

**NPDES PERMIT NO. NM0000108
RESPONSE TO COMMENTS**

RECEIVED ON THE SUBJECT DRAFT
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
PERMIT IN ACCORDANCE WITH REGULATIONS LISTED AT 40CFR124.17

APPLICANT: El Paso Electric Company
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ISSUING OFFICE: U.S. Environmental Protection Agency
Region 6
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PERMIT ACTION: Final permit decision and response to comments received on the proposed
NPDES permit publicly noticed on January 27, 2024.

DATE PREPARED: September 24, 2024

Unless otherwise stated, citations to 40 CFR refer to promulgated regulations listed at Title 40,
Code of Federal Regulations, revised as of January 10, 2023.

CHANGES FROM THE DRAFT PERMIT

There are changes from the draft permit publicly noticed on January 27, 2024:

- New virtual Outfall 110 has been added to the permit for reporting and limiting the combined loadings of dissolved Boron from Outfalls 001 and 002. The dissolved Boron limits proposed for Outfalls 001 and 002 have been replaced with a single limit for the combined loadings from these Outfalls consistent with Waste Load Allocation (WLA) assigned to this permit in the Gila/Mimbres/San Francisco and Lower Rio Grande basins Total Maximum Daily Load (TMDL) approved July 9, 2024.
- 36-month schedule of compliance to meet dissolved Boron loading limit has been incorporated in the final permit.
- Internal outfall 109 has been included in the final permits limitations and monitoring requirements.

STATE CERTIFICATION

In a letter from Shelly Lemon, Bureau Chief, Surface Water Quality Bureau, to Kim Ngo, Acting Director, Water Division (EPA) dated March 24, 2024, the NMED certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law upon inclusion of the specific conditions in the permit.

The NMED stated that in order to meet the requirements of State law, including water quality standards and appropriate basin plan as may be amended by the water quality management plan, each of the conditions cited in the draft permit and the State certification shall not be made less stringent.

The State also stated that it reserves the right to amend or revoke this certification if such action is necessary to ensure compliance with the State's water quality standards and water quality management plan.

CONDITIONS OF CERTIFICATION

There are no conditions of State certification.

COMMENTS THAT ARE NOT CONDITIONS OF CERTIFICATION

Comment No. 1: In the Fact Sheet, Part X. Draft Permit Rationale and Proposed Permit Conditions, Section B. Technology-Based Effluent Limitations/Conditions references the El Paso Electric Company (Permittee) requesting authorization to discharge non-chemical cleaning wastewater from pressure washing or cleaning equipment associated with Unit No. 9 through Internal Outfall 109. NMED requests this section be updated to provide clarity to the administrative record. The permittee requested and received authorization in the current

administratively continued NPDES NM0000108 Permit, effective date January 1, 2019 through December 31, 2023. The permittee does not request authorization for a new internal outfall in this permit renewal cycle.

Response No. 1: Comment noted for future record. See also Response No. 2 below. No change to the final permit required.

Comment No. 2: The current administratively continued NPDES permit NM0000108, effective date January 1, 2019 through December 31, 2023, includes the El Paso Electric Company internal Outfall 109.

The Permittee included information and data from Outfall 109 in their NPDES renewal application.

Outfall 109 is not listed as an outfall in the draft permit. NMED requests that the omission of Outfall 109 from the draft permit be corrected.

In the permit cover letter, the second paragraph should read:

Outfall 001: Latitude: 31° 48' 13" North and Longitude 106° 32' 47" West
Outfall 002: Latitude: 31° 48' 16" North and Longitude 106° 32' 59" West
Internal Outfall 106: Latitude: 31° 48' 16" North and Longitude 106° 32' 52.5" West
Internal Outfall 107: Latitude: 31° 48' 50" North and Longitude 106° 32' 53.5" West
Internal Outfall 108: Latitude: 31° 48' 17.4" North and Longitude 106° 32' 55.4" West
Internal Outfall 109: Latitude: 31° 48' 17.9" North and Longitude: 106° 32' 56.5" West

In Part I. Requirements for NPDES Permits, Section A. Limitations and Monitoring Requirements,

3. Internal Outfalls, the header should read:

3. Internal Outfalls 106, 107, 108 & 109

Response No. 2: The typographical error regarding omission of internal outfall 109, which was included in the existing permit and referenced in the Fact Sheet which also did not indicate that this outfall had been requested and approved in the last permit cycle, has been corrected in the final permit.

Comment No. 3: Part I. Requirements for NPDES Permits, Section A. Limitations and Monitoring Requirements, Paragraphs 1. Outfall 001 and 2. Outfall 002 includes a new effluent loading limit for dissolved boron.

NMED supports the addition of a compliance schedule in Part I Requirements for NPDES Permits, Section B. Schedule of Compliance, to allow El Paso Electric Company to establish a control treatment system to meet the new dissolved boron effluent limit.

NMED requests that the following text be added to Part I Requirements for NPDES Permits,

Section B. Schedule of Compliance:

- a. The Permittee shall achieve compliance with the pollutant effluent limitations specified discharges in accordance with the following Schedule:

Dissolved Boron (30-Day Average 3.72 lbs/day): Three (3) years plus one (1) day from the effective date of the final permit.

- b. The Permittee shall develop and submit a water quality sampling plan within three (3) months from the effective date of the final permit.
- c. The Permittee shall collect and evaluate water quality samples within nine (9) months from the effective date of the final permit.
- d. The Permittee shall evaluate control treatment options within nine (9) months of the effective date from effective date of the final permit
- e. The Permittee shall select the control treatment option within twelve (12) months from the effective date of the final permit. Once a control treatment is identified, the Permittee shall complete the procurement process to select a control treatment system vendor and construction company, secure the appropriate contracts, purchase control treatment system equipment, and obtain any additional permits, as needed.
- f. The Permittee shall install and implement the control treatment system within 30 months from the effective date of the final permit. Once the control treatment system is installed and implemented, the Permittee shall undergo troubleshooting and adapt the new control treatment equipment.
- g. The Permittee shall achieve compliance with the effluent limitations within 36 months from the effective date of the final permit.
- h. The Permittee shall submit quarterly Compliance Status Reports to EPA, with a copy to NMED, that highlight actions being taken to comply with effluent limitations for dissolved boron. Reporting quarters shall end on the last day of the months March, June, September, and December. The reports should be submitted per Part III.D.4.
- i. No later than 14 calendar days following the date for compliance for pollutant effluent limitations, the Permittee shall submit a final written report that details all tasks that were done to achieve compliance. The report should be submitted per Part III.D.4.

Response No. 3: On July 9, 2024, EPA approved the Gila/Mimbres/San Francisco and Lower Rio Grande basins TMDL with dissolved boron waste load allocation (WLA) of 3.72 lbs/day for El Paso Electric company NPDES Permit No. NM0000108. The draft permit included a limit of 3.72 lbs/day for both Outfalls 001 and 002 for a possible combined total of 7.44 lbs/day from the facility, which could have exceeded the facility's assigned WLA of only 3.72 lbs/day in the newly approved TMDL. To be consistent with the assigned WLA, as required by 40 CFR

122.44(d)(1)(vii)(B), the final permit includes a new virtual outfall 110 with a dissolved Boron limit of 3.72 lbs/day for the total combined loadings from outfalls 001 and 002 based on the more restrictive assigned WLA. The limits for Outfalls 001 and 002 have been replaced with "Report." Monitoring and reporting will be required for both Outfalls 001 and 002 with the sum of the 30-day loadings from these Outfalls reported and limited under Outfall 110. EPA agrees with NMED 40 pursuant to C.F.R. § 122.47 that the schedule of compliance leading to compliance with CWA and regulations as soon as possible, but not later than the applicable statutory deadline. To collect data and identify sources of dissolved boron in the groundwater wells and within facility systems, a schedule of compliance in comment No. 3 (a - i) above has been adopted in the final permit.

Commented [LB1]: There is a problem with the TMDL after all since the WLA for El Paso Electric is 3.72 lbs/day. Permit has limit for Outfall 001 of 3.72 lbs/day and also another 3.72 lbs/day for Outfall 002 = total of 7.44 lbs/day which is double the WLA.

Comment No. 4: In Part II. Other Conditions, Section B. 24-Hour Oral Reporting: Daily Maximum Limitation Violation, NMED requests dissolved boron, total copper, and total iron be added to the reporting for daily maximum exceedances.

Response No. 4: Dissolved boron, Total copper, and Total iron has been added to 24-Hour oral reporting in the final permit.

Comment No. 5: Fact Sheet, Part XI, Aquatic Toxicity Testing states: "The NMIP directs the WET testing to be 7-day chronic tests using *Ceriodaphnia dubia* and *Pimephales promelas* once per quarter with a 100% critical dilution."

Part I. Requirements for NPDES Permits, Section A. Limitations and Monitoring Requirements, Paragraph 1. Outfall 001 Paragraph 002. Outfall 002 both include "Whole Effluent Toxicity Testing (7-Day Chronic Static Renewal/NOEC)" in the effluent tables.

Part II. Other Conditions, Section H. Whole Effluent Toxicity Testing (48-Hour Acute NOEC Freshwater) needs to be corrected from 48-Hour Acute NOEC Freshwater to 7-day chronic to reflect the correct Whole Effluent Toxicity Testing type. The header should read: Section H. Whole Effluent Toxicity Testing (7-Day Chronic Static Renewal/NOEC).

Response No. 5: The critical dilution of the discharge to the receiving stream is 100%. The correct WET testing is 7-day chronic tests using *Ceriodaphnia dubia* and *Pimephales promelas* once per quarter as directed by NMIP. Part II, Section H of the permit has been updated to 7-Day Chronic Static Renewal/NOEC

Comment No. 6: In Part III. Standard Conditions for NPDES Permits, Section D. Reporting Requirements, 4. Discharge Monitoring Reports and Other reports, NMED requests that EPA update the email address to SWQ.Reporting@env.nm.gov (email preferred) instead of psrs.program.manager@env.nm.gov.

Response No. 6:

Comment No.7: In Part III. Standard Conditions for NPDES Permits, Section D. Reporting Requirements, 7. Twenty-Four Hour Reporting, NMED requests that EPA update the email

address to SWQ.Reporting@env.nm.gov (email preferred) instead of psrs.program.manager@env.nm.gov.

Response No. 7: Overflow/bypass reporting has been updated to include preferred email (SWQ.Reporting@env.nm.gov) in the final permit.

COMMENTS FROM EL PASO ELECTRIC COMPANY

Comment No. 8: The permittee notes that the applicant activity description captured on the public notice letter which states that the applicant is classified under Standard Industrial Classification (SIC) Code(s) code 4952 which operates a Publicly Owned Treatment Works (POTW) with a design flow of 0.04 MGD serving 345 people.

Response No. 8: As described on the fact sheet based on the information provided in the application, the El Paso Electric Company (EPE) operates a natural gas fueled power generation station called the Rio Grande Power Station (RGPS) that is located at 3501 Doniphan Drive, Sunland Park, New Mexico. Power station is categorized under Standard Industrial Classification (SIC) Code(s) 4911. Comment noted for the record, no change to the final permit required in response to this comment.

Comment No. 9: The permittee notes that section X.B of the Fact sheet states that EPE is requesting to authorize the discharge of non- chemical cleaning wastewater associated with Unit No. 9 through internal outfall 109. EPE states that authorization request was approved during the last permit renewal cycle and since there is no new internal outfalls requests, the fact sheet portion that discusses adding outfall 109 should be deleted.

Response No. 9: Comment is noted for future reference. See Response No. 2 above.

Comment No. 10: The permittee notes that on page 10 of the fact sheet (Reasonable potential analysis) the ambient value of 0.77 mg/l for Boron is incorrect. On February 12, 2024, El- Paso electric Company reached out EPA on how the ambient value was calculated and the response was that it was miscalculated and should be listed at 0.335 mg/l. With the new ambient value of 0.335 mg/l, the determination that the 0.75 mg/l WQS was exceeded is incorrect. With no exceedance of NMWQS for Boron with Texas not having a WQS for Boron, there should be no RP based on downstream ambient data.

Response No.10: EPA received low flow and ambient data from NMED and acknowledges that the average value for Boron collected between 2010 through 2019 is 0.335 mg/l and 0.77 mg/l value is incorrect. Reasonable potential analysis (RP) recalculation still shows potential to exceed 0.75mg/l WQS criterion. A compliance schedule contained in the permit leading to compliance with the water quality-based effluent limitation has been included in Part I (B) of the permit. No change to the permit in response to this comment. See also Response No. 3 above.

Comment No. 11: The permittee notes that on page 3 part I of the draft permit, internal outfall 109 is missing from listed internal outfalls. Internal outfall 109 is listed in the existing permit for

RGPS and was listed in the renewal permit application attachment A. The permittee requests addition of outfall 109 following outfall 108 in the list of internal outfalls.

Response No. 11: Response No.2 above.

Comments No. 12: The permittee notes that Page 3, Part II of the draft permit, the type of WET test, 48-hour NOEC freshwater listed in the section title is incorrect. As explained and described in both the permit and fact sheet, EPEC has been switched to a 7- Day chronic renewal WET chronic.

Response No. 12: The fact sheet and draft permit describes WET limitations and conditions. 48-hour NOEC freshwater subtitle is a typographical error and has been updated in the final permit

Comment No. 13: The EPEC requires that the permit limit requirement for Dissolved Boron be removed from outfall 001 and Outfall 002 until further investigation and data collected is conducted. The permittee notes that the boron data used in the NMED TMDL study consist of 19 samples collected between 2010-2012 and 2019 from the Rio Grande river. Twelve of the samples were from Corchesne Bridge, which is located on the Texas side of the Rio Grande. Texas currently does not have an established WQS for Boron. Of the seven samples collected on the New Mexico side of the Rio Grande River, none exceeded the 0.75 mg/l WQS. The section of the Rio Grande River, international Mexico border to Texas border, evaluated in the study is 8.7 miles in length. These 19 samples were collected in an approximate 1.5-mile section. There has been no water quality data presented for the other 7.2 miles of this section of the Rio Grande River.

The effects of the water quality in the Texas section of the Rio Grande River are currently unknown. There is approximately 10 miles of the Rio Grande River that flow through Texas upstream of the international Mexico border to Texas border section of the Rio Grande River. There is no indication that the water quality data from this section of the Rio Grande River was factored into the study. Additionally, just past the New Mexico/ Texas border of the Rio Grande river was , approximately 0.25 miles upstream of the Corchesne Bridge, El Paso water Utilities Doniphan phase 1 lift station discharges into the Rio Grande river. Utilizing Google Earth historical imagery, there is evidence that water has been discharged year-round, during the 2010-2012 and 2019 TMDL study sample collection and going back further into the early 2000's. This is a source of water that could have directly impacted any sampling results at the Corchesne Bridge. Discharge from this outfall was not considered in the NMED study.

Boron is a naturally occurring element and unknown to be present in the ground water along the Rio Grande. Thirty-one dissolved boron results between 2020 - 2023 from groundwater used by EPEC RGPS, indicate an average of 0.34 mg/l and a max of 0.45 mg/l of boron in the water used in the plant. Nearly all the water utilized for the power generation at RGPS is sourced from nine groundwater wells in Sunland Park, NM. This concentration of dissolved boron present in the groundwater is close to half of the WQS of 0.75 mg/l used in the boron TMDL calculations and lbs/day limit proposed. The EPEC RGPS does not add boron in any of its operations.

EPEC requests that the sampling and reporting requirement for boron that is in the current permit be continued in the new permit, without any permit limit requirement.

Response No. 13: Response No. 3 and No. 10 above

IMPACT TO A NEIGHBORING JURISDICTION:

In a letter from EPA to Robert Sadlier, Deputy Director, Water Quality Division, Texas Commission on Environmental Quality (TCEQ) dated June 17, 2024, EPA exercised its discretionary authority under CWA § 401(a)(2) to notify TCEQ (downstream user) that EPA reviewed the project and determined that a discharge associated with this proposed project may affect the quality of waters within their jurisdiction, potentially including the Rio Grande in the Texas Water Segment 2314. And if they determine that the discharge associated with this certified project “will affect” the quality of your waters so as to violate any of your water quality requirements, they could, within sixty (60) days after receipt of the notification, notify the EPA in writing that they object to the issuance of the permit and request that the EPA hold a public hearing on their objection. No response from TCEQ was received and the Neighboring Jurisdiction CWA § 401(a)(2) process at 40 CFR 121 Subpart B has concluded without a determination by the Neighboring Jurisdiction that the discharge will violate any of its water quality requirements, objection to the issuance of the Federal license or permit, and requesting a public hearing from the Federal agency.