



Supplemental Environmental Projects Webinar

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North Central Texas Council of Governments

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Supplemental Environmental Projects (“SEPs”)



IMPROVING THE TEXAS ENVIRONMENT

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TCEQ Office of Legal Services

Important SEP Information



<https://www.tceq.texas.gov/compliance/enforcement/sep/sep-main>

Presentation Objectives



- Supplemental Environmental Project (“SEP”)
- SEP Offset
- Types of SEPs
- Third-Party Administrator
- SEP Numbers
- Contact Information

Terms



A **respondent** is an entity that is in violation of TCEQ rules or Texas law. The respondent is any entity regulated by TCEQ, including individuals, governments, and non-profits.

An **Agreed Order** is an agreement between TCEQ and the respondent, in which the respondent agrees to pay a penalty and come into compliance.

Supplemental Environmental Project (“SEP”)



An environmental
enhancement project that
offsets an administrative
penalty in an enforcement
matter

Purpose of SEPs



- **Prevent** pollution
- **Reduce** the amount of pollutants reaching the environment
- **Enhance** the quality of the environment
- **Contribute** to public awareness of environmental matters

Texas Water Code § 7.067(b)(2)

Violation Media = SEP Media



- Air Violations = AIR (AQ SEPs)
- Water Violations = WQ, MWD, EAQ, PWS, WR
(WQ SEPs)
- Waste Violations = MSW, IWD, IHW, PST
(WQ SEPs)

SEP Preference



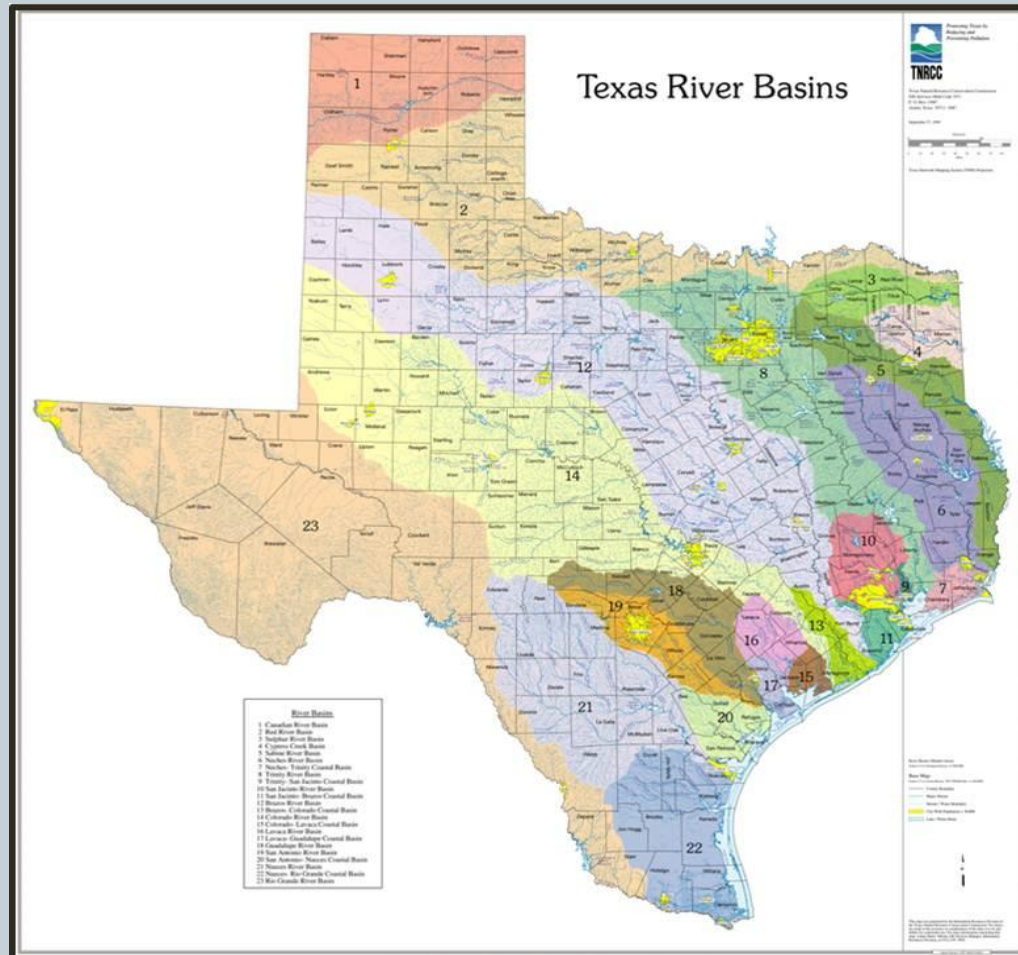
Projects that benefit the
'community' in which the
alleged violation occurred

Levels of Community

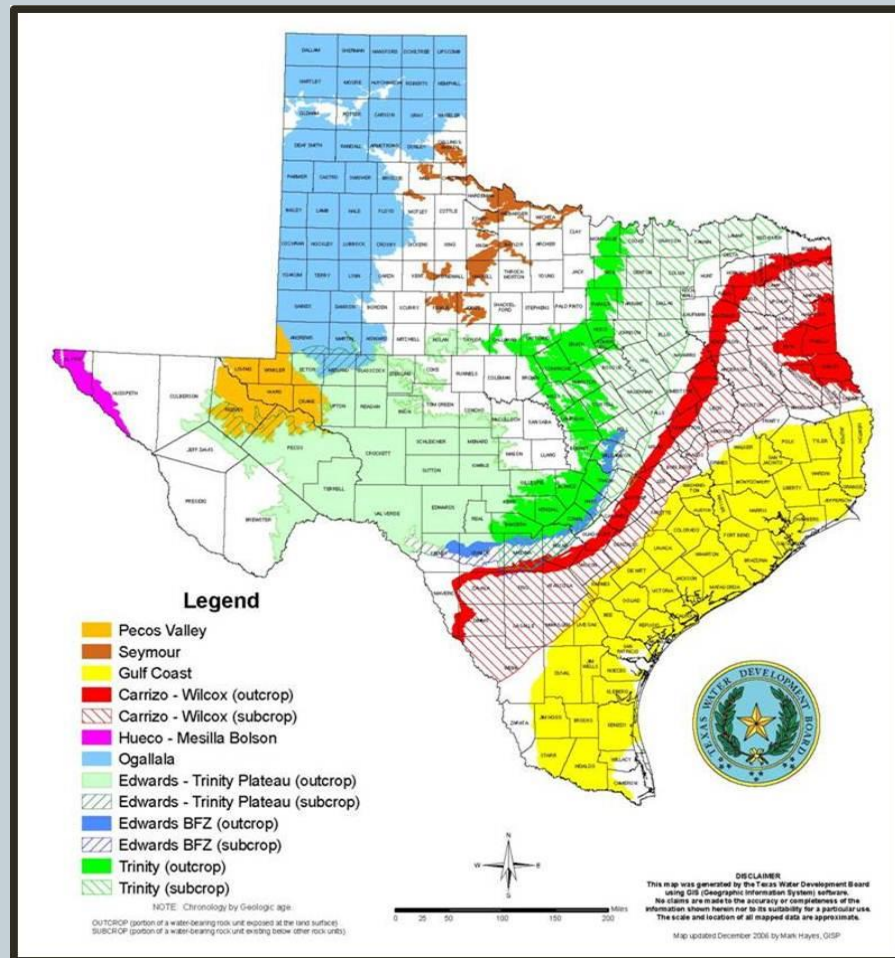


- City
- County
- Texas River Basin (WQ)
- Texas Aquifer (WQ), or
- Texas Air Control Region (AQ)

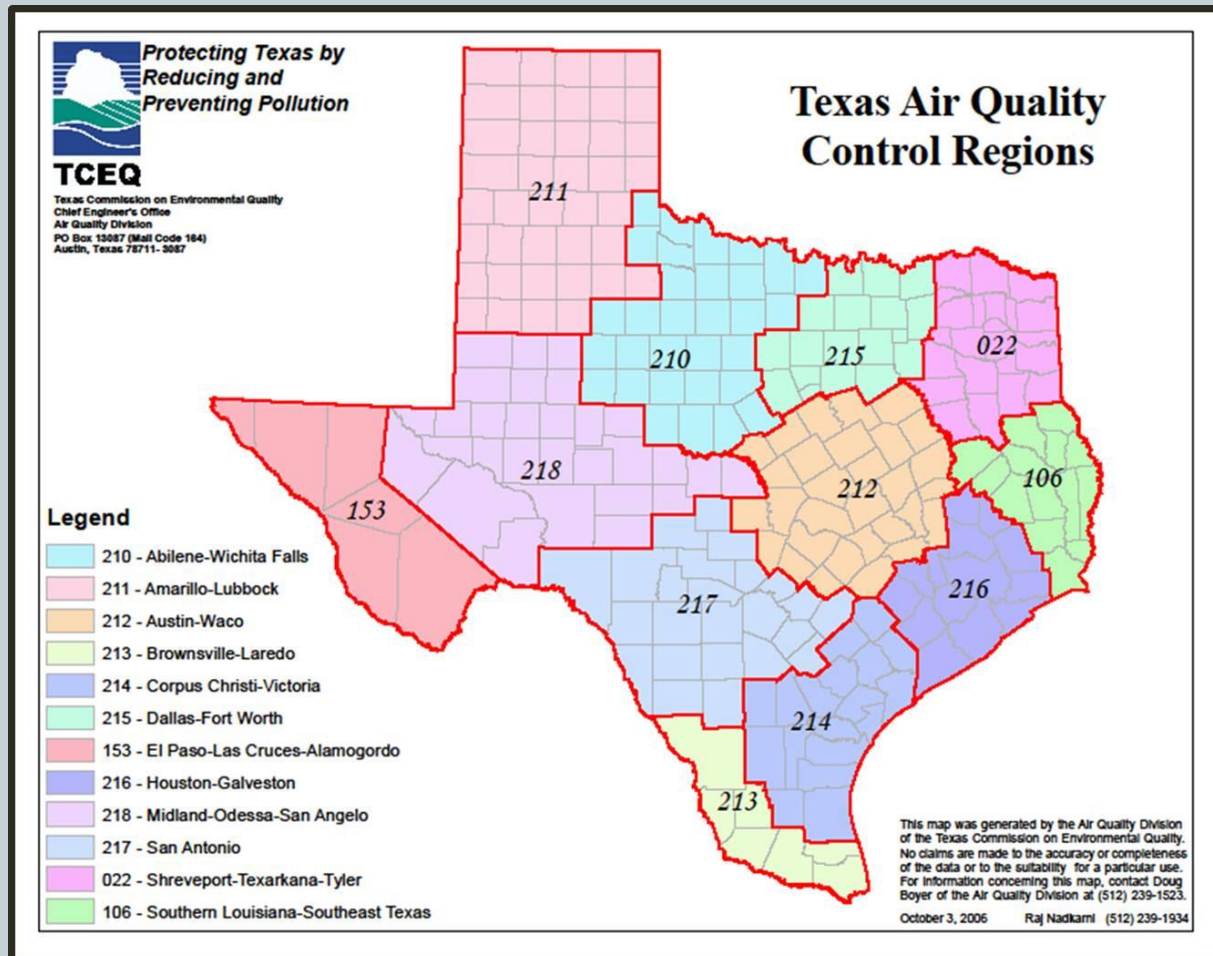
Texas River Basins



Major Aquifers of Texas



Texas Air Quality Control Regions



SEP Offset



- SEP Offset
 - Respondent may perform or contribute to a SEP in lieu of paying an assessed penalty to the General Revenue Fund
 - SEP Credit is **earned** by:
 - ✦ Performing a Compliance or Custom SEP; and/or
 - ✦ Contributing to a Third-Party Administrator SEP
 - SEPs do not reduce penalty amount
 - **SEPs are not GRANTS!!!**

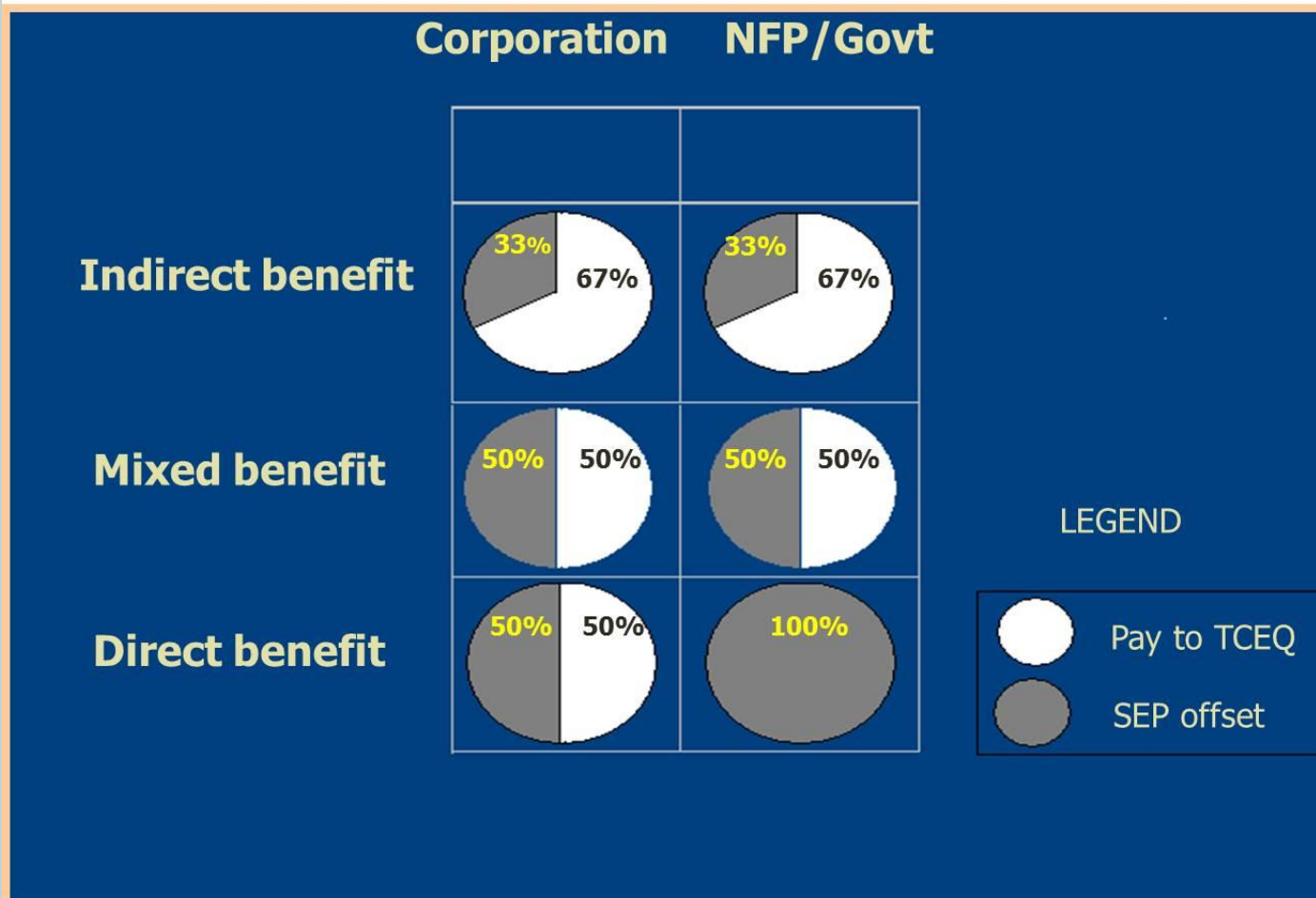
How SEP Offsets are Determined



- **Type of Organization**
 - For Profit (Corporations)/Individuals
 - Local Governments/Nonprofit Organizations

- **Environmental Benefit**
 - Direct
 - Indirect
 - Mixed

Penalty Percentage Offset



Types of SEPs



- **Compliance SEP or C- SEP**
(Local Government Only)
- **Custom SEP**
(Any Respondent)
- **Contribution to Pre-Approved SEP**
(Any Respondent)

General SEP Policy



The commission **may consider** a respondent's **willingness to contribute** to a supplemental environmental project that is **approved by the commission**, giving preference to projects that **benefit the community** in which the alleged violation occurred

General SEP Policy



The commission may **not** approve a project that is necessary to bring a respondent into compliance with environmental laws or necessary to remediate environmental harm caused by the respondent's alleged violation*

EXCEPTION!!



* Compliance SEP (C-SEP)

The commission may approve a supplemental environmental project that is necessary to bring a respondent into compliance with environmental laws or that is necessary to remediate environmental harm caused by the respondent's alleged violation if the respondent is a local government ("LG")

Local Government Defined As:



- School district
- County
- Municipality
- Junior college district
- River authority
- Water district or other special district (not water supply corporation)
- Political subdivision created under the constitution or Texas statute

Texas Water Code § 7.067(b)(1)

C- SEPs



- Two paths to a C-SEP: Automatic or Financially Qualified
- Performed by the Respondent (LG) as part of a TCEQ Agreed Order
- **NEED FOR CORRECTIVE ACTION**

Automatic C-SEP



- The LG has not previously committed a violation at the same site with the same underlying cause in the preceding 5 years, as documented in a TCEQ order; and
- Did not agree, before the date the commission initiated the enforcement action, to perform the project.

(SB 394, 84th Legislature, effective June 19, 2015)

Financially Qualified C-SEP



The LG does not qualify for an automatic C-SEP and must undergo a financial assessment.

(HB 2694, 82nd Legislature, effective September 1, 2011)

For Financial Assessment:

- Contact Financial Administration Division
- Or call, 512.239.0300

C- SEPs



- Repair structure(s) or equipment that may be the cause of the LG's non-compliance with an environmental law

OR

- Remediation of environmental harm caused by LG's alleged violation, such as a cleanup of a spill

Custom SEPs



- Performed by the respondent as part of a TCEQ Agreed Order
- Projects most considered
 - **DIRECT** quantifiable benefit to the environment
- Projects must be fully completed within **365 days** from the effective date of the Agreed Order to earn SEP Credit

Custom SEPs



- **Failure to complete** a Custom SEP will result in the Respondent paying the entire assessed penalty in addition to whatever funds were spent on the project
- Custom SEPs usually **cost more** than the assessed penalty (SEP Offset Amount)

Custom SEPs



- SEPs **must** be accepted **PRIOR** to any
 - Feasibility study
 - Budgeting discussions
 - Planning
 - Implementation (NO REIMBURSEMENTS)

*Information gathering is okay!

Types of Custom SEPs



- Extend first time **water service** to low-income residents who are using shallow or contaminated wells
- Extend first time **sewer service** to low-income residents who are using failing septic systems
- **Dam repairs** for dams from the Agency's list of high risk dams
- **Collection events** for proper disposal at NO COST TO CITIZENS
 - Used Tires
 - HHW (Batteries, used paint, used oil, antifreeze)
 - Electronics
 - Large municipal solid waste (appliances without Freon)
- **Erosion control** project on a creek, river, or lake with a natural embankment (Photos and maps are required with application)

Beautification and flood control projects are **NOT** considered as Erosion Control Projects!

Reporting: C-SEPs and Custom SEPs



- Typical Reporting Documents required for Compliance and Custom SEPs:
 - Itemized list of expenses
 - Paid receipts, invoices, and matching payment records
 - Work logs for contracted labor
 - Detailed map showing location(s) of the project
 - Dated photographs: before, during and after the project
 - Certified/notarized Quantifiable Environmental Benefit

TRANSPARENCY!
TRANSPARENCY!
TRANSPARENCY!

Compliance and Custom SEPs: Unallowable Costs




- SEPs will **not** cover administrative costs or organization's operating costs including:
 - Reporting expenses
 - Handling of finances
 - Project coordination
 - Liability, or
 - Equipment breakdowns



Electronics Collection Event

Recycle old computers



Millions of Tires

Several tire graveyards are located throughout the state of Texas

Wastewater Projects (Cont'd)



Before

After

Third-Party Administrator SEPs



Third-Party SEPs are performed by a **LG** or **nonprofit organization** that has a SEP Agreement with TCEQ and are called

**“Third-Party
Administrators”**

Third-Party Administrator SEPs



- **Types of Third-Party SEPs**
 - **Cleanup Projects:** Collection events (tires, HHW, etc.)
 - **Air Projects:** School bus replacement, energy efficiency upgrades, air monitoring networks, etc.
 - **Water Quality Projects:** Wastewater and drinking water assistance for low-income households, water quality monitoring networks, etc.
 - **Habitation Restoration, Preservation, and Acquisition Projects**

Third-Party Administrator SEPs



- LG or nonprofit organization submits application to become a Third-Party Administrator
- TCEQ reviews the submission and if approved, a SEP Agreement is executed
 - Includes details of the project and an estimated budget with all allowable costs
 - Preference for direct benefit SEPs
- Project is included in the Pre-Approved List on SEP website and available for contributions from respondents
 - Contributions are voluntary; **NO GUARANTEE OF FUNDING**

Third-Party Administrator SEPs



- Respondent contributes allowable SEP Offset Amount to Third-Party Administrator within Respondent's community
 - Only after a SEP has been approved by the Commission, **do not pay early**
- Third-Party Administrator must have separate FEE-FREE and NON-INTEREST-BEARING BANK account for all SEP funds
 - No commingling of funds
 - Must pay vendors from SEP bank account
- Third-Party Administrator performs the SEP and reports quarterly to TCEQ
 - No other obligation from Respondent

Third Party Administrator SEPs: Quarterly Reports



- Identify whether SEP contributions have been received
- Identify whether SEP Funds are being spent timely
 - Within one year
 - Reasonable extensions available
- Ensure SEP expenditures are allowable under the SEP Agreement
- Verify that SEP Funds are not being commingled with non-SEP Funds

Third Party Administrator SEPs: Quarterly Reports



- **Documentation required:**
 - Completed Quarterly Report Form
 - Copy of bank statement for the bank account holding SEP Funds
 - Invoices for allowable costs
 - Paid receipts for allowable costs
 - Work logs for contracted labor
 - Any other documentation required under the SEP Agreement

Third-Party Administrator SEPs: Allowable Costs



- **Types of Allowable Expenses**
 - Supplies
 - Materials
 - Equipment
 - Contracted labor
- **Types of Allowable Admin Costs ($\leq 10\%$ of the direct cost of the project)**
 - Salary and fringe benefits
 - Travel and per diem
 - Overhead costs

Third-Party Administrator SEPs: Current Third-Party Administrators



AQ SEPs

- Houston-Galveston AERCO
- Southeast Texas Regional Planning Commission
- Texas Congress of Parents and Teachers (PTA)
- Texas Association of RC&D

WQ SEPs

- Armand Bayou Nature Center
- Galveston Bay Foundation
- Gulf Coast Waste Disposal Authority
- National Audubon Society
- Texas Association of RC&D

Third-Party Administrator SEPs



To see a complete list of Pre-Approved
Third-Party Administrator SEPs:

<https://www.tceq.texas.gov/compliance/enforcement/sep/pre-approved-seps.html>



Armand Bayou Nature Center
Volunteers planting seedlings of native grasses



Armand Bayou Nature Center

**Replanting reeds in nearby bayou to
restore ecosystem**



Galveston Bay Foundation

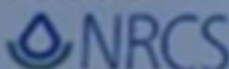
Placing reef domes to restore ecosystem
in bay area

Oyster Lake Shoreline Protection and Wetlands Restoration Project Phase 1



CHENIERE

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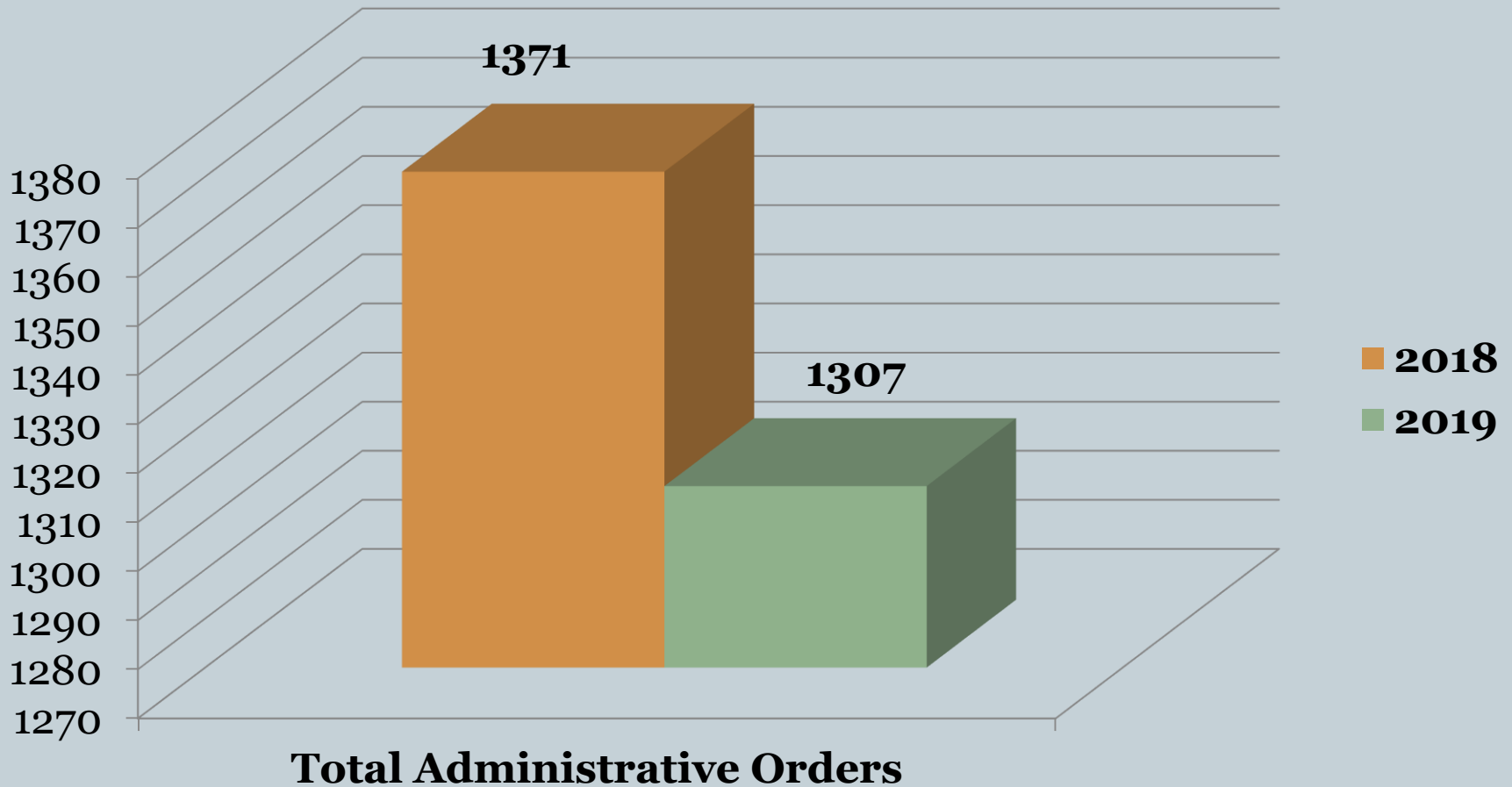


Performed in part with penalty monies from a Texas Commission on Environmental Quality enforcement action

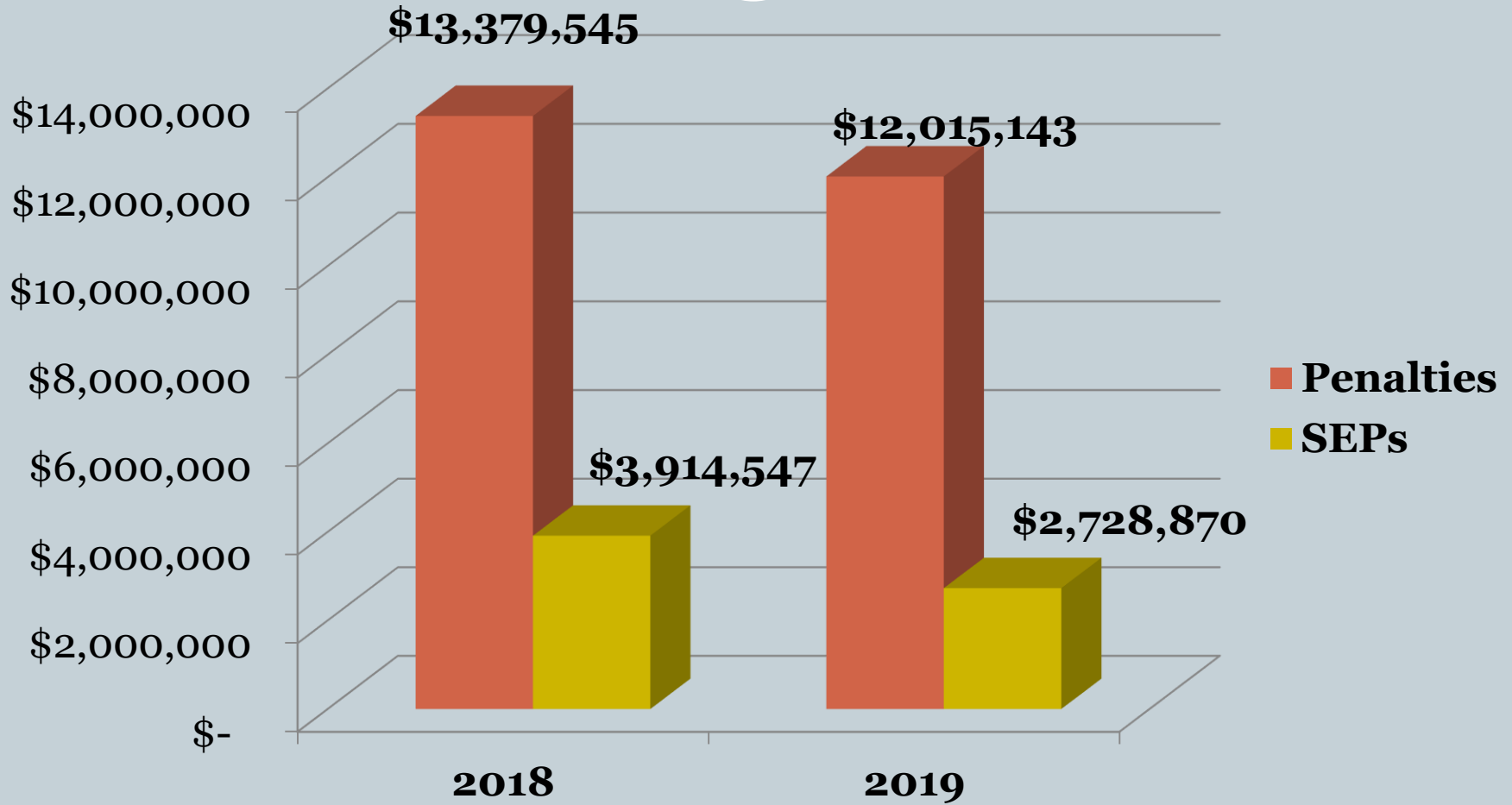
Galveston Bay Foundation

Sign has enforcement statement that reads, "Performed in part with penalty monies from a Texas Commission on Environmental Quality enforcement action"

SEP Numbers: Total Administrative Orders



SEP Numbers: Administrative Orders with SEPs



Contact Information



- **Third-Party Administrator SEP Applications & Contracts:**
SEP Attorney
Litigation Division
 - **Ryan Rutledge** 512.239.0630
ryan.rutledge@tceq.texas.gov

- **Custom & Compliance SEPs/Reporting**
SEP Coordinator
Litigation Division
 - **Betty Sanders** 512.239.3992
betty.sanders@tceq.texas.gov

Contact Information



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 - **Betty Sanders** 512.239.3992
betty.sanders@tceq.texas.gov

- **OCE SEP Coordinator**
Enforcement Division
 - **Stuart Beckley** 512.239.3565
stuart.beckley@tceq.texas.gov

Thank you!



We appreciate your interest in the SEP Program!

Questions??

SEP Website:

<https://www.tceq.texas.gov/compliance/enforcement/sep/sep-main>

Contact | Connect

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