

City of Pearland
RN101920007
Docket No. 2013-1816-MWD-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Three or more enforcement actions (5 NOVs, 1 Order) over the prior five year period for the same violations.

Media:

Municipal Waste Discharge (“MWD”)

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

approximately 1,000 feet north of McHard Road, approximately 1.25 miles west of the intersection of McHard Road and State Highway 288, Brazoria County

Type of Operation:

domestic wastewater treatment facility

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: May 8, 2015

Comments Received: None

Penalty Information

Total Penalty Assessed: \$22,500

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Supplemental Environmental Project (“SEP”) Conditional Offset:

\$22,500

Name of SEP: The Trust for Public Lands - *Galveston Bay Natural Area Acquisition and Conservation Program*

Compliance History Classifications:

Person/CN – Satisfactory
 Site/RN – Satisfactory

Major Source: Yes

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: September 12, 2012; August 20, 2013

Date(s) of NOV(s): See Compliance History – 5 related NOVs

Date(s) of NOE(s): August 25, 2013

City of Pearland
RN101920007
Docket No. 2013-1816-MWD-E

Violation Information

Failed to comply with permitted effluent limits [TEX. WATER CODE § 26.121(a)(1); 30 TEX. ADMIN. CODE § 305.125(1); and Texas Pollutant Discharge Elimination System Permit No. WQ0010134008, Effluent Limitations and Monitoring Requirements No. 1].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Consulting engineers have initiated plans to expand Respondent's Facility to increase capacity. The plans include schedules for adding emergency treatment to supply short-term capacity and new facility construction to address long-term capacity requirements.

Technical Requirements:

1. Regarding the design and construction of temporary emergency capacity ("Emergency Capacity") and the design and construction of a new domestic wastewater treatment facility ("New Facility") that will replace the existing Facility:
 - a. By September 1, 2015, complete design of the Emergency Capacity and the New Facility;
 - b. By November 2, 2015, commence construction of the New Facility;
 - c. By January 2, 2016, complete construction of the Emergency Capacity;
 - d. By May 1, 2018, complete construction of the New Facility; and
 - e. Submit written certification to demonstrate compliance within 15 days of each deadline contained in Technical Requirements Nos. 1.a. through 1.d.

Litigation Information

Date Petition(s) Filed:	August 05, 2014
Date Answer Filed:	August 10, 2014
SOAH Referral Date:	September 25, 2014
Hearing Date(s):	
Preliminary Hearing:	October 29, 2014 (waived)
Evidentiary Hearing:	February 27, 2015 (continued)
Settlement Date:	March 10, 2015

Contact Information

TCEQ Attorneys: Jim Sallans, Litigation Division, (512) 239-3400
 Lena Roberts, Litigation Division, (512) 239-3400
 Eli Martinez, Public Interest Counsel, (512) 239-6363

TCEQ SEP Attorney: Meaghan Bailey, Litigation Division, (512) 239-3400

TCEQ Enforcement Coordinator: Lanae Foard, Enforcement Division, (512) 239-2554

TCEQ Regional Contact: Steve Smith, Houston Regional Office, (713) 767-3500

Respondent Contact: The Honorable Tom Ried, Mayor of City of Pearland, 3519 Liberty Drive, Pearland, Texas 77581

Respondent's Attorney: Brad Castleberry, Lloyd Gosselink Rochelle and Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701

Attachment A
Docket Number: 2013-1816-MWD-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Pearland
Penalty Amount:	Twenty-Two Thousand Five Hundred Dollars (\$22,500)
SEP Offset Amount:	Twenty-Two Thousand Five Hundred Dollars (\$22,500)
Type of SEP:	Contribution to a Pre-Approved Third-Party Administrator
Third-Party Administrator:	The Trust for Public Lands
Project Name:	<i>The Trust for Public Land's Galveston Bay Natural Area Acquisition and Conservation Program</i>
Location of SEP:	Brazoria, Chambers, Galveston, and Harris Counties

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset of the administrative Penalty Amount assessed in this Agreed Order for 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

Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to **The Trust for Public Lands** for *The Trust for Public Land's Galveston Bay Natural Area Acquisition and Conservation Program*. The contribution will be used in accordance with the Supplemental Environmental Project between the Third-Party Administrator and the TCEQ (the "Project"). Specifically, the SEP Offset Amount will be used to provide for acquisitions that will preserve open space in the Galveston Bay watershed, thereby contributing to improved water quality, conserving wetlands and other special habitats, and increasing public access to the Bay, its tributaries, and their habitats. The Third-Party Administrator's professional staff (a) works with local interests to identify acquisition projects, (b) purchases the land to remove it from the market, and (c) transfers the land to a public agency or nonprofit organization, which will be the ultimate fee title holder and permanent steward of the property. The Third-Party Administrator will ensure that each property is encumbered with a conservation easement that will preserve the property into perpetuity. SEP Offset Amount will be used for the purchase of land. The SEP will be done in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used solely for the direct cost of the Project. No portion of the SEP Offset Amount shall be spent on administrative costs, including but not limited to operating costs, reporting expenses, handling of expenses, project coordination, liability, or equipment breakdowns.

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.

Respondent's signature affixed to this Agreed Order certifies that Respondent has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action. Respondent shall not profit in any manner from this SEP.

B. Environmental Benefit

The preservation of open space in the Galveston Bay watershed provides substantial environmental, economic, and community benefits for the region. Open space contributes free ecological services, services that society must pay for otherwise. A key environmental benefit for acquisitions along Galveston Bay system waterways will be maintaining/restoring stream buffers that will help filter contaminants before they reach the water, while providing wildlife habitat. Forested buffers provide the additional benefit of improving air quality through the removal of carbon dioxide, ozone, and sulfur dioxide. Acquiring habitat along the bay front or along streams would also provide a buffer for coastal wetlands, preventing their further degradation, and ensuring greater protection of uplands from storm surge and other erosional forces.

The habitats of the Galveston Bay system - barrier islands, oak and riparian woodlands, coastal prairies, cypress swamps, seagrass meadows, saltgrass marshes, and oyster reefs host an astounding cornucopia of wildlife, including 95 percent of the recreationally and commercially important fish species of the Bay and Gulf systems, and 75 percent of North America's bird species. Yet, these habitats have suffered substantial losses and changes: Increases in open water, losses of seagrass beds, losses of coastal prairie uplands, conversion of freshwater wetlands to brackish wetlands or agricultural lands, and degradation of estuarine marshes. Some of the habitats are seriously threatened with prairies being the most threatened habitat along the Texas coast: Only one percent of these prairies remain in a somewhat natural state. Wetlands, one of the most biologically productive habitats on the planet, have experienced a loss around Galveston Bay during the past 50 years that is estimated at 35,000 acres.

The habitat losses have increased stresses on the water quality of the area's streams and bayous, on the remaining wildlife, and on the human inhabitants of the region. The water quality has deteriorated such that 29 of the stream segments in the region are on the State's 303(d) list for water quality impairment for one or more parameters. Approximately half of those impairments are linked to industrial uses and half to municipal development and nonpoint source pollution. The banks of the Bay and its tributary streams are often eroding and have frequently been stripped of their native vegetation, increasing erosion potential and reducing wildlife habitat. Open space for human enjoyment, relaxation, and health is at a premium, with the Houston-Galveston area having, on average, less than one-half of the recommended local park acreage of 25 acres per 1,000 residents.

Additionally, local communities benefit from open space by the increased quality of life, which is one of the greatest lures for the new knowledge-based workforce and for retirees as well. Open space can be linked through greenways to provide enhanced recreational opportunities and alternative transportation opportunities. Increased open space can also reduce the heat island effect of cities, lowering energy consumption.

C. Minimum Expenditure

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, Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. Respondent shall make the check payable to **The Trust for Public Lands SEP** and shall mail the contribution with a copy of the Agreed Order to:

Scott Parker, Executive Director
The Trust for Public Land
Texas State Office
816 Congress Avenue, Suite 1680
Austin, Texas 78701

3. Records and Reporting

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

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

4. Failure to Fully Perform

If 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 Respondent failed to fully implement and complete the Project, 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, 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 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. Recognition

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 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	3-Sep-2013	Screening	17-Sep-2013	EPA Due	
	PCW	11-Feb-2015				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Pearland
Reg. Ent. Ref. No.	RN101920007
Facility/Site Region	12-Houston
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	47713	No. of Violations	2
Docket No.	2013-1816-MWD-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Lanae Foard
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$15,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1	
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.	
Compliance History	50.0% Enhancement Subtotals 2, 3, & 7 \$7,500

Notes: Enhancement for one NOV with same/similar violations, four months of self-reported effluent violations, and one order without denial of liability.

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	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$74,808	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$778,588		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$22,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
Reduces or enhances the Final Subtotal by the indicated percentage.			

Notes: [Empty box]

Final Penalty Amount	\$22,500
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$22,500
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction)				

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$22,500
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Screening Date 17-Sep-2013

Docket No. 2013-1816-MWD-E

PCW

Respondent City of Pearland

Policy Revision 3 (September 2011)

Case ID No. 47713

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101920007

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

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>)	5	25%
	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	1	25%
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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations, four months of self-reported effluent violations, and one order without denial of liability.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%

Screening Date 17-Sep-2013
Respondent City of Pearland
Case ID No. 47713
Reg. Ent. Reference No. RN101920007
Media [Statute] Water Quality
Enf. Coordinator Lanae Foard

Docket No. 2013-1816-MWD-E

PCW

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

Violation Number

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010134008, Effluent Limitations and Monitoring Requirements No. 1

Violation Description Failed to comply with permitted effluent limits, as documented during a record review conducted on August 20, 2013, and shown in the attached violation table.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text" value="30.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>

Matrix Notes Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input checked="" type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

One monthly event is recommended for the month of June 2013.

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent City of Pearland
Case ID No. 47713
Reg. Ent. Reference No. RN101920007
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description 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	\$778,588	31-Jan-2013	16-Jun-2014	1.37	\$3,562	\$71,246	\$74,808
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

Total cost to complete rehabilitation of the Facility to return to compliance with permitted effluent limitations. Date required is the initial date of noncompliance. Final date is the expected 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

\$778,588

TOTAL

\$74,808

Screening Date 17-Sep-2013
Respondent City of Pearland
Case ID No. 47713
Reg. Ent. Reference No. RN101920007
Media [Statute] Water Quality
Enf. Coordinator Lanae Foard

Docket No. 2013-1816-MWD-E

PCW

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

Violation Number

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0010134008, Effluent Limitations and Monitoring Requirements No. 1

Violation Description Failed to comply with permitted effluent limits, as documented during a record review conducted on August 20, 2013, and shown in the attached violation table.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual	<input type="text"/>	<input type="text"/>	
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>

Matrix Notes

A simplified model was used to evaluate ammonia nitrogen to determine whether the discharged amounts of pollutants exceeded protective levels. Flow was also considered. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed protective levels.

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="text" value="x"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Two quarterly events are recommended for the quarters containing the months of January 2013, April 2013, and May 2013.

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent City of Pearland
Case ID No. 47713
Reg. Ent. Reference No. RN101920007
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)				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

Economic benefit for this violation is included with 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 \$0

TOTAL \$0

EFFLUENT VIOLATION TABLE
City of Pearland
TPDES Permit No. WQ0010134008
Docket No. 2013-1816-MWD-E

Permitted Effluent Limits	Monitoring Period			
	Violation 1: January 2013	Violation 1: April 2013	Violation 1: May 2013	Violation 2: June 2013
Fecal Coliform 7-Day Average Limit = 400 CFU/100 mL	c	c	c	1,427
2-Hour Peak Flow Limit = 5,555 gpm	5,876	c	c	c
Ammonia Nitrogen Daily Average Concentration Limit = 2 mg/L	c	4.6	c	4.5
Ammonia Nitrogen Daily Maximum Concentration Limit = 7 mg/L	c	25.4	12.8	28.3
Ammonia Nitrogen Daily Average Loading Limit = 33 lbs/day	c	57.7	c	57.98

c = compliant

CFU/100 mL = colony forming units per 100 milliliters

gpm = gallons per minute

mg/L = milligrams per liter

lbs/day = pounds per day

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Compliance History Report

PUBLISHED Compliance History Report for CN600595052, RN101920007, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN600595052, City of Pearland **Classification:** SATISFACTORY **Rating:** 2.63
Regulated Entity: RN101920007, CITY OF PEARLAND **Classification:** SATISFACTORY **Rating:** 7.00
Complexity Points: 6 **Repeat Violator:** NO
CH Group: 08 - Sewage Treatment Facilities
Location: Approximately 1,000 feet north of McHard Road, approximately 1.25 miles west of the intersection of McHard Road and State Highway 288, Brazoria County, Texas
TCEQ Region: REGION 12 - HOUSTON
ID Number(s): **WASTEWATER PERMIT** WQ0010134008
WASTEWATER EPA ID TX0117501

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

Date Compliance History Report Prepared: September 18, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: September 18, 2008 to September 18, 2013

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

Name: Lanae Foard

Phone: (512) 239-2554

Site and Owner/Operator History:

- 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 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:

1 Effective Date: 04/07/2013 ADMINORDER 2012-1877-MWD-E (Findings Order-Agreed Order Without Denial)

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: Effluent Limits PERMIT

Description: Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 1	September 25, 2008	(717293)	Item 24	January 19, 2011	(903918)
Item 2	November 21, 2008	(732683)	Item 25	February 16, 2011	(910809)
Item 3	December 19, 2008	(732684)	Item 26	March 15, 2011	(918070)
Item 4	February 19, 2009	(755936)	Item 27	April 19, 2011	(930273)
Item 5	March 12, 2009	(755937)	Item 28	May 17, 2011	(939778)
Item 6	April 20, 2009	(755938)	Item 29	June 20, 2011	(947192)
Item 7	May 18, 2009	(772924)	Item 30	July 19, 2011	(954441)
Item 8	June 11, 2009	(772925)	Item 31	August 18, 2011	(961030)
Item 9	August 27, 2009	(818910)	Item 32	September 20, 2011	(967119)
Item 10	September 17, 2009	(818911)	Item 33	October 19, 2011	(973085)
Item 11	October 19, 2009	(818912)	Item 34	November 15, 2011	(979212)
Item 12	November 19, 2009	(818913)	Item 35	December 19, 2011	(986057)
Item 13	December 15, 2009	(818914)	Item 36	January 19, 2012	(992414)
Item 14	January 20, 2010	(818915)	Item 37	March 20, 2012	(1005266)
Item 15	March 17, 2010	(835879)	Item 38	April 17, 2012	(1011842)
Item 16	April 19, 2010	(835880)	Item 39	May 17, 2012	(1018204)
Item 17	May 18, 2010	(835881)	Item 40	July 19, 2012	(1033298)
Item 18	June 09, 2010	(847810)	Item 41	August 20, 2012	(1039810)
Item 19	August 26, 2010	(868816)	Item 42	September 20, 2012	(1048757)
Item 20	September 20, 2010	(875686)	Item 43	October 16, 2012	(1069515)
Item 21	October 20, 2010	(883242)	Item 44	November 14, 2012	(1069516)
Item 22	November 17, 2010	(889652)	Item 45	December 21, 2012	(1069517)
Item 23	December 15, 2010	(898019)	Item 46	March 18, 2013	(1091154)
			Item 47	April 17, 2013	(1097488)

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.

- 1 Date: 12/18/2012 (1030814) CN600595052**
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to maintain compliance with effluent limits for Fecal Coliform.
- 2 Date: 01/31/2013 (1082814) CN600595052**
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter
- 3 Date: 04/30/2013 (1108509) CN600595052**
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter
- 4 Date: 05/31/2013 (1112089) CN600595052**
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter
- 5 Date: 06/30/2013 (1119029) CN600595052**
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

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
CITY OF PEARLAND;
RN10192007**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2013-1816-MWD-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Pearland ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Brad B. Castleberry, of the law firm Lloyd Gosselink Rochelle and Townsend, P.C., presented this Order to the Commission.

Respondent understands that it has certain procedural rights at certain points in the enforcement process, including 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 Order, Respondent agrees to waive all notice and procedural rights.

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

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

FINDINGS OF FACT

1. Respondent owns and operates a domestic wastewater treatment facility located approximately 1,000 feet north of McHard Road, approximately 1.25 miles west of the intersection of McHard Road and State Highway 288 in Brazoria County, Texas (the "Facility"). The Facility adjoins, is contiguous with, surrounds, or is near or adjacent to state water as defined in TEX. WATER CODE § 26.001(5).
2. During an investigation conducted on September 12, 2012, and a record review conducted on August 20, 2013, an investigator documented that Respondent failed to comply with permitted effluent limits, as shown in the effluent violation table below:

EFFLUENT VIOLATION TABLE				
Permitted Effluent Limits	Monitoring Period			
	January 2013	April 2013	May 2013	June 2013
Fecal Coliform 7-Day Average Limit = 400 CFU/100 mL	c	c	c	1,427
2-Hour Peak Flow Limit = 5,555 gpm	5,876	c	c	c
Ammonia Nitrogen Daily Average Concentration Limit = 2 mg/L	c	4.6	c	4.5
Ammonia Nitrogen Daily Maximum Concentration Limit = 7 mg/L	c	25.4	12.8	28.3
Ammonia Nitrogen Daily Average Loading Limit = 33 lbs/day	c	57.7	c	57.98

c = compliant
mg/L = milligrams per liter
lbs/day = pounds per day
CFU/100 mL = colony forming units per 100 milliliters
gpm = gallons per minute

- The Executive Director recognizes that Respondent’s consulting engineers have initiated plans to expand Respondent’s Facility to increase capacity. The plans include schedules for adding emergency treatment to supply short-term capacity and new facility construction to address long-term capacity requirements.

CONCLUSIONS OF LAW

- As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ.
- As evidenced by Finding of Fact No. 2, Respondent failed to comply with permitted effluent limits, in violation of TEX. WATER CODE § 26.121(a)(1); 30 TEX. ADMIN. CODE § 305.125(1); and Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0010134008, Effluent Limitations and Monitoring Requirements No. 1.
- Pursuant to TEX. WATER CODE § 7.051, TCEQ has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ’s jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
- An administrative penalty in the amount of twenty-two thousand five hundred dollars (\$22,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Pursuant to TEX. WATER CODE § 7.067, twenty-two thousand five hundred dollars (\$22,500.00) of the administrative penalty shall be conditionally offset by Respondent’s timely and satisfactory completion of a Supplemental Environmental Project (“SEP”) as defined in the SEP Agreement (“Attachment A” - incorporated herein by reference). Respondent’s obligation to pay the conditionally offset portion of the administrative penalty assessed by this Order shall be discharged upon full compliance with all the terms and conditions of this Order, which includes timely and satisfactory completion of all provisions of the SEP Agreement, as determined by the Executive Director.

If Respondent fails to timely and satisfactorily comply with any requirement contained in this Order, including the SEP Agreement and any payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the conditionally offset portion of the administrative penalty shall become immediately due and payable without demand or notice. The acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Order, and the Executive Director may require Respondent to pay all or part of the conditionally offset administrative penalty.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 4 for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here. Penalty payments shall be made payable to TCEQ and shall be sent with the notation "Re: City of Pearland, Docket No. 2013-1816-MWD-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
2. Respondent shall implement and complete a SEP as set forth in Conclusion of Law No. 4. The amount of twenty-two thousand five hundred dollars (\$22,500.00) of the assessed administrative penalty is conditionally offset based on Respondent's implementation and completion of a SEP pursuant to the terms and conditions contained in the SEP Agreement, as defined in Attachment A. Penalty payments for any portion of the SEP deemed by the Executive Director as not complete shall be paid within 30 days after the date the Executive Director demands payment.
3. Respondent shall undertake the following technical requirements regarding the design and construction of temporary emergency capacity ("Emergency Capacity") and the design and construction of a new domestic wastewater treatment facility, TPDES Permit No. WQ0010134008, ("New Facility") that will replace the existing Facility:
 - a. By September 1, 2015, complete design of the Emergency Capacity and the New Facility;
 - b. By November 2, 2015, commence construction of the New Facility;
 - c. By January 2, 2016, complete construction of the Emergency Capacity;
 - d. By May 1, 2018, complete construction of the New Facility; and
 - e. Within fifteen days of each deadline contained in Ordering Provisions Nos. 3.a. through 3.d., Respondent shall submit written certification of compliance. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, and shall 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 fine and imprisonment for knowing violations."

Respondent shall submit the written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Water Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day to day control over the Facility operations referenced in this Order.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
8. This Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the Office of the Attorney General of the State of Texas ("OAG") to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within TCEQ's jurisdiction, or of a rule adopted or an order or permit issued by TCEQ under such a statute. The Executive Director may, without further notice or hearing, refer this matter to the OAG for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.

9. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
10. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
11. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this 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 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.
12. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Order is the date of hand delivery of the fully executed Order to Respondent, or three days after the date on which the Commission mails a copy of the fully executed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of the fully executed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

May 29, 2015
Date

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

3-10-15
Date

Darrin Paker

Name (printed or typed)
Authorized Representative
City of Pearland

City Attorney

Title

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

Attachment A
Docket Number: 2013-1816-MWD-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Pearland
Penalty Amount:	Twenty-Two Thousand Five Hundred Dollars (\$22,500)
SEP Offset Amount:	Twenty-Two Thousand Five Hundred Dollars (\$22,500)
Type of SEP:	Contribution to a Pre-Approved Third-Party Administrator
Third-Party Administrator:	The Trust for Public Lands
Project Name:	<i>The Trust for Public Land's Galveston Bay Natural Area Acquisition and Conservation Program</i>
Location of SEP:	Brazoria, Chambers, Galveston, and Harris Counties

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset of the administrative Penalty Amount assessed in this Agreed Order for 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

Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to **The Trust for Public Lands** for *The Trust for Public Land's Galveston Bay Natural Area Acquisition and Conservation Program*. The contribution will be used in accordance with the Supplemental Environmental Project between the Third-Party Administrator and the TCEQ (the "Project"). Specifically, the SEP Offset Amount will be used to provide for acquisitions that will preserve open space in the Galveston Bay watershed, thereby contributing to improved water quality, conserving wetlands and other special habitats, and increasing public access to the Bay, its tributaries, and their habitats. The Third-Party Administrator's professional staff (a) works with local interests to identify acquisition projects, (b) purchases the land to remove it from the market, and (c) transfers the land to a public agency or nonprofit organization, which will be the ultimate fee title holder and permanent steward of the property. The Third-Party Administrator will ensure that each property is encumbered with a conservation easement that will preserve the property into perpetuity. SEP Offset Amount will be used for the purchase of land. The SEP will be done in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used solely for the direct cost of the Project. No portion of the SEP Offset Amount shall be spent on administrative costs, including but not limited to operating costs, reporting expenses, handling of expenses, project coordination, liability, or equipment breakdowns.

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.

Respondent's signature affixed to this Agreed Order certifies that Respondent has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action. Respondent shall not profit in any manner from this SEP.

B. Environmental Benefit

The preservation of open space in the Galveston Bay watershed provides substantial environmental, economic, and community benefits for the region. Open space contributes free ecological services, services that society must pay for otherwise. A key environmental benefit for acquisitions along Galveston Bay system waterways will be maintaining/restoring stream buffers that will help filter contaminants before they reach the water, while providing wildlife habitat. Forested buffers provide the additional benefit of improving air quality through the removal of carbon dioxide, ozone, and sulfur dioxide. Acquiring habitat along the bay front or along streams would also provide a buffer for coastal wetlands, preventing their further degradation, and ensuring greater protection of uplands from storm surge and other erosional forces.

The habitats of the Galveston Bay system - barrier islands, oak and riparian woodlands, coastal prairies, cypress swamps, seagrass meadows, saltgrass marshes, and oyster reefs host an astounding cornucopia of wildlife, including 95 percent of the recreationally and commercially important fish species of the Bay and Gulf systems, and 75 percent of North America's bird species. Yet, these habitats have suffered substantial losses and changes: Increases in open water, losses of seagrass beds, losses of coastal prairie uplands, conversion of freshwater wetlands to brackish wetlands or agricultural lands, and degradation of estuarine marshes. Some of the habitats are seriously threatened with prairies being the most threatened habitat along the Texas coast: Only one percent of these prairies remain in a somewhat natural state. Wetlands, one of the most biologically productive habitats on the planet, have experienced a loss around Galveston Bay during the past 50 years that is estimated at 35,000 acres.

The habitat losses have increased stresses on the water quality of the area's streams and bayous, on the remaining wildlife, and on the human inhabitants of the region. The water quality has deteriorated such that 29 of the stream segments in the region are on the State's 303(d) list for water quality impairment for one or more parameters. Approximately half of those impairments are linked to industrial uses and half to municipal development and nonpoint source pollution. The banks of the Bay and its tributary streams are often eroding and have frequently been stripped of their native vegetation, increasing erosion potential and reducing wildlife habitat. Open space for human enjoyment, relaxation, and health is at a premium, with the Houston-Galveston area having, on average, less than one-half of the recommended local park acreage of 25 acres per 1,000 residents.

Additionally, local communities benefit from open space by the increased quality of life, which is one of the greatest lures for the new knowledge-based workforce and for retirees as well. Open space can be linked through greenways to provide enhanced recreational opportunities and alternative transportation opportunities. Increased open space can also reduce the heat island effect of cities, lowering energy consumption.

C. Minimum Expenditure

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, Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. Respondent shall make the check payable to **The Trust for Public Lands SEP** and shall mail the contribution with a copy of the Agreed Order to:

Scott Parker, Executive Director
The Trust for Public Land
Texas State Office
816 Congress Avenue, Suite 1680
Austin, Texas 78701

3. Records and Reporting

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

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

4. Failure to Fully Perform

If 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 Respondent failed to fully implement and complete the Project, 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, 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 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. Recognition

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 Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.