

Executive Summary – Enforcement Matter – Case No. 41610
The University of Texas of the Permian Basin
RN104431986
Docket No. 2011-0709-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

Media:

PWS

Small Business:

No

Location(s) Where Violation(s) Occurred:

UTPB Center for Energy and Economic Diversification, 4901 East University Boulevard,
Midland County

Type of Operation:

Public water supply

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: August 26, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$913

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$913

Name of SEP: Baker Sanctuary Fence Project Phase III

Compliance History Classifications:

Person/CN - Average

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41610
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RN104431986
Docket No. 2011-0709-PWS-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: April 7, 2011
Date(s) of NOE(s): May 3, 2011

Violation Information

1. Failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to sample [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.033(d)].
2. Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result, and failed to provide public notice of the failure to collect repeat distribution samples [30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A)(ii) and 290.122(c)(2)(B)].
3. Failed to collect at least five routine distribution coliform samples during the month following a total coliform-positive sample result and failed to provide public notice of the failure to sample [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(B)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

As of January 6, 2011, the City of Midland has been providing the Facility with water service and the Facility has been inactivated as a public water supply.

Technical Requirements:

The Order will require the Respondent to implement and complete a Supplemental Environmental Project (“SEP”). (See SEP Attachment A)

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Executive Summary – Enforcement Matter – Case No. 41610
The University of Texas of the Permian Basin
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Docket No. 2011-0709-PWS-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Andrea Byington, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-2579; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.

TCEQ SEP Coordinator: Stu Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565

Respondent: Robert Trentham, Director, The University of Texas of the Permian Basin, 4901 East University Boulevard, Odessa, Texas 79762
Barry Burgdorf, Vice Chancellor and General Counsel, the University of Texas System, 201 West Seventh Street, Austin, Texas 78701-2981

Respondent's Attorney: N/A

Attachment A
Docket Number: 2011-0709-PWS-E
Supplemental Environmental Project

Respondent: The University of Texas of the Permian Basin
Penalty Amount: Nine Hundred Thirteen Dollars (\$913)
SEP Offset Amount: Nine Hundred Thirteen Dollars (\$913)
Type of SEP: Pre-approved
Third-Party Recipient: Travis Audubon Society
Project Name: Baker Sanctuary Fence Project Phase III
Location of SEP: Travis County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

Project Description

a. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **Travis Audubon Society, Inc.** for the *Baker Sanctuary Fence Project Phase III*. The contribution will be used in accordance with the Supplemental Environmental Project between the Third-Party Recipient and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to install an eight-foot tall game fence along 1,900 feet of the northern end of the Baker Sanctuary in order to prevent erosion and habitat destruction from the deer. The Third-Party Recipient owns the Baker Sanctuary; a 690 acre habitat preserve located in northwest Travis County for state and federally endangered Golden-cheeked Warbler and other wildlife.

In addition to providing quality habitat, this land helps filter pollutants, which enhances water quality as it flows from Lime Creek to Sandy Creek then into the Cypress Creek arm of Lake Travis. However, Baker Sanctuary has become overrun with white-tailed deer which are destroying the hardwood-juniper woodland habitat and understory plant species the Golden-cheeked Warblers need to survive. Additionally, the large population of browsing deer causes the land to erode, resulting in decreased water quality and increased runoff into Lake Travis and the Colorado River.

The Project may involve clearing no more than an eight-foot wide path to facilitate fence construction. The Third-Party Recipient shall minimize disturbance to the Golden-

Respondent Name
Agreed Order - Attachment A

cheeked Warbler during this Project, including considerations of nesting season. This is Phase III of the fence project, which will eventually enclose the entire Sanctuary.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

b. Environmental Benefit

This project will enhance the quality of the environment and prevent pollution by keeping the deer out of Baker Sanctuary, thereby reducing soil erosion and protecting water quality. Additionally, the fence will prevent destruction of habitat critical to the endangered Golden-cheeked Warbler.

c. Minimum Expenditure

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

1. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

Travis Audubon Society, Inc.
Attention: Executive Director
3710 Cedar Street
Austin, Texas 78705

2. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount due to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

Respondent Name
Agreed Order - Attachment A

Texas Commission on Environmental Quality
Enforcement Division
Attention: SEP Coordinator, MC 219
PO Box 13087
Austin, Texas 78711-3087

3. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP agreement in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director (“ED”) may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to “Texas Commission on Environmental Quality” and shall mail it to:

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

4. Publicity

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

5. Clean Texas Program

Respondent shall not include this SEP in any application made to TCEQ under the “Clean Texas” (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

6. Other SEPs by TCEQ or Other Agencies

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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	9-May-2011	Screening	10-May-2011	EPA Due	31-Mar-2011
	PCW	23-Jun-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	The University of Texas of the Permian Basin
Reg. Ent. Ref. No.	RN104431986
Facility/Site Region	7-Midland
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	41610	No. of Violations	3
Docket No.	2011-0709-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Andrea Byington
		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts
 Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 10-May-2011

Docket No. 2011-0709-PWS-E

PCW

Respondent The University of Texas of the Permian Basin

Policy Revision 2 (September 2002)

Case ID No. 41610

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104431986

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Byington

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	6	30%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 30%

>> **Repeat Violator (Subtotal 3)**

N/A

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for six NOVs with same/similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 30%

Screening Date 10-May-2011

Docket No. 2011-0709-PWS-E

PCW

Respondent The University of Texas of the Permian Basin

Policy Revision 2 (September 2002)

Case ID No. 41610

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104431986

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Byington

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and Tex. Health & Safety Code § 341.033(d)

Violation Description Failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to sample for the month December 2010.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes Failure to sample may expose the public to a significant amount of undetected contaminants that would exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1

149 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$250

One monthly event is recommended, based on the month for which samples were not taken.

Good Faith Efforts to Comply

25.0% Reduction \$62

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes The Respondent returned to compliance on January 6, 2011.

Violation Subtotal \$188

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$32

Violation Final Penalty Total \$263

This violation Final Assessed Penalty (adjusted for limits) \$263

Economic Benefit Worksheet

Respondent The University of Texas of the Permian Basin
Case ID No. 41610
Reg. Ent. Reference No. RN104431986
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$25	1-Dec-2010	31-Dec-2010	1.00	\$1	\$25	\$26
Other (as needed)	\$5	31-Dec-2010	31-Mar-2011	1.16	\$0	\$5	\$5

Notes for AVOIDED costs

The avoided costs include the estimated amount to collect routine samples (\$25 per sample) and provide public notice for the failure to collect the samples (\$5 per notice), calculated for the month in which no samples were collected and during the period that a public notice was required.

Approx. Cost of Compliance \$30

TOTAL \$32

Screening Date 10-May-2011

Docket No. 2011-0709-PWS-E

PCW

Respondent The University of Texas of the Permian Basin

Policy Revision 2 (September 2002)

Case ID No. 41610

PCW Revision October 30, 2006

Reg. Ent. Reference No. RN104431986

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Byington

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(3)(A)(ii) and 290.122(c)(2)(B)

Violation Description Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result, and failed to provide public notice of the failure to collect repeat distribution samples in September 2010.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Matrix Notes	Falsification			Percent
	Major	Moderate	Minor	
Failure to properly sample may expose the public to a significant amount of undetected contaminants that exceed levels protective of human health.				0%

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1 30 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$250

One monthly event is recommended, based on the month for which the samples were not taken.

Good Faith Efforts to Comply

0.0% Reduction \$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$30

Violation Final Penalty Total \$325

This violation Final Assessed Penalty (adjusted for limits) \$325

Economic Benefit Worksheet

Respondent The University of Texas of the Permian Basin
Case ID No. 41610
Reg. Ent. Reference No. RN104431986
Media Public Water Supply
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$25	20-Sep-2010	21-Sep-2010	0.00	\$0	\$25	\$25
Other (as needed)	\$5	22-Sep-2010	22-Dec-2010	1.17	\$0	\$5	\$5

Notes for AVOIDED costs

The avoided costs include the estimated amount to collect one repeat sample (\$25 per sample) within 24 hours of being notified and provide public notice for the failure to collect the sample (\$5 per notice), calculated for the 24 hour time period in which only three out of four repeat samples were collected and during the period that a public notice was required.

Approx. Cost of Compliance

\$30

TOTAL

\$30

Screening Date 10-May-2011

Docket No. 2011-0709-PWS-E

PCW

Respondent The University of Texas of the Permian Basin

Policy Revision 2 (September 2002)

Case ID No. 41610

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104431986

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Byington

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(2)(F) and 290.122(c)(2)(B)

Violation Description

Failed to collect at least five routine distribution coliform samples during the month following a total coliform-positive sample result in October 2010 and failed to provide public notice of the failure to sample for the month of October 2010.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				0%

Matrix Notes: Failure to properly sample may expose the public to a significant amount of undetected contaminants that exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1 Number of violation days 31

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$250

One monthly event is recommended, based on the month in which samples were not taken.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$137

Violation Final Penalty Total \$325

This violation Final Assessed Penalty (adjusted for limits) \$325

Economic Benefit Worksheet

Respondent The University of Texas of the Permian Basin
Case ID No. 41610
Reg. Ent. Reference No. RN104431986
Media Public Water Supply
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$125	1-Oct-2010	31-Oct-2010	1.00	\$6	\$125	\$131
Other (as needed)	\$5	31-Oct-2010	30-Nov-2010	1.00	\$0	\$5	\$5

Notes for AVOIDED costs

The avoided costs include the estimated amount to collect a total of five routine samples (\$25 per sample) and provide public notice for the failure to collect the samples (\$5 per notice), calculated for the month in which no samples were collected and during the period that a public notice was required.

Approx. Cost of Compliance

\$130

TOTAL

\$137

Compliance History

Customer/Respondent/Owner-Operator: CN601267040 University of Texas of the Permian Basin Classification: AVERAGE Rating: 1.50
Regulated Entity: RN104431986 UTPB CENTER FOR ENERGY AND ECONOMIC DIVERSIFICATION Classification: Site Rating:

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1650100
Location: 4901 EAST UNIVERSITY , MIDLAND COUNTY, TEXAS
TCEQ Region: REGION 07 - MIDLAND
Date Compliance History Prepared: July 06, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 06, 2006 to July 06, 2011

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Andrea Byington Phone: (512) 239-2579

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CEEDS Inv. Track. No.)

1	10/12/2009	(777623)
2	04/19/2011	(911977)
3	04/20/2011	(913485)
4	04/20/2011	(913494)
5	04/20/2011	(913501)
6	04/20/2011	(913506)
7	04/25/2011	(913519)
8	04/25/2011	(913710)
9	04/25/2011	(914174)
10	04/25/2011	(914185)
11	04/25/2011	(914189)
12	05/05/2011	(914357)
13	06/03/2011	(923896)

- E. Written notices of violations (NOV). (CEEDS Inv. Track. No.)

Date: 11/19/2008 (913501) CN601267040
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 09/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: TCR PN Routine Monitoring Violation 09/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 09/16/2009 (913506) CN601267040
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 07/2009 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 07/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 03/29/2010 (911977) CN601267040
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 02/2010 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 02/2010 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 10/25/2010 (913519) CN601267040
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)
Description: TCR Repeat Monitoring Violation 09/2010 - Failure to collect all repeats following a coliform found result.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Repeat Monitoring Violation 09/2010 - Failure to post public notice for not collecting any repeats following a coliform found result.

Date: 12/07/2010 (913710) CN601267040
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)
Description: TCR Increase Monitoring Violation 10/2010 - Failure to collect all 5 distribution samples following a coliform found month.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 10/2010 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 02/11/2011 (914174) CN601267040
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 12/2010 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 12/2010 - Failure to post public notice for not collecting any routine monitoring sample(s).

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	TEXAS COMMISSION ON
THE UNIVERSITY OF TEXAS OF	§	
THE PERMIAN BASIN	§	ENVIRONMENTAL QUALITY
RN104431986	§	

AGREED ORDER
DOCKET NO. 2011-0709-PWS-E

At its _____ agenda, the Texas Commission on Environmental Quality (“the Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding The University of Texas of the Permian Basin (“the Respondent”) under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

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

I. FINDINGS OF FACT

1. The Respondent owns and operates a public water supply at 4901 East University Boulevard, Midland County, Texas (the "Facility") that has approximately one service connection and serves at least 25 people per day for at least 60 days per year.
2. During a record review conducted on April 7, 2011, TCEQ staff documented that the Facility did not collect routine distribution water samples for coliform analysis and did not provide public notification of the failure to sample for the month of December 2010.
3. During a record review on April 7, 2011, TCEQ staff documented that the Facility did not collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result for routine distribution coliform samples collected in September 2010, and did not provide public notice of the failure to collect repeat distribution samples in September 2010.
4. During a record review on April 7, 2011, TCEQ staff documented that the Facility did not collect at least five routine distribution coliform samples during the month following a total coliform-positive sample result in October 2010 and did not provide public notice of the failure to sample for the month of October 2010.
5. The Respondent received notice of the violations on May 8, 2011.
6. The Executive Director recognizes that, as of January 6, 2011, the City of Midland has been providing the Facility with water service and the Facility has been inactivated as a public water supply.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 2, the Respondent failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to sample, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. As evidenced by Findings of Fact No. 3, the Respondent failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result, and failed to provide public notice of the failure to collect repeat distribution samples, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A)(ii) and 290.122(c)(2)(B).

4. As evidenced by Findings of Fact No. 4, the Respondent failed to collect at least five routine distribution coliform samples during the month following a total coliform-positive sample result and failed to provide public notice of the failure to sample, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(B).
5. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of Nine Hundred Thirteen Dollars (\$913) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). Nine Hundred Thirteen Dollars (\$913) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

III. ORDERING PROVISIONS

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

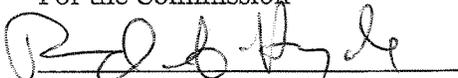
1. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II, Paragraph 6 above, Nine Hundred Thirteen Dollars (\$913) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
4. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
7. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

10/4/11
Date

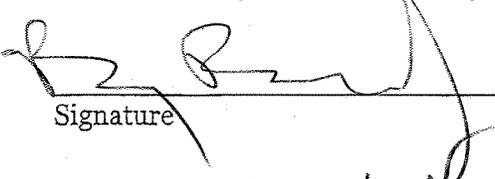
I, the undersigned, have read and understand the attached Agreed Order in the matter of the University of Texas of the Permian Basin. I am authorized to agree to the attached Agreed Order on behalf of University of Texas of the Permian Basin, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, University of Texas of the Permian Basin waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

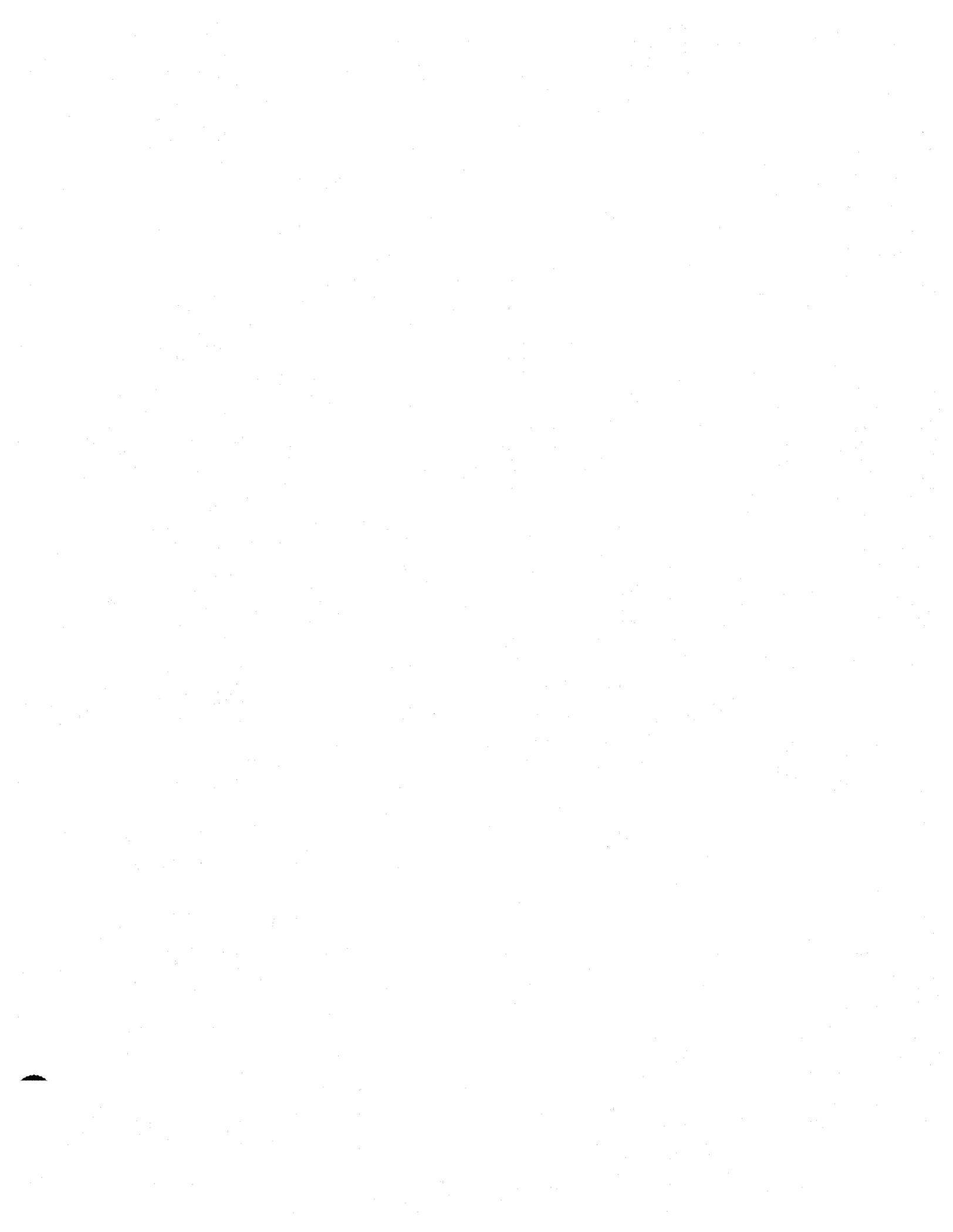

Signature

Barry Burgdorf
Name (Printed or typed)
Authorized Representative of
The University of Texas of the Permian Basin

July 20, 2011
Date

Vice Chancellor and general Counsel
Title The University of Texas System

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.



Attachment A
Docket Number: 2011-0709-PWS-E
Supplemental Environmental Project

Respondent: The University of Texas of the Permian Basin
Penalty Amount: Nine Hundred Thirteen Dollars (\$913)
SEP Offset Amount: Nine Hundred Thirteen Dollars (\$913)
Type of SEP: Pre-approved
Third-Party Recipient: Travis Audubon Society
Project Name: Baker Sanctuary Fence Project Phase III
Location of SEP: Travis County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

Project Description

a. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **Travis Audubon Society, Inc.** for the *Baker Sanctuary Fence Project Phase III*. The contribution will be used in accordance with the Supplemental Environmental Project between the Third-Party Recipient and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to install an eight-foot tall game fence along 1,900 feet of the northern end of the Baker Sanctuary in order to prevent erosion and habitat destruction from the deer. The Third-Party Recipient owns the Baker Sanctuary; a 690 acre habitat preserve located in northwest Travis County for state and federally endangered Golden-cheeked Warbler and other wildlife.

In addition to providing quality habitat, this land helps filter pollutants, which enhances water quality as it flows from Lime Creek to Sandy Creek then into the Cypress Creek arm of Lake Travis. However, Baker Sanctuary has become overrun with white-tailed deer which are destroying the hardwood-juniper woodland habitat and understory plant species the Golden-cheeked Warblers need to survive. Additionally, the large population of browsing deer causes the land to erode, resulting in decreased water quality and increased runoff into Lake Travis and the Colorado River.

The Project may involve clearing no more than an eight-foot wide path to facilitate fence construction. The Third-Party Recipient shall minimize disturbance to the Golden-

Respondent Name
Agreed Order - Attachment A

cheeked Warbler during this Project, including considerations of nesting season. This is Phase III of the fence project, which will eventually enclose the entire Sanctuary.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

b. Environmental Benefit

This project will enhance the quality of the environment and prevent pollution by keeping the deer out of Baker Sanctuary, thereby reducing soil erosion and protecting water quality. Additionally, the fence will prevent destruction of habitat critical to the endangered Golden-cheeked Warbler.

c. Minimum Expenditure

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

1. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

Travis Audubon Society, Inc.
Attention: Executive Director
3710 Cedar Street
Austin, Texas 78705

2. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount due to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

Respondent Name
Agreed Order - Attachment A

Texas Commission on Environmental Quality
Enforcement Division
Attention: SEP Coordinator, MC 219
PO Box 13087
Austin, Texas 78711-3087

3. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP agreement in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall mail it to:

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

4. Publicity

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

5. Clean Texas Program

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

6. Other SEPs by TCEQ or Other Agencies

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