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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES SECURITIES AND		)	
EXCHANGE COMMISSION,		)	
		)	
Plaintiff,		)	COMPLAINT
		)	
v.		)	
		)	Civil Action No. _____
EL PASO CORPORATION,		)	
		)	
Defendant.		)	
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Plaintiff, United States Securities and Exchange Commission (the  
“Commission”), alleges that:

**NATURE OF THE ACTION**

1. From approximately June 2001 through June 2002, El Paso Corporation, and its predecessor in-interest The Coastal Corporation (collectively, “El Paso”) violated the books and records and internal controls provisions of the Foreign Corrupt Practices Act (the “FCPA”) when it indirectly made approximately \$5.5 million in illegal surcharge payments in connection with its purchases of crude oil from third parties under the United Nations Oil for Food Program. The third parties paid kickbacks to Iraq in the

form of surcharges on shipments of crude oil from Iraq's State Oil Marketing Organization ("SOMO"). El Paso knew or was reckless in not knowing that illegal surcharges were paid in connection with those purchases, and that the third parties passed those surcharges back to El Paso in premiums. El Paso knew that the surcharge payments were prohibited by the Oil for Food Program and U.S. and international trade sanctions on Iraq.

2. The Oil for Food Program provided humanitarian relief to the Iraqi population during the time that Iraq was subject to international trade sanctions. The program required that all payments for Iraqi crude oil be made to a United Nations escrow account, so that Iraq could purchase necessary humanitarian goods. However, the surcharges paid in connection with El Paso's purchases of oil bypassed the escrow account and were instead paid by third parties to Iraqi-controlled accounts at banks in Jordan and Lebanon.

3. In purchasing Iraqi crude oil from third parties, El Paso paid a premium above the Official Selling Price ("OSP") established by the United Nations and SOMO. El Paso failed to accurately record in its books and records the approximately \$5.5 million in surcharges that were included in the premiums. El Paso also failed to devise and maintain a system of internal accounting controls to detect and prevent such illicit payments.

4. As a result of this conduct, El Paso violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

## **JURISDICTION**

5. This Court has jurisdiction over this action pursuant to Exchange Act Sections 21(d), 21(e) and 27 [15 U.S.C. §§ 78u(d), 78u(e) and 78aa]. El Paso made use of the mails or the means or instrumentalities of interstate commerce in furtherance of the conduct alleged in this Complaint.

6. Certain of the acts or transactions constituting the violations alleged in this Complaint occurred within this judicial district, and venue is therefore proper under Section 27 of the Exchange Act. [15 U.S.C. § 78aa].

## **DEFENDANT**

7. Defendant El Paso Corporation is a Delaware corporation with its headquarters in Houston, Texas. The company is involved in the production, processing, and marketing of petroleum and natural gas. It is registered with the Commission under Section 12(b) of the Exchange Act [15 U.S.C. § 78l(b)] and its common stock trades on the New York Stock Exchange under the symbol “EP.”

8. In January 2001, The Coastal Corporation (“Coastal”) merged with a wholly owned subsidiary of El Paso Corporation called El Paso Energy Corporation. Coastal, and later El Paso Energy Corporation, was an oil trading company that owned and operated refineries in Aruba and Corpus Christi, Texas. El Paso Corporation ceased its oil trading and refinery business entirely by March 2004.

## **FACTS**

### **The United Nations Oil for Food Program**

9. On August 2, 1990, the government of Iraq, under Saddam Hussein, invaded Kuwait. Four days later the United Nations Security Council voted to enact U.N.

Resolution 661, which prohibited member states from trading in any Iraqi commodities or products. The United Nations continued to enforce these sanctions until 2003.

10. On April 14, 1995, the United Nations Security Council adopted Resolution 986, which authorized the Government of Iraq to sell oil on the condition that the proceeds of all of its oil sales be deposited in a bank account monitored by the United Nations and used only to purchase designated humanitarian goods for the benefit of the Iraqi people. In May 1996, the Government of Iraq entered into a written Memorandum of Understanding to implement Resolution 986.

11. The United Nations Office of Iraq Program, Oil for Food (the “Oil for Food Program” or “Program”) was subsequently established to administer Iraq’s sale of oil and purchase of humanitarian goods by Iraq. A special bank account was established at a bank in New York, New York (the “Oil for Food Escrow Account”) to handle the transactions. The United Nations’ economic sanctions on Iraq remained in place for all trade and transactions not authorized by the Oil for Food Program.

12. The Government of Iraq, acting through SOMO, began selling oil pursuant to the Oil for Food Program in December 1996. Under the Oil for Food Program, Iraqi government officials had the power to select the companies and individuals who received the rights to purchase Iraqi oil. During every phase of the Oil for Food Program, high ranking Iraqi officials selected which companies and individuals would receive the rights to purchase certain quantities of Iraqi oil -- frequently referred to as “allocations” of oil -- at a certain price per barrel.

13. A company that wished to buy oil could negotiate and enter into a contract with SOMO. The company then sought approval of the contract from the United

Nations. Once a contract was approved, the oil was loaded onto seagoing oil tankers. A company purchasing oil under the Program was required to pay the full amount of the contract price by means of a letter of credit from its bank in favor of the Oil for Food Escrow Account. No company was permitted to make payments, directly or indirectly, to Iraq outside the Escrow Account.

#### **Surcharge Demands by Iraqi Government Officials**

14. From approximately August 2000 to March 2003, officials of the Iraqi government conditioned the distribution of allocations of oil under the Oil for Food Program on the recipients' agreement to pay kickbacks. The kickbacks were paid in the form of a surcharge on each barrel of oil sold. If a company did not agree to pay the required surcharge it did not receive oil allocations.

15. SOMO officials directed where these surcharges were to be paid. Most of the surcharge payments were sent by wire to Iraqi-controlled accounts at banks in Jordan and Lebanon to accounts established in the names of SOMO officials or other Iraqi individuals. Money from these accounts was subsequently transferred to the Iraqi Central Bank in Baghdad.

16. Iraqi officials demanded that oil customers pay surcharges ranging from \$0.10 to as much as \$0.50 per barrel in November 2000. In 2001, however, the demand was for between \$0.25 and \$0.30 per barrel. In order to allow oil buyers a sufficient margin from which to pay the surcharge, SOMO proposed below-market prices for the oil.

17. In the Fall of 2000, the United Nations 661 Committee received reports of Iraqi surcharge demands, which Iraqi government officials denied. The Committee

advised oil traders that it was illegal to make any such payments. El Paso was notified as early as December 2000 that it was illegal to make any such payments.

18. To eliminate Iraq's opportunity to demand surcharges, the 661 Committee imposed "retroactive pricing" on Iraqi crude oil sales beginning in October 2001. This entailed withholding approval of the pricing mechanism until after the oil had been lifted -- when it could be determined what the true fair market value of the oil was at the time of the actual lifting. Retroactive pricing made it less profitable for buyers to pay surcharges, and Iraq's gains from surcharges decreased over time as fewer companies chose to lift oil. By the Fall of 2002, the surcharge demands ceased.

**El Paso's Purchases of Iraqi Oil on Which Surcharges Were Paid**

19. When the Oil for Food Program began, Coastal, through its former Chief Executive Officer, had longstanding ties to Iraq and to Saddam Hussein personally. As a result, in 1996, Coastal obtained the very first crude oil contract issued under the Program.

20. Coastal first received a surcharge demand from an Iraqi government official in September 2000. Between September 9 and 12, 2000, two Coastal senior executives met in Baghdad with the Director General of SOMO. At that meeting, the SOMO official demanded that Coastal pay a surcharge of \$0.10 per barrel on all future Iraqi crude oil liftings. The Coastal officials conveyed the demand to Coastal's corporate headquarters.

21. At the time of the September 2000 kickback demand, Coastal had one outstanding crude oil purchase contract, U.N. Contract no. M/08/72, with SOMO. El Paso ultimately lifted 2,018,770 barrels under the contract. An El Paso consultant and

former Coastal official arranged to make a surcharge payment of \$0.10 per barrel, or \$201,877, on Coastal's behalf under the contract. The payment was ultimately made in two installments on December 19, 2001, and March 25, 2002, to an Iraqi-controlled account at Ahli Bank in Jordan. In July 2001, the former Coastal official requested that El Paso pay him approximately \$200,000 for the surcharge. El Paso refused his request.

22. After the Fall of 2000, when it received notice from SOMO that all Oil for Food Program crude oil contracts would include surcharges, El Paso did not enter into further direct contracts with SOMO. The company did not, however, cease purchasing Iraqi crude oil. Instead, it continued its purchases from third parties, and knew or was reckless in not knowing that illegal surcharges were paid in connection with those purchases, and passed back to El Paso in premiums. In making their commercial decisions on oil trades, El Paso's traders had to factor the cost of surcharge payments in the price of their oil.

23. The company knew from first-hand experience that SOMO was demanding illegal surcharges on all purchases of Iraqi crude oil. For example, on December 3, 2000, a tanker chartered by Coastal arrived in port at Mina al-Bakr to load millions of barrels of oil under Coastal's contracts with two third parties. In the following days, Coastal was advised by one of the third parties that SOMO had demanded a surcharge of \$0.40 per barrel and that the tanker would not be loaded until the surcharge was paid. The third party informed El Paso that it would not make the surcharge payment. A standoff ensued, and Coastal incurred demurrage charges of \$60,000 per day from the tanker's owner while the ship was stuck in port. Ultimately, the third party paid a surcharge on the lifting, and on December 20 the tanker was loaded.

Shortly thereafter, the El Paso merger took place. Subsequently, another lifting under the contract was made. Records show that the third party paid a total surcharge of \$1,031,436 in connection with the transaction. The surcharge was passed along to El Paso as a premium.

24. El Paso's knowledge of surcharge demands is evident in recorded telephone conversations of the company's oil traders. The recorded conversations include references to discussions between El Paso's traders and SOMO officials in which SOMO reiterated its across-the-board kickback demands. For example, on a May 17, 2001 taped call, an El Paso official reminded an El Paso trader of past conversations on the subject of surcharges with SOMO officials in which "they told us -- blatantly -- that we would have to pay."

25. The conversations also include calls between El Paso's oil traders and other market participants discussing their understanding that surcharge payments were a part of all Iraqi transactions. On one call, an El Paso oil trader described seeing a competitor talking with "the head SOMO guy." The competitor then showed the El Paso oil trader a piece of paper that held an account number and a contact for the payment of an illegal surcharge. The El Paso oil trader laughed and described the encounter as "Pretty blatant, isn't it?" The El Paso trader described the competitor's response as, "Very blatant."

26. The company was also aware of articles in the trade press and national media discussing illegal Iraqi surcharge demands.

27. Starting in or around 2001, El Paso inserted a provision in some of its third party Iraqi oil purchase contracts requiring its contract partners to represent that

they had “made no surcharge or other payment to SOMO” outside the Oil for Food Escrow Account in obtaining the crude oil sold to El Paso. The representations were false. Records show that surcharges were paid on the oil transactions. El Paso officials did not conduct sufficient due diligence to ensure that the Iraqi crude oil it purchased from third parties was not acquired through the payment of illegal surcharges. Indeed, El Paso officials knew that SOMO continued to demand surcharges as a precondition to receiving Iraqi crude oil.

28. The recorded conversations reveal the company’s knowledge that the contract provision it inserted in its Iraqi crude oil purchase agreements was entirely ineffective. For example, in at least one conversation, a third party that indicated he was willing to violate international trade sanctions by paying illegal surcharges to Iraq indicated that he would be equally willing to sign a false certification denying the payment.

29. Beginning in June 2001, El Paso entered into fourteen additional third-party transactions involving fifteen contracts between third parties and SOMO to purchase crude oil despite its knowledge of the SOMO kickback scheme. El Paso paid a total of approximately \$420 million for approximately 21.4 million barrels of oil under these transactions. Between June 2001 and June 2002, surcharge payments of approximately \$5.5 million were paid in connection with these transactions. El Paso generated significant revenues from these transactions. The total net profit from their oil trading business was approximately \$5.5 million. El Paso sustained significant losses on its refinery business for the relevant time period, and the refinery business was sold in March 2004.

### **El Paso's Failure to Maintain Adequate Internal Controls**

30. After becoming aware of the Iraqi demands and collection of illegal surcharges on crude oil sales, El Paso failed to maintain a system of internal controls sufficient to ensure that the company's transactions were executed in accordance with management's authorization and that the transactions would be recorded as necessary to maintain accountability for the company's assets. Thus, El Paso failed to implement a system of internal controls to detect and prevent such illicit payments.

31. In addition, El Paso failed to maintain adequate records of its Iraqi crude oil contracts. The company itself was aware in August 2002 that 1) it failed to accumulate and maintain adequate documentation of its Oil for Food transactions, and 2) it failed to obtain adequate representations and warranties by El Paso's third parties regarding their compliance with the Oil for Food program. For example, El Paso's contract files did not even contain proof that invoices had been paid for at least thirteen shipments, there was no process for documenting commercially reasonable prices paid for oil cargos, no evidence that documents were reviewed by anyone to ensure propriety and adequacy, and inadequate explanations of why documents were missing from files.

### **El Paso's Failure Properly to Account for Its Purchases of Iraqi Crude Oil**

32. El Paso's accounting for its Oil for Food transactions failed properly to record the nature of the company's payments. In at least fifteen transactions, a portion of the company's purchase price for Iraqi crude oil constituted surcharge payments to Iraq in violation of U.N. regulations and U.S. and international trade sanctions. The company failed to so designate those payments, characterizing them instead simply as part of El

Paso's cost of goods sold. Thus, El Paso failed to accurately record these payments in its books, records, and accounts.

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM**

#### **[Violations of Section 13(b)(2)(A) of the Exchange Act]**

33. Paragraphs 1 through 32 are realleged and incorporated by reference.

34. As described above, El Paso, through its officers, agents and subsidiaries, failed to keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected its transactions and dispositions of its assets.

35. By reason of the foregoing, El Paso violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

### **SECOND CLAIM**

#### **[Violations of Section 13(b)(2)(B) of the Exchange Act]**

36. Paragraphs 1 through 35 are realleged and incorporated by reference.

37. As described above, with respect to illegal surcharge payments made in connection with El Paso's purchases of Iraqi crude oil, El Paso failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) payments were made in accordance with management's general or specific authorization; and (ii) payments were recorded as necessary to maintain accountability for its assets.

38. By reason of the foregoing, El Paso violated Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:

- A. Permanently restraining and enjoining El Paso from violating Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and (B)];
- B. Ordering El Paso to disgorge ill-gotten gains, with prejudgment interest, wrongfully obtained as a result of its illegal conduct;
- C. Ordering El Paso to pay civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and
- D. Granting such further relief as the Court may deem just and appropriate.

Dated: January \_\_, 2007

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