

Executive Summary – Enforcement Matter – Case No. 41960
Sadler's Smokehouse, Ltd.
RN101747905
Docket No. 2011-1066-WQ-E

Order Type:

Findings Agreed Order

Findings Order Justification:

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

Media:

WQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Sadler's Bar B Que Sales, 1206 North Frisco Street, Henderson, Rusk County

Type of Operation:

Meat production facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: October 21, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$18,600

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$18,600

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

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Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: April 29, 2011 and June 6, 2011

Date(s) of NOE(s): June 17, 2011

Violation Information

Failed to prevent the unauthorized discharges of wastewater into water in the state. Specifically, due to a damaged discharge pipe that carries wastewater from the anaerobic lagoon to an aeration lagoon, approximately 10,000 gallons of wastewater overflowed the anaerobic lagoon and then flowed into a nearby unnamed creek. The discharge then traveled to a private fishing pond, killing approximately 109 fish. Also, on June 6, 2011, a section of an earthen berm on lagoon number 3 collapsed, releasing approximately 1.01 million gallons of partially treated wastewater into a nearby unnamed creek. The discharge then traveled to a private pond, then flowed into another unnamed creek, and into two ponds on the Gibson Buffalo Ranch, killing an unknown number of fish [TEX. WATER CODE § 26.121(a)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent has implemented the following corrective measures at the Facility:

- a. On April 28, 2011, contained the leak caused by the damaged discharge pipe;
- b. On April 30, 2011, redesigned the drainage system from the anaerobic lagoon to the aeration basin, repaired the broken pipe, and installed an overflow prevention system;
- c. By May 4, 2011, began remediating the discharge that occurred on April 28, 2011 by placing hay bales in the affected creeks, by providing an aerator to the owner of the private pond, and by hiring a contractor to remove and properly dispose of the soil located along the discharge path;
- d. On June 6, 2011, constructed a temporary berm to stop the discharge from lagoon number 3 and prevent future discharges;
- e. On June 6, 2011, constructed temporary dams made from hay bales in the affected creek that carries water away from the Facility to help absorb the solids;
- f. By June 9, 2011, removed and properly disposed of approximately 75 tractor trailer loads of water from the affected creeks and ponds; and

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g. By June 9, 2011, began removing dead fish from the affected ponds.

Technical Requirements:

The Order will require the Respondent to:

a. Within 30 days:

i. Complete the remediation of the affected creeks and private ponds; and

ii. Complete the reconstruction of the collapsed lagoon wall.

b. Within 45 days, submit written certification demonstrating compliance with Ordering Provisions a.i., and a.ii.

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

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Samuel Short, Enforcement Division,
Enforcement Team 3, MC 169, (512) 239-5363; Debra Barber, Enforcement Division,
MC 219, (512) 239-0412.

TCEQ SEP Coordinator: N/A

Respondent: James Reed, President/CEO, Sadler's Smokehouse, Ltd., 1206 North
Frisco Street, Henderson, Texas 75652

Respondent's Attorney: N/A





Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	20-Jun-2011	Screening	28-Jun-2011	EPA Due	
	PCW	5-Jul-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	Sadler's Smokehouse, Ltd.
Reg. Ent. Ref. No.	RN101747905
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	2	
Enf./Case ID No.	41960		Order Type	Findings
Docket No.	2011-1066-WQ-E	Government/Non-Profit	No	
Media Program(s)	Water Quality	Enf. Coordinator	Samuel Short	
Multi-Media		EC's Team	Enforcement Team 3	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$15,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1		
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>		
Compliance History	24.0% Enhancement	Subtotals 2, 3, & 7
		\$3,600

Notes: Enhancement for two NOVs for dissimilar violations and one Agreed Order with denial of liability.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$2,388	<small>*Capped at the Total EB \$ Amount</small>	
Approx. Cost of Compliance	\$75,000		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$18,600
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
<small>Reduces or enhances the Final Subtotal by the indicated percentage.</small>			

Notes:

Final Penalty Amount	\$18,600
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$18,600
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DEFERRAL	0.0% Reduction	Adjustment	\$0
<small>Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>			

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$18,600
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Screening Date 28-Jun-2011

Docket No. 2011-1066-WQ-E

PCW

Respondent Sadler's Smokehouse, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 41960

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101747905

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

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>)	0	0%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	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) 24%

>> Repeat Violator (Subtotal 3)

No

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 two NOVs for dissimilar violations and one Agreed Order with denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 24%

Screening Date 28-Jun-2011

Docket No. 2011-1066-WQ-E

PCW

Respondent Sadler's Smokehouse, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 41960

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101747905

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1)

Violation Description Failed to prevent the unauthorized discharge of wastewater into water in the state, as documented during an investigation conducted on April 29, 2011. Specifically, due to a damaged discharge pipe that carries wastewater from the anaerobic lagoon to an aeration lagoon, approximately 10,000 gallons of wastewater overflowed the anaerobic lagoon and then flowed into a nearby unnamed creek. The discharge then traveled to a private fishing pond, killing approximately 109 fish.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (50%). Includes 'OR' label.

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0%).

Matrix Notes Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 2 Number of violation days 2

Table for frequency: daily (x), weekly, monthly, quarterly, semiannual, annual, single event.

Violation Base Penalty \$10,000

Two daily events are recommended from the date of the discharge, April 28, 2011, to the date the discharge was stopped and the repairs to the lagoon were completed, April 30, 2011.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A. Includes 'Before NOV' and 'NOV to EDPRP/Settlement Offer' columns.

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

Violation Subtotal \$10,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$978

Violation Final Penalty Total \$12,400

This violation Final Assessed Penalty (adjusted for limits) \$12,400

Economic Benefit Worksheet

Respondent Sadler's Smokehouse, Ltd.
Case ID No. 41960
Reg. Ent. Reference No. RN101747905
Media Water Quality
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
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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	\$15,000	28-Apr-2011	30-Apr-2011	0.01	\$0	\$5	\$6
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)	\$25,000	28-Apr-2011	6-Feb-2012	0.78	\$973	n/a	\$973

Notes for DELAYED costs

Estimated cost to redesign the drainage system, repair the broken pipe, and install an overflow prevention system. Date required is the date the discharge occurred and the final date is the date the repairs were completed. Estimated cost to remediate the affected creeks and privately owned ponds. Date required is the date the first discharge occurred and the final date is the estimated date of compliance.

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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$40,000

TOTAL

\$978

Screening Date 28-Jun-2011

Docket No. 2011-1066-WQ-E

PCW

Respondent Sadler's Smokehouse, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 41960

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101747905

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

Violation Number 2

Rule Cite(s) Tex. Water Code § 26.121(a)(1)

Violation Description

Failed to prevent the unauthorized discharge of wastewater into water in the state, as documented during an investigation conducted on June 6, 2011. Specifically, on June 6, 2011, a section of an earthen berm on lagoon number 3 collapsed, releasing approximately 1.01 million gallons of partially treated wastewater into a nearby unnamed creek. The discharge then traveled to a private pond, then flowed into another unnamed creek, and into two ponds on the Gibson Buffalo Ranch, killing an unknown number of fish.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	x			50%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 1 Number of violation days 1

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

Violation Base Penalty \$5,000

One daily event is recommended from the date of the discharge, June 6, 2011, to the date the discharge ceased and interim corrective actions were taken, June 6, 2011.

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 \$5,000

Economic Benefit (EB) for this violation

Estimated EB Amount \$1,410

Statutory Limit Test

Violation Final Penalty Total \$6,200

This violation Final Assessed Penalty (adjusted for limits) \$6,200

Economic Benefit Worksheet

Respondent Sadler's Smokehouse, Ltd.
Case ID No. 41960
Reg. Ent. Reference No. RN101747905
Media Water Quality
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
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$5,000	6-Jun-2011	6-Jun-2011	0.00	\$0	\$0	\$0
Engineering/construction	\$30,000	6-Jun-2011	6-Feb-2012	0.67	\$67	\$1,342	\$1,410
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

Estimated cost to construct a temporary berm to stop the discharge and prevent future discharges. Date required is the date the discharge occurred and the final date is the date the berm was completed and the discharge ceased. Estimated cost to reconstruct the collapsed lagoon wall. Date required is the date the discharged occurred and the final date is the estimated date of compliance. Estimated cost to remediate the affected creeks and privately owned ponds is included in violation no. 1.

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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$35,000

TOTAL

\$1,410

Compliance History

Customer/Respondent/Owner-Operator: CN603404047 Sadler's Smokehouse Ltd Classification: AVERAGE Rating: 9.60
Regulated Entity: RN101747905 SADLER'S BAR B QUE SALES Classification: AVERAGE Site Rating: 9.60
ID Number(s):
Location: 1206 N FRISCO ST, HENDERSON, TX, 75652
TCEQ Region: REGION 05 - TYLER
Date Compliance History Prepared: June 28, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 28, 2006 to June 28, 2011
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Samuel Short Phone: (512) 239-5363

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
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
6. Rating Date: 9/1/2010 Repeat Violator: NO

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 Effective Date: 01/12/2008 ADMINORDER 2005-1615-AIR-E
Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.4
5C THC Chapter 382, SubChapter A 382.085(b)
Description: Facility failed to control excessive odorous emissions from wastewater ponds.
- 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.)
N/A (782140)
1 12/08/2009
2 12/22/2009 (784424)
3 05/20/2010 (798177)
4 05/28/2010 (824501)
5 06/16/2011 (921653)
- E. Written notices of violations (NOV). (CEEDS Inv. Track. No.)
N/A
Date: 03/26/2009 (784424)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.4
5C THC Chapter 382, SubChapter A 382.085(b)
Description: Facility failed to control excessive odorous emissions from wastewater ponds,
Date: 05/23/2011 (921058)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.4
5C THSC Chapter 382 382.085(b)

Description: Failure to prohibit the discharge of air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.

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
ENFORCEMENT ACTION
CONCERNING
SADLER'S SMOKEHOUSE, LTD.
RN101747905**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2011-1066-WQ-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 Sadler's Smokehouse, Ltd. (“the Respondent”) under the authority of TEX. WATER CODE chs. 7 and 26. 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 meat production facility at 1206 North Frisco Street in Henderson, Rusk County, Texas (the “Facility”).
2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.

3. During an investigation on April 29, 2011, TCEQ staff documented that due to a damaged discharge pipe that carries wastewater from the anaerobic lagoon to an aeration lagoon, approximately 10,000 gallons of wastewater overflowed the anaerobic lagoon and then flowed into a nearby unnamed creek. The discharge then traveled to a private fishing pond, killing approximately 109 fish.
4. During an investigation on June 6, 2011, TCEQ staff documented that a section of an earthen berm on lagoon number 3 collapsed, releasing approximately 1.01 million gallons of partially treated wastewater into a nearby unnamed creek. The discharge then traveled to a private pond, then flowed into another unnamed creek, and into two ponds on the Gibson Buffalo Ranch, killing an unknown number of fish.
5. The Respondent received notice of the violations on June 24, 2011.
6. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. On April 28, 2011, contained the leak caused by the damaged discharge pipe;
 - b. On April 30, 2011, redesigned the drainage system from the anaerobic lagoon to the aeration basin, repaired the broken pipe, and installed an overflow prevention system;
 - c. By May 4, 2011, began remediating the discharge that occurred on April 28, 2011 by placing hay bales in the affected creeks, by providing an aerator to the owner of the private pond, and by hiring a contractor to remove and properly dispose of the soil located along the discharge path;
 - d. On June 6, 2011, constructed a temporary berm to stop the discharge from lagoon number 3 and prevent future discharges;
 - e. On June 6, 2011, constructed temporary dams made from hay bales in the affected creek that carries water away from the Facility to help absorb the solids;
 - f. By June 9, 2011, removed and properly disposed of approximately 75 tractor trailer loads of water from the affected creeks and ponds; and
 - g. By June 9, 2011, began removing dead fish from the affected ponds.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.

2. As evidenced by Findings of Fact Nos. 3 and 4, the Respondent failed to prevent the unauthorized discharges of wastewater into water in the state, in violation of TEX. WATER CODE § 26.121(a)(1).
3. Pursuant to TEX. WATER CODE § 7.051, 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.
4. An administrative penalty in the amount of Eighteen Thousand Six Hundred Dollars (\$18,600) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the Eighteen Thousand Six Hundred Dollar (\$18,600) administrative penalty.

III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Eighteen Thousand Six Hundred Dollars (\$18,600) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Sadler's Smokehouse, Ltd., Docket No. 2011-1066-WQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Complete the remediation of the affected creeks and private ponds; and
 - ii. Complete the reconstruction of the collapsed lagoon wall.

- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i., and 2.a.ii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3734

3. 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.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a

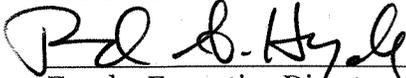
written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. 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.
7. 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.
8. 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.
9. 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.
10. 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

11/3/11
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Sadler's Smokehouse, Ltd. I am authorized to agree to the attached Agreed Order on behalf of Sadler's Smokehouse, Ltd., 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, Sadler's Smokehouse, Ltd. 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

9/1/11
Date

James C. Reed
Name (Printed or typed)
Authorized Representative of
Sadler's Smokehouse, Ltd.

President, CEO
Title

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.