

Executive Summary – Enforcement Matter – Case No. 48017
Southern Methodist University
RN106949894
Docket No. 2013-2171-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:

No

Location(s) Where Violation(s) Occurred:

SMU Barr Pool, 6025 Ownby Drive, University Park, Dallas County

Type of Operation:

Swimming pool

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: May 16, 2014

Comments Received: No

Penalty Information

Total Penalty Assessed: \$5,625

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: \$5,625

Name of SEP: Galveston Bay Foundation, Inc.

Compliance History Classifications:

Person/CN - Unclassified

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: September 25, 2013

Date(s) of NOE(s): November 26, 2013

Executive Summary – Enforcement Matter – Case No. 48017
Southern Methodist University
RN106949894
Docket No. 2013-2171-WQ-E

Violation Information

Failed to prevent an unauthorized discharge of chlorinated water from swimming pool draining and cleaning activities into water in the state [TEX. WATER CODE § 26.121(a)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent has implemented the following:

- a. By May 28, 2013, developed a training, maintenance, and cleaning protocol for pool cleaning and training of all Facility employees in proper storm water management; and
- b. By July 1, 2013, removed the connection to the storm water system and connected to the sanitary sewer system.

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

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Greg Zychowski, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-3158; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456

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

Respondent: Christine Regis, Vice President for Business and Finance, Southern Methodist University, P.O. Box 750100, Dallas, Texas 75275-0100

Respondent's Attorney: Scott Deatherage, Gardere Wynne Sewell LLP, 1601 Elm Street, Thanksgiving Tower, Suite 3000, Dallas, Texas 75201

Attachment A
Docket Number: 2013-2171-WQ-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

| | |
|-----------------------------------|--|
| Respondent: | Southern Methodist University |
| Penalty Amount: | Five Thousand Six Hundred Twenty-Five Dollars (\$5,625) |
| SEP Offset Amount: | Five Thousand Six Hundred Twenty-Five Dollars (\$5,625) |
| Type of SEP: | Contribution to a Third-Party Pre-Approved SEP |
| Third-Party Administrator: | Galveston Bay Foundation, Inc. |
| Project Name: | <i>Galveston Bay “Marsh Mania” Restoration Program</i> |
| Location of SEP: | Harris, Galveston, Chambers, and Brazoria Counties |

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

1. Project Description

a. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **Galveston Bay Foundation, Inc.** for the *Galveston Bay “Marsh Mania” Restoration Program*. The contribution will be used in accordance with the SEP Agreement between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to re-establish marsh habitat to Galveston Bay by restoring marsh elevations to those that will support marsh vegetation and protect marsh habitats from the threat of erosion. The Third-Party Administrator shall also plant salinity-appropriate marsh grasses to reestablish the habitat. The SEP Offset Amount will be used for on-the-ground site preparation and construction of marsh restoration sites, including supplies, materials, equipment, and contractual labor costs, excluding compensation of Galveston Bay Foundation personnel or volunteers.

Restoration work will take place in and around Galveston Bay, its sub-bays, and its tributaries throughout Harris, Galveston, Chambers, and Brazoria Counties. The specific locations will be determined based on local prioritization and needs. The Third-Party Administrator, at its own expense, shall work with local steering committees comprised of leaders from government agencies and local organizations

to identify and prioritize sites. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used solely for the direct cost of implementing the Project, including but not limited to supplies, materials, and equipment. Any portion of this contribution that is not spent on the specifically identified SEP may, at the discretion of the Executive Director ("ED"), be applied to another pre-approved SEP.

The 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. The Respondent shall not profit in any manner from this SEP.

b. Environmental Benefit

Due to the loss of wetlands in the Galveston Bay system, the Galveston Bay National Estuary Program identified wetland restoration, creation, and protection as the number one priority in the *Galveston Bay Plan*. Marshes along coastal Texas, including Galveston Bay, serve as nursery grounds for over 95% of the recreational and commercial fish species found in the Gulf of Mexico as well as many varieties of shrimps and crabs. These habitats also provide breeding, nesting, and feeding grounds for more than one-third of all threatened and endangered animal species, support many endangered plant species, and provide permanent and seasonal habitat for a great variety of wildlife, including finfish and shellfish and 75% of North America's bird species. Marshes also result in the reduction of pollution by filtering particulates and excess nutrients from runoff and serve to protect shorelines from erosion and help reduce the effects of flooding and storm surges on more upland areas.

c. Minimum Expenditure

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

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. The Respondent shall make the check payable to **Galveston Bay Foundation SEP** and shall mail the contribution with a copy of the Agreed Order to:

Southern Methodist University
Agreed Order - Attachment A

Robert Stokes, President
Galveston Bay Foundation, Inc.
17330 Highway 3
Webster, Texas 77598-4133

3. Records and Reporting

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

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

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to fully implement and complete the Project, the Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, the Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP; 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
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP and/or project, made by or on behalf of the 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.

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

The SEP Offset Amount identified in this Attachment A and in the attached Agreed Order has not been, and shall not be, included as a SEP for the 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 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

| | | | | | | |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| DATES | Assigned | 2-Dec-2013 | Screening | 10-Dec-2013 | EPA Due | |
| | PCW | 13-Mar-2014 | | | | |

| | |
|--|-------------------------------|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | Southern Methodist University |
| Reg. Ent. Ref. No. | RN106949894 |
| Facility/Site Region | 4-Dallas/Fort Worth |
| Major/Minor Source | Minor |

| | | | |
|--|----------------|------------------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 48017 | No. of Violations | 1 |
| Docket No. | 2013-2171-WQ-E | Order Type | Findings |
| Media Program(s) | Water Quality | Government/Non-Profit | Yes |
| Multi-Media | | Enf. Coordinator | Jorge Ibarra, P.E. |
| | | EC's Team | Enforcement Team 3 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$25,000 |

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$7,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **0.0%** Enhancement **Subtotals 2, 3, & 7** **\$0**

Notes: No adjustment for compliance history.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$1,875**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts: \$33
Approx. Cost of Compliance: \$2,000
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$5,625**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$5,625**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$5,625**

DEFERRAL **0.0%** Reduction **Adjustment** **\$0**

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

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$5,625**

Screening Date 10-Dec-2013

Docket No. 2013-2171-WQ-E

PCW

Respondent Southern Methodist University

Policy Revision 3 (September 2011)

Case ID No. 48017

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106949894

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

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 | 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) 0%

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

N/A

Adjustment Percentage (Subtotal 3) 0%

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

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 0%

Screening Date 10-Dec-2013

Docket No. 2013-2171-WQ-E

PCW

Respondent Southern Methodist University

Policy Revision 3 (September 2011)

Case ID No. 48017

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106949894

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(1)

Violation Description

Failed to prevent an unauthorized discharge of chlorinated water from swimming pool draining and cleaning activities into water in the state. Specifically, during an investigation conducted on September 25, 2013, it was documented that on March 4, 2013, approximately 16,400 gallons of chlorinated pool water from pool cleaning operations was discharged to the storm water system and into Hackberry Creek just downstream of Drexel Drive and Beverly Drive in the City of University Park, resulting in approximately 481 dead green sunfish and an unknown number of crayfish and aquatic worms.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | |
|-----------|-------|----------|-------|
| | Major | Moderate | Minor |
| Actual | x | | |
| Potential | | | |

Percent 30.0%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
| | | | |

Percent 0.0%

Matrix Notes

Failure to prevent an unauthorized discharge of chlorinated water into water in the state resulted in the release of pollutants which exceeded levels that are protective of human health and the environment.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

| | |
|--------------|---|
| daily | x |
| weekly | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | |
| single event | |

Violation Base Penalty \$7,500

One daily event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$1,875

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

Notes The Respondent achieved compliance by July 1, 2013.

Violation Subtotal \$5,625

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$33

Violation Final Penalty Total \$5,625

This violation Final Assessed Penalty (adjusted for limits) \$5,625

Economic Benefit Worksheet

Respondent Southern Methodist University
Case ID No. 48017
Reg. Ent. Reference No. RN106949894
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 |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| 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) | \$2,000 | 4-Mar-2013 | 1-Jul-2013 | 0.33 | \$33 | n/a | \$33 |

Notes for DELAYED costs

Estimated cost to cease the discharge, to remove the connection to the storm water system and to connect to sanitary sewer system, and to develop a training, maintenance, and cleaning protocol for pool cleaning and training of all Facility employees in proper storm water management (the dead fish were removed by an unknown party). Date required is the date of the unauthorized discharge and the final date is the date all preventive actions were implemented.

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

\$2,000

TOTAL

\$33



Compliance History Report

PUBLISHED Compliance History Report for CN600132138, RN106949894, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN600132138, Southern Methodist University **Classification:** UNCLASSIFIED **Rating:** -----

Regulated Entity: RN106949894, SMU BARR POOL **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: 6025 OWNBY DR, CITY OF UNIVERSITY PARK, DALLAS COUNTY, TX

TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s):
WATER QUALITY NON PERMITTED ID NUMBER
R04106949894

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: December 13, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: December 13, 2008 to December 13, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Jorge Ibarra, P.E. **Phone:** (817) 588-5890

Site and Owner/Operator History:

- 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 for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

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
SOUTHERN METHODIST
UNIVERSITY
RN106949894

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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2013-2171-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 Southern Methodist University ("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, represented by Scott Deatherage of the law firm of Gardere Wynne Sewell LLP 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 swimming pool located at 6025 Ownby Drive in University Park, Dallas County, Texas (the "Facility").

2. The Respondent has discharged a pollutant into or adjacent to water in the state under TEX. WATER CODE ch. 26.
3. During an investigation conducted on September 25, 2013, TCEQ staff documented that the Respondent did not prevent an unauthorized discharge of chlorinated water from swimming pool draining and cleaning activities into water in the state. Specifically, on March 4, 2013, approximately 16,400 gallons of chlorinated pool water from pool cleaning operations was discharged to the storm water system and into Hackberry Creek just downstream of Drexel Drive and Beverly Drive in the City of University Park, resulting in approximately 481 dead green sunfish and an unknown number of crayfish and aquatic worms.
4. The Respondent received notice of the violations on November 27, 2013.
5. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. By May 28, 2013, developed a training, maintenance, and cleaning protocol for pool cleaning and training of all Facility employees in proper storm water management; and
 - b. By July 1, 2013, removed the connection to the storm water system and connected to the sanitary sewer system.

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 No. 3, the Respondent failed to prevent an unauthorized discharge of chlorinated water from swimming pool draining and cleaning activities 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 Five Thousand Six Hundred Twenty-Five Dollars (\$5,625) 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. Five Thousand Six Hundred Twenty-Five Dollars (\$5,625) 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 is assessed an administrative penalty in the amount of Five Thousand Six Hundred Twenty-Five Dollars (\$5,625) 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: Southern Methodist University, Docket No. 2013-2171-WQ-E" to:

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

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II, Paragraph 4 above, Five Thousand Six Hundred Twenty-Five Dollars (\$5,625) of the assessed administrative penalty shall be offset with the condition that the SEP defined in Attachment A, incorporated herein by reference, is implemented by the Respondent. 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.
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

Pam Powers
For the Executive Director

6/20/14
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Southern Methodist University. I am authorized to agree to the attached Agreed Order on behalf of Southern Methodist University, 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, Southern Methodist University 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.

Chris Regis
Signature
Chris Regis

4/25/14
Date
Vice President for Business and Finance

Name (Printed or typed)
Authorized Representative of
Southern Methodist University

Title

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

Attachment A
Docket Number: 2013-2171-WQ-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

| | |
|-----------------------------------|--|
| Respondent: | Southern Methodist University |
| Penalty Amount: | Five Thousand Six Hundred Twenty-Five Dollars (\$5,625) |
| SEP Offset Amount: | Five Thousand Six Hundred Twenty-Five Dollars (\$5,625) |
| Type of SEP: | Contribution to a Third-Party Pre-Approved SEP |
| Third-Party Administrator: | Galveston Bay Foundation, Inc. |
| Project Name: | <i>Galveston Bay "Marsh Mania" Restoration Program</i> |
| Location of SEP: | Harris, Galveston, Chambers, and Brazoria Counties |

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

1. Project Description

a. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **Galveston Bay Foundation, Inc.** for the *Galveston Bay "Marsh Mania" Restoration Program*. The contribution will be used in accordance with the SEP Agreement between the Third-Party Administrator and the TCEQ (the "Project"). Specifically, the SEP Offset Amount will be used to re-establish marsh habitat to Galveston Bay by restoring marsh elevations to those that will support marsh vegetation and protect marsh habitats from the threat of erosion. The Third-Party Administrator shall also plant salinity-appropriate marsh grasses to reestablish the habitat. The SEP Offset Amount will be used for on-the-ground site preparation and construction of marsh restoration sites, including supplies, materials, equipment, and contractual labor costs, excluding compensation of Galveston Bay Foundation personnel or volunteers.

Restoration work will take place in and around Galveston Bay, its sub-bays, and its tributaries throughout Harris, Galveston, Chambers, and Brazoria Counties. The specific locations will be determined based on local prioritization and needs. The Third-Party Administrator, at its own expense, shall work with local steering committees comprised of leaders from government agencies and local organizations

Southern Methodist University
Agreed Order - Attachment A

to identify and prioritize sites. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used solely for the direct cost of implementing the Project, including but not limited to supplies, materials, and equipment. Any portion of this contribution that is not spent on the specifically identified SEP may, at the discretion of the Executive Director ("ED"), be applied to another pre-approved SEP.

The 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. The Respondent shall not profit in any manner from this SEP.

b. Environmental Benefit

Due to the loss of wetlands in the Galveston Bay system, the Galveston Bay National Estuary Program identified wetland restoration, creation, and protection as the number one priority in the *Galveston Bay Plan*. Marshes along coastal Texas, including Galveston Bay, serve as nursery grounds for over 95% of the recreational and commercial fish species found in the Gulf of Mexico as well as many varieties of shrimps and crabs. These habitats also provide breeding, nesting, and feeding grounds for more than one-third of all threatened and endangered animal species, support many endangered plant species, and provide permanent and seasonal habitat for a great variety of wildlife, including finfish and shellfish and 75% of North America's bird species. Marshes also result in the reduction of pollution by filtering particulates and excess nutrients from runoff and serve to protect shorelines from erosion and help reduce the effects of flooding and storm surges on more upland areas.

c. Minimum Expenditure

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

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. The Respondent shall make the check payable to **Galveston Bay Foundation SEP** and shall mail the contribution with a copy of the Agreed Order to:

Southern Methodist University
Agreed Order - Attachment A

Robert Stokes, President
Galveston Bay Foundation, Inc.
17330 Highway 3
Webster, Texas 77598-4133

3. Records and Reporting

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

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

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to fully implement and complete the Project, the Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, the Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP; 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
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP and/or project, made by or on behalf of the 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.

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

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