless explicitly stated otherwise, references to the Public Service Board in this Rules and Regulations No. 2 shall include El Paso Water Utilities.

SECTION III GENERAL STORMWATER SYSTEM USE REQUIREMENTS

A. GENERAL PROHIBITIONS

No person shall introduce or cause to be introduced into the MS4 or waters within the jurisdiction of the city any discharge that is not composed entirely of stormwater. It is an affirmative defense to any enforcement action for violation of this section that the discharge was composed entirely of one or more of the following categories of acceptable discharges:

1. A discharge authorized by, and in full compliance with, an TPDES permit (other than the TPDES permit for discharges from the MS4);
2. A discharge resulting from firefighting;
3. Agricultural stormwater runoff;
4. A discharge from water line flushing, but not including a discharge from water line disinfection by superchlorination or other means unless it contains no harmful quantity of chlorine or any other chemical used in line disinfection;
5. A discharge from lawn watering, landscape irrigation, or other irrigation water;
6. A discharge from a diverted stream flow or natural spring;
7. A discharge from uncontaminated pumped groundwater or rising groundwater;
8. Uncontaminated groundwater infiltration (as defined in 40 CFR Section 35.2005 (20)) to the MS4;
9. Uncontaminated discharge from a foundation drain, crawl space pump, footing drain or sump pump;
10. A discharge from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;
11. A discharge from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant;
12. A discharge from individual residential or charity car washing but only without the use of detergents or surfactants;
13. An uncontaminated discharge from riparian habitat or wetland;

14. A discharge from water used in street washing; provided, that the water is not contaminated with any harmful cleaning substance;
15. Vehicle, external building, and pavement wash water where detergents and soaps are not used and where spills or leaks of toxic or hazardous materials have not occurred (unless spilled materials have been removed; and if local, state, or federal regulations are applicable, the materials are removed according to those regulations), and where the purpose is to remove mud, dirt, and dust;
16. Water used to control dust.

Any discharge into the city's stormwater collection system, which is in accordance with city-issued permit, which may be based upon a Texas Pollutant Discharge Elimination System (TPDES) permit and applicable state permits, shall be an exception to this prohibition.

No affirmative defense shall be available under this section if the discharge or flow in question has been determined to be a source of a pollutant or pollutants to the waters of the United States or to the MS4, and written notice of such determination has been provided to the discharger.

B. SPECIFIC PROHIBITIONS

The specific prohibitions and requirements in this section are within but do not limit the general prohibition of all the discharges prohibited by the general prohibition in these Rules and Regulations.

1. No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the City to violate a water quality standard, the City's TPDES permit, or any state-issued discharge permit for discharges from its MS4.
2. No person shall release or cause, allow, or permit to be introduced any of the following substances into the MS4 nor the waters within the jurisdiction of the city such that the substance may enter the MS4 system:
 - a. Any used motor oil, antifreeze, or any other motor vehicle fluid;
 - b. Any industrial waste;
 - c. Any hazardous waste, including hazardous household waste;
 - d. Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
 - e. Any wastewater from a commercial carwash facility; from any commercial vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility.
 - f. Any wastewater from the commercial washing, cleaning, de-icing, or other maintenance of aircraft;
 - g. Any wastewater from a commercial mobile power washer or from the washing or other cleaning of building exterior where the wastewater contains any harmful cleaning substance;
 - h. Any wastewater from commercial floor, rug, or carpet cleaning;

- i. Any wastewater from the washdown or other cleaning of pavement that contains any harmful quantity of any cleaning substance; or any wastewater from the washdown or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of such released material have been previously removed;
 - j. Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blowdown from a boiler;
 - k. Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydromulch material, or from the cleaning of commercial vehicles or equipment containing, or used in transporting or applying, such material;
 - l. Any filter backwash from a swimming pool, fountain, or spa;
 - m. Any non de-chlorinated swimming pool or spa water;
 - n. Any discharge from water line disinfection by superchlorination or other means if it contains any harmful quantity of chlorine or any other chemical used in line disinfection;
 - o. Any water from a water curtain in a spray room used for painting vehicles or equipment;
 - p. Any contaminated runoff from a vehicle wrecking yard;
 - q. Any substance or material that will damage, block, or clog the MS4; Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by a leaking PST, or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge complies with all state and federal standards and requirements;
 - r. Any discharge into any street, gutter, ditch, channel, watercourse, drain, stormwater inlet or storm sewer of any wastewater, including but not limited to sand/grit trap sludges and restaurant grease trap sludges, or liquid waste containing cement, concrete, building materials, oil, chemicals, wastewater or other liquid industrial waste, such as all waterborne solids, liquids or gaseous waste containing toxic or poisonous substances in amounts prohibited by any federal or state regulation or any substance which can block or interfere with the flow in any of the previously named storm sewers and other public rights-of-way is prohibited.
3. No person shall introduce or cause to be introduced into the MS4 or waters within the jurisdiction of the city any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities, or associated with landfilling or other placement or disposal of soil, rock, or other earth materials, in excess of what could be retained on site or captured by employing sediment and erosion control measures to the maximum extent practicable under prevailing circumstances.
 4. No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4, or allow such a connection to continue.
 5. Regulation of Pesticides, Herbicides, and Fertilizers.
 - a. Any sale, distribution, application, labeling, manufacture, transportation, storage, or disposal of a pesticide, herbicide, or fertilizer must comply fully with all state and federal statutes and regulations including, without limitation, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and all federal regulations

promulgated pursuant to FIFRA; Chapters 63, 75, and 76 of the Texas Agriculture Code and all state regulations promulgated pursuant thereto; and any other state or federal requirement.

- b. No person shall use or cause to be used any pesticide or herbicide contrary to any directions for use on any labeling required by state or federal statute or regulation.
- c. No person shall dispose of, discard, store, or transport a pesticide, herbicide, or fertilizer, or a pesticide, herbicide, or fertilizer container, in a manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter the MS4 or waters of the United States.

6. Used Oil Regulation.

No person shall:

- a. Discharge used oil into the MS4 or a sewer, drainage system, septic tank, surface water, groundwater, or watercourse;
- b. Knowingly mix or commingle used oil with solid waste that is to be disposed of in a landfill or knowingly directly dispose of used oil on land or in all landfill or knowingly discharge used oil onto the ground;
- c. Introduce used oil into the environment by any method, including application of used oil to a road or land for dust suppression, weed abatement, or other similar use.

A retail dealer who annually sells directly to the public more than five hundred gallons of oil in containers for use off-premises shall post in a prominent place a sign provided by the state informing the public that improper disposal of used oil is prohibited by law. The sign shall prominently display the toll-free telephone number of the State's used oil information center.

C. RELEASE REPORTING AND CLEANUP

- 1. The Operator of any facility, vehicle, or other source of any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, dumping, disposing, or any other release of any of the following quantities of any of the following substances that may flow, leach, enter, or otherwise be introduced into the MS4 or waters of the United States, shall telephone and notify the Fire Department and the PSB as soon as practicable concerning the incident:
 - a. An amount equal to or in excess of a reportable quantity of any hazardous substance, as established under 40 CFR Part 302;
 - b. An amount equal to or in excess of a reportable quantity of any extremely hazardous substance, as established under 40 CFR Part 355;
 - c. An amount of oil that either (1) violates applicable water quality standards, or (2) causes a film or discoloration of the surface of the water or an adjoining shoreline or causes a sludge or emulsion to be deposited beneath the surface of the water or upon an adjoining shoreline; or
 - d. Any harmful quantity of any pollutant.

2. The immediate notification required by subsection 1 of this section shall include the following information:
 - a. The identity or chemical name of the substance released, and whether the substance is an extremely hazardous substance;
 - b. The exact location of the release, including any known name of the waters involved or threatened and any other environmental media affected;
 - c. The time and duration (thus far) of the release;
 - d. An estimate of the quantity and concentration (if known) of the substance released;
 - e. The source of the release;
 - f. Any known or anticipated health risks associated with the release and, where appropriate, advice regarding medical attention that may be necessary for exposed individuals;
 - g. Any precautions that should be taken as a result of the release;
 - h. Any steps that have been taken to contain and clean up the released material and minimize its impacts; and
 - i. The names and telephone numbers of the person or persons to be contacted for further information.

3. Within fourteen days following such release, the operator of a facility, vehicle, or other source of the release shall submit a written report to the PSB containing each of the items of information specified above in subsection 2 of this section, as well as the following additional information:
 - a. The ultimate duration, concentration, and quantity of the release;
 - b. All actions taken to respond to contain, and clean up the released substances, and all precautions taken to minimize the impacts;
 - c. Any known or anticipated acute or chronic health risks associated with the release;
 - d. Where appropriate, advice regarding medical attention necessary for exposed individuals;
 - e. The identity of any governmental/private sector representatives responding to the release; and
 - f. The measures taken or to be taken by the responsible person(s) to prevent similar future occurrences.

4. Any release report required by a state or federal authority shall be adequate to meet the reporting requirements of subsection 3 of this section upon submittal to the utility.

5. The notifications required by subsections 2 and 3 of this section shall not relieve the responsible person of any expense, loss damage, or other liability which may be incurred as a result of the release, including any liability for damage to the city, to natural resources, or to any other person or property; nor shall such notification relieve the responsible person of any fine, penalty, or other liability which may be imposed pursuant to this chapter or to state or federal law.

6. Any person responsible for any release as described in subsection 1 of this section shall comply with all state, federal, and any other local law requiring reporting, cleanup, containment and any other appropriate remedial action in response to the release.

7. Any person responsible for a release described in subsection 1 of this section shall reimburse the PSB for any cost incurred by the PSB in responding to the release within thirty days of being invoiced by the PSB.

SECTION IV STORMWATER PERMITS

A. ADOPTION OF TPDES PERMITS

The TPDES General Permit number TXR050000 for industrial facilities, number TXR150000 for construction facilities, and other TPDES general permits for discharge of stormwater and their successors are hereby adopted and shall be considered part of this Rule to the prescribed extent of each of the general permits.

B. UNPERMITTED DISCHARGES PROHIBITED

A person who is the operator of a facility commits an offense if the person discharges, or causes to be discharged, stormwater regulated by an NPDES or TPDES permit without first having obtained a NPDES or TPDES permit to do so.

C. SMALL CONSTRUCTION ACTIVITIES

1. Automatic Authorization for Small Construction Activities With Low Potential for Erosion: For small construction activities that occur during periods of low potential for erosion, Operators are not required to develop a Stormwater Pollution Prevention Plan (SWP3) or submit a NOI, provided:
 - a. Construction activity is initiated and completed, including either final or temporary stabilization of all disturbed areas, within the time frame identified in the TPDES general permit for the location of the construction site.
 - b. A signed copy of the pertinent construction site notice, including the certification statement, is posted and maintained at the construction site in a location where it is readily available for viewing by the general public and local, state, and federal authorities prior to commencing construction activities and a copy of it was mailed or delivered to the PSB at least two days prior to commencement of construction activities.
 - c. All temporary stabilization is adequately maintained to effectively reduce or prohibit erosion and final stabilization is completed no later than 30 days following the end date of the time frame identified in the TPDES general permit for the location of the construction site.
 - d. Any supporting concrete batch plant or asphalt plant is separately authorized for discharges under an individual TPDES permit or other TPDES permit.
 - e. The Operator complies with the requirements of the TPDES general permit.
2. Automatic Authorization for All Other Small Construction Activities: Other small construction activities that do not comply with item 1) above may be automatically authorized under the TPDES general permit and are not required to submit a NOI provided:
 - a. The Operator develops a Stormwater Pollution Prevention Plan (SWP3) according to the provisions of the TPDES general permit that cover either the entire site or

all portions of the site for which the applicant is the Operator, and implement that plan prior to commencing construction activities.

- b. The SWP3 and any fees shall be submitted to the City for review and approval and a City SWP3 permit shall be obtained by the operator from the City prior to commencement of construction activities. A copy of the SWP3 City permit shall be provided to the PSB at least two days prior to commencement of construction activities.
- c. A signed copy of the pertinent construction site notice, including the certification statement, is posted at the construction site in a location where it is readily available for viewing by the general public and local, state, and federal authorities prior to commencing construction activities and a copy of it was mailed or delivered to the PSB at least two days prior to commencement of construction activities.
- d. The Operator complies with the requirements of the TPDES general permit.

3. Waivers from Coverage for Small Construction Activities

Operators of small construction activity sites may also be eligible for a waiver from the otherwise applicable requirements of this Section under the following terms and conditions:

- a. The Operator of a small construction activity site applies for and receives a waiver from the requirements to obtain authorization under the TPDES general permit for construction where:
 - (i) The Operator prepares a signed “Low Rainfall Erosivity Waiver” in accordance with the TPDES general permit for construction activities and certifying that the construction activity will commence and be completed within a period when the value of the calculated rainfall erosivity R factor is less than five (5);
 - (ii) The “Low Rainfall Erosivity Waiver” form is submitted to the TCEQ and a copy is provided to the PSB at least two (2) days before construction activity begins;
 - (iii) The waiver is approved by TCEQ.
- b. If a construction activity extends beyond the approved waiver period due to circumstances beyond the control of the Operator, the Operator must either:
 - (i) Recalculate the rainfall erosivity R factor using the original start date and a new projected ending date, and if the R factor is still under five (5) submit a new “Low Rainfall Erosivity Waiver” to the TCEQ and PSB at least two (2) days before the end of the original waiver period; or
 - (ii) Comply with the requirements of the previous two subsections (Section IV.C.1 and 2) least two (2) days before the end of the approved waiver period.

D. LARGE CONSTRUCTION ACTIVITIES

Operators of large construction activities that qualify for coverage under the TPDES general permit for construction must:

1. Develop a stormwater pollution prevention plan (SWP3) according to the provisions of the general permit that covers either the entire site or all portions of the site for which the applicant is the Operator, and implement that plan prior to commencing construction activities.
2. The SWP3 and any fees shall be submitted to the City for review and approval and a City SWP3 permit shall be obtained by the operator from the City prior to commencement of construction activities. A copy of the SWP3 City permit shall be provided to the PSB at least two days prior to commencement of construction activities.
3. Submit a Notice of Intent (NOI), along with required fee(s) if applicable, to TCEQ and the PSB at least ten (10) days prior to commencing construction activities, or within 24 hours before commencing construction activities if utilizing electronic NOI submittal. If the Operator changes, or an additional operator is added after the initial NOI is submitted, the new operator must submit an NOI at least ten (10) days before assuming operational control, or within 24 hours before assuming operational control if utilizing electronic NOI submittal.
4. Post a copy of the NOI at the construction site in a location where it is readily available for viewing by the general public and local, state, and federal authorities prior to commencing construction activities, and maintain the notice in that location until completion of the construction activity.
5. Mail or deliver a copy of the signed NOI to the PSB at least two days prior to the commencement of construction activities, and retain proof of submittal of the NOI in the SWP3.
6. Submit the Notice of Termination (NOT) to TCEQ requesting termination of coverage at the termination of the permitted discharges in accordance with the TPDES general permit. A copy of the NOT shall be mailed or delivered to the PSB.
7. File a Notice of Change (NOC) letter with the TCEQ if applicable in accordance with the TPDES general permit. A copy of the NOC shall be mailed or delivered to the PSB.
8. Comply with the requirements of the TPDES general permit.

E. INDUSTRIAL ACTIVITIES

1. Operators of industrial activities that qualify for coverage under the TPDES general permit for industrial activities must:
 - a. Develop and implement a stormwater pollution prevention plan (SWP3) according to the provisions of the TPDES general permit for discharges associated with industrial activities that covers either the entire site or all portions of the site for which the applicant is the Operator prior to submitting a Notice of Intent (NOI).
 - b. The SWP3 and any fees shall be submitted to the City for review and approval and a City SWP3 permit shall be obtained by the Operator from the City prior to discharges associated with industrial activities. A copy of the SWP3 City permit

shall be provided to the PSB prior to discharges associated with industrial activities.

- c. Submit a NOI, along with required fee(s) if applicable, to TCEQ and the PSB prior to commencement of industrial activity that could result in a discharge of stormwater runoff subject to the requirements of the general permit.
 - d. The NOI and SWP3 shall either be maintained at the site or be readily available for review by the PSB upon request.
 - e. Submit the Notice of Termination (NOT) to TCEQ within 10 days after the facility ceases discharging stormwater associated with industrial activity, obtains coverage under an individual permit, obtains coverage under an alternative general permit, or within 10 days following transfer of ownership or responsibility of the facility. A copy of the NOT shall be mailed or delivered to the PSB.
 - f. File a Notice of Change (NOC) letter with both TCEQ and the PSB within fourteen days, if applicable in accordance with the general permit.
 - g. Continue to pay any required fee(s) to TCEQ.
 - h. Comply with the requirements of the TPDES general permit.
2. Facilities regulated under this general permit may be excluded from permit requirements if there is no exposure of industrial materials or activities from precipitation or runoff. To qualify for a no exposure exclusion from permit requirements, the Operator of the facility must provide certification that industrial activities and materials are isolated from stormwater and stormwater runoff by storm resistant shelters. The certification shall be submitted to TCEQ using the “No Exposure Certification” (NEC) form. A copy of the form shall be provided to the PSB. The facility is subject to inspection by the PSB to determine compliance with the no exposure exclusion.
 3. Any discharge eligible for coverage under the general permit may alternatively be authorized under an individual TPDES permit according to Title 30 Texas Administrative Code Chapter 305. If an industrial facility operates under an individual permit for stormwater discharges, the facility must comply with the requirements of the individual permit.

F. COMPLIANCE WITH PERMIT

1. A facility shall be operated in strict compliance with the requirements of its NPDES or TPDES general or individual permit to discharge stormwater.
2. A person commits an offense if the person operates a facility in violation of a requirement of the facility's NPDES or TPDES general or individual permit to discharge stormwater or fails to obtain authorization to discharge in accordance with TPDES Permit requirements, if applicable.

G. MODIFICATION OF SWP3

1. The PSB may require any operator of a facility to modify the facility's stormwater pollution prevention plan (SWP3), if in the best professional judgment of the PSB the SWP3 does not comply with the requirements of the facility's NPDES or TPDES permit to discharge stormwater.

2. The deficiencies in a facility's SWP3 will be made in writing in a Notice of Deficiency, and the PSB will give the facility Operator a reasonable amount of time, not to exceed thirty days, to make the necessary changes in the SWP3. The PSB may grant a time extension if requested by the Operator and the PSB determines that the request is reasonable.
3. A person commits an offense for failure to respond to the PSB's Notice of Deficiency or for failing to correct the deficiencies identified by the PSB within the required timeframe.

H. BEST MANAGEMENT PRACTICES

The PSB may adopt requirements identifying Best Management Practices (BMPs) for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the United States. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement at said person's expense, additional Structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES or TPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWP3) as necessary for compliance with requirements of the NPDES or TPDES permit.

SECTION V REPORTING AND MONITORING

A. MONITORING OF DISCHARGES

The PSB reserves the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at the discharger's expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

B. ACCESS TO FACILITIES

1. The PSB or its representative(s), TCEQ or EPA may enter premises or vehicles regulated by this chapter at all reasonable times, whenever it is necessary to make an inspection to enforce any of the provisions of this chapter, to inspect permits and records required by this chapter, to collect air, water, waste, or wastewater samples, or whenever probable cause exists to believe that a violation of this chapter or other environmental laws exists on such premises.
2. The PSB shall first present credentials and demand entry if the premises are occupied. If the premises are unoccupied, a reasonable attempt shall be made to locate the owner or person in control of the premises and demand entry.
3. Where premises have security measures in force that require proper identification and clearance before entry into its premises, the person in control of the premises shall make necessary arrangements with its security guards so that, upon presentation of suitable

identification, the PSB will be permitted to enter without delay for the purposes of performing specific responsibilities.

4. If entry is denied or if a person in control cannot be located, the PSB or representatives shall have every recourse provided by law to secure entry. Such recourse shall include the right to obtain a search warrant under the guidelines of the Texas Code of Criminal Procedure; and for the purposes of same, any person with enforcement authority under this chapter is hereby declared to be a "health officer."
5. Facility operators shall allow the PSB or representatives ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES or a TPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
6. The PSB shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the PSB to conduct monitoring and/or sampling of the facility's stormwater discharge.
7. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the PSB and shall not be replaced. The costs of clearing such access shall be borne by the operator.
8. Unreasonable delays in allowing the PSB access to a permitted facility is a violation of a stormwater discharge permit and of this rule. A person who is the operator of a facility with a NPDES or TPDES permit to discharge stormwater associated with construction or industrial activity commits an offense if the person denies the PSB reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this rule.

C. CITIZEN PARTICIPATION

1. All citizens are encouraged to report to the PSB any spills, releases, illicit connections, other instances of anyone discharging pollutants, into the MS4 or waters of the United States, and any other violation of Rules and Regulations No. 2, of which they become aware.
2. The PSB may receive citizen reports by telephone, in writing, or in person. A written record of each citizen report will be prepared and kept on file for a period of three years, and a copy of the PSB's record of the report will be furnished to the reporting citizen upon request. Also upon request, the PSB will inform the reporting citizen of any action undertaken by the PSB in response to the citizen's report.

D. CONFIDENTIAL INFORMATION

Discharger information and data obtained from reports, questionnaires, applications, permits, monitoring programs and inspections shall be made available by the PSB in accordance with the Freedom of Information Act. Information or data submitted to the PSB is without restriction unless

the discharger specifically requests and is able to demonstrate to the satisfaction of the PSB that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets under applicable state law. Any such request must be asserted at the time the information or data is submitted. Each page shall also be stamped "confidential" by the discharger at the time the information is submitted. When requested and demonstrated by the discharger that such information should be held confidential, the portions of a report that might disclose trade secrets shall not be made available for inspection by the public but shall be made immediately available upon request to governmental agencies for use related to the TPDES program and in enforcement proceedings involving the Person or User submitting the report. Information regarding constituents and characteristics of stormwater shall not be recognized as confidential.

E. DISCHARGE MONITORING REPORTS

A copy of any Discharge Monitoring Report (DMR) submitted by the permittee under a TPDES general permit shall be submitted to the PSB within 15 days of submitting it to the TCEQ.

F. NOTICES

Unless otherwise provided, all written notices required by this Rules and Regulations No. 2, shall be submitted to:

El Paso Water Utilities
1154 Hawkins Blvd.
El Paso, TX 79925

SECTION VI ENFORCEMENT

A. AUTHORITY TO ISSUE CITATIONS

The PSB and personnel under its supervision or any other personnel authorized to issue Class C misdemeanor citations is authorized to issue citations, notices of violation and/or correction notices for violations of any provision of Rules and Regulations No. 2

B. SUSPENSION OF MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) ACCESS

1. Suspension due to Illicit Discharges in Emergency Situations. The PSB may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

2. Suspension due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this chapter may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The PSB will notify a violator of the proposed termination of its MS4 access. The violator may petition the PSB for a reconsideration and hearing.

3. A Person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the PSB.

C. JUDICIAL RELIEF

Despite any other provisions contained in this rule, the legal counsel for the PSB is hereby authorized to seek and proceed with legal action and/or equitable remedies against any person or discharger believed to be violating or have violated this Rules and Regulations No. 2 and/or federal or state laws governing water quality, stormwater, and hazardous or non-hazardous wastes over which the PSB has enforcement authority. A legal proceeding prosecuted under this rule does not constitute a waiver by the PSB of any right the city may have to join in a legal action originating from an alternative source of law.

D. CRIMINAL PENALTIES

Any person violating any provision of the Rules and Regulations No. 2 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed two thousand dollars (\$2000.00) per violation, and if such violation is a continuous one, each day's violation shall constitute a separate offense

E. CIVIL PENALTIES

Any person who violates any provision of these Rules and Regulations relating to point source effluent limitations or the discharge of a pollutant, other than from a nonpoint source, into a sanitary or stormwater sewer system owned or controlled by the PSB shall be subject to a civil penalty up to a maximum of five thousand dollars per violation. If the violation is a continuous one, each day's violation shall constitute a separate offense. A culpable mental state is not required to prove an offense under this ordinance

F. REMEDIES NONEXCLUSIVE

The remedies provided for in this rule are not exclusive. The PSB may take any, all or a combination of these actions against a noncompliant discharger. The PSB may take other action against any discharger when the circumstances warrant. Further, the PSB may take more than one enforcement action against any noncompliant discharger.

SECTION VII CUSTOMER'S RIGHTS AND RESPONSIBILITIES

A. CUSTOMER FACILITIES

The Utility does not assume the responsibility of inspecting any part of the customer's installation of stormwater facilities. The customer shall be solely responsible for the costs of installing and maintaining any such facilities. The Utility shall have access to any benefited properties served by the drainage utility for inspection or repair or for the enforcement of the provisions of these Rules and Regulations No. 2.

B. DAMAGE TO CUSTOMER

The City of El Paso and/or EPWU shall not be responsible for any loss or damage caused by the improper installation, condition or use of the customer's equipment or by any negligence or wrongful act of the customer or his agents, employees or licensees.

C. DAMAGE TO UTILITY

Any damage to equipment belonging to the Utility caused by the negligence or wrongful act of the customer or his agent, employee or licensee shall be paid by the customer upon presentation of a bill therefore. Non-payment of such charges shall be grounds for disconnection of service.

SECTION VIII DESIGN AND OWNERSHIP OF FACILITIES

A. OPERATIONS, MAINTENANCE AND OWNERSHIP

The Utility shall design, construct, operate and maintain all public stormwater facilities with due regard to present and future requirements of capacity, system operation and efficiency and anticipated life of such improvements. Title to all such facilities shall remain in the El Paso Water Utilities, City of El Paso, Texas, acting by and through its Public Service Board upon completion of the construction of such facilities and upon the incorporation of such facilities into the operating system.

B. UTILITY FURNISHED EQUIPMENT

Title to all Utility-installed equipment and materials shall remain property of the El Paso Water Utilities, City of El Paso, Texas, acting by and through its Public Service Board.

SECTION IX SEVERABILITY CLAUSE

If any provision, paragraph, section, subsection, sentence, clause or phrase of these Rules and Regulations No. 2 or the application of same to any person or set of circumstances is for any reason held void, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of these rules and regulations.

SECTION X SAVINGS

These rules and regulations are a part of the other rules and regulations of the Public Service Board and, save and except as amended hereby, the remaining provisions of the Public Service Board's rules and regulations shall remain in full force and effect.

SECTION XI EFFECTIVE DATE

These rules and regulations shall be and become effective from and after their adoption hereby and shall remain in effect until amended or changed by the Public Service Board.

PASSED, APPROVED and ADOPTED at the regular meeting of the Public Service Board of the City of El Paso, Texas, this 12th day of December, 2007, at which a quorum was present, held in accordance with the provisions of V.T.C.A. Government Code, Sections 551.001 et. seq.


T
RULES & REGULATIONS NO. 2, SECTION 1.B., ADDED, REVISED, APPROVED & ADOPTED this 23rd day of July, 2008, by the El Paso Water Utilities Public Service Board of the City of El Paso, Texas.

RULES & REGULATIONS NO. 2, SECTION 1 (B), ADDED, REVISED, APPROVED & ADOPTED this 9th day of January, 2019, by the El Paso Water Utilities Public Service Board of the City of El Paso, Texas.

ATTEST:



Kristina Mena, Secretary-Treasurer

PUBLIC SERVICE BOARD


Christopher Antcliff, Chair

APPROVED AS TO FORM:



Lee Ann B. Koehler, General Counsel