

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2005-1016-PWS-E TCEQ ID: RN101199552 CASE NO.: 25741  
RESPONDENT NAME: N.D.N.Y. ENTERPRISES, INC. DBA CHANCES NIGHT CLUB**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 201 Highway 35 South, Rockport, Aransas County</p> <p><b>TYPE OF OPERATION:</b> Transient non-community public water supply system</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on August 27, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873  <b>TCEQ Enforcement Coordinator:</b> Mr. Mike Limos, Waste Enforcement Division, MC 128, (512) 239-5839  <b>TCEQ Regional Contact:</b> Mr. Sinoel Contreras, Corpus Christi Regional Office, MC R-,14 (361) 825-3112  <b>Respondent:</b> Mr. Frank J. Corry, Jr., Registered Agent, N.D.N.Y. Enterprises, Inc., 201 South Highway 35 Bypass, Rockport, Texas 78381  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b> None</p> <p><b>Dates of Investigation Relating to this Case:</b> January 1, 2005</p> <p><b>Date of NOE Relating to this Case:</b> February 4, 2005</p> <p><b>Background Facts:</b></p> <p>The EDFARP was filed on May 1, 2007. The Respondent received notice of the EDFARP on May 8, 2007, as evidenced by the signature on the return receipt "green card." The Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>PWS:</b></p> <p>1. Failed to collect and submit repeat bacteriological samples following May 2003 and November 2004 coliform-positive sample results, and failed to provide public notice of the violations [30 TEX. ADMIN. CODE § 290.109(c)(3)(A)(ii) and (g)(4)].</p> <p>2. Failed to comply with the Maximum Contaminant Level (MCL) for coliform bacteria in July 2003, and failed to provide public notice of the violation [30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(A)].</p>	<p><b>Total Assessed:</b> \$3,200</p> <p><b>Total Deferred:</b> \$0</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$3,200</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification:</b> N/A</p> <p><b>Person Compliance History Classification:</b> N/A</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1. Immediately:</p> <p>a. Begin collecting and submitting routine monthly samples which are representative of the Facility's water system, according to the Facility's written monitoring plan;</p> <p>b. Comply with the MCL for coliform bacteria;</p> <p>c. Collect and submit additional routine bacteriological samples following all coliform-positive results;</p> <p>d. Collect and submit repeat bacteriological samples following all coliform-positive results; and</p> <p>e. Begin providing public notification as applicable.</p> <p>2. Within 30 days, pay all outstanding fees, including any associated penalties and interest.</p> <p>3. Within 45 days, submit written certification demonstrating compliance.</p>

**VIOLATION SUMMARY CHART:**

<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p>3. Failed to collect the required number of additional routine bacteriological samples in January and July 2003, and in December 2004, following colidorm-positive sample results, and failed to provide public notice of the violations [30 Tex. Admin. Code §§ 290.109(c)(2)(F) and (g), and 290.122(c)(2)(B)].</p> <p>4. Failed to collect and submit routine bacteriological samples for the months of July and September 2004 [30 TEX. ADMIN. CODE § 290.109(c)(2)(A)(i) and TEX. HEALTH &amp; SAFETY CODE § 341.033(d)].</p> <p>5. Failed to pay Public Health Service Fees for Fiscal Year 2005 for Financial Administration Account No. 90040051 [30 TEX. ADMIN. CODE § 290.51(a)(3) and TEX. WATER CODE § 5.702].</p>		



Policy Revision 2 (September 2002)

# Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	28-Feb-2005	Screening	07-Jun-2005	EPA Due	
	PCW	07-Jun-2005				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	N.D.N.Y. Enterprises, Inc. dba Chances Night Club
Reg. Ent. Ref. No.	RN101199552
Facility/Site Region	14-Corpus Christi <
Major/Minor Source	Minor Source <

<b>CASE INFORMATION</b>			
Enf./Case ID No.	25741	No. of Violations	5
Docket No.	2005-1016-PWS-E	Order Type	Findings <
Media Program(s)	Public Water Supply <	Enf. Coordinator	Mike Limos
Multi-Media		EC's Team	Enforcement Team 8 <
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$2,000</b>
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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.

<b>Compliance History</b>	60% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$1,200</b>
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Notes: Enhancement is recommended for 1 Agreed Order, effective 11/2/02 and 8 NOV's for same or similar violations at this site within the past 5 years.

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

<b>Good Faith Effort to Comply</b>	0% Reduction	<b>Subtotal 5</b>	<b>\$0</b>
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with a small x)

Notes: The Respondent is not yet in compliance.

<b>Economic Benefit</b>	0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$918	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$850	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$3,200</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>		<b>Adjustment</b>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

<b>Final Penalty Amount</b>	<b>\$3,200</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$3,200</b>
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<b>DEFERRAL</b>	0% Reduction	<b>Adjustment</b>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is offered because a Findings Order is recommended.

<b>PAYABLE PENALTY</b>	<b>\$3,200</b>
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**Screening Date** 07-Jun-2005      **Docket No.** 2005-1016-PWS-E      **PCW**  
**Respondent** N.D.N.Y. Enterprises, Inc. dba Chances Night Club      *Policy Revision 2 (September 2002)*  
**Case ID No.** 25741      *PCW Revision May 19, 2005*  
**Reg. Ent. Reference No.** RN101199552  
**Media [Statute]** Public Water Supply  
**Enf. Coordinator** Mike Limos

**Compliance History Worksheet**

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	8	40%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events (number of events)	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)</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%
Other	<i>Please Enter Yes or No</i>		
	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 is recommended for 1 Agreed Order, effective 11/2/02 and 8 NOVs for same or similar violations at this site within the past 5 years.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)**

**Screening Date** 07-Jun-2005      **Docket No.** 2005-1016-PWS-E      **PCW**  
**Respondent** N.D.N.Y. Enterprises, Inc. dba Chances Night Club      *Policy Revision 2 (September 2002)*  
**Case ID No.** 25741      *PCW Revision May 19, 2005*  
**Reg. Ent. Reference No.** RN101199552  
**Media [Statute]** Public Water Supply  
**Enf. Coordinator** Mike Limos  
**Violation Number**   
**Primary Rule Cite(s)**   
**Secondary Rule Cite(s)**   
**Violation Description**   
**Base Penalty**

>> **Environmental, Property and Human Health Matrix**

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> **Programmatic Matrix**

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

Matrix Notes

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input checked="" type="checkbox"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

**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** N.D.N.Y. Enterprises, Inc. dba Chances Night Club  
**Case ID No.** 25741  
**Reg. Ent. Reference No.** RN101199552  
**Media [Statute]** Public Water Supply  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

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

Item	Cost	Start Date	End Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$200	30-May-2003	30-Nov-2004	2.0	\$20	\$200	\$220
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

The Respondent avoided the costs of performing tests and notifying customers that the tests were not done.

Approx. Cost of Compliance \$200

TOTAL \$220

<b>Screening Date</b>	07-Jun-2005	<b>Docket No.</b>	2005-1016-PWS-E	<b>PCW</b>
<b>Respondent</b>	N.D.N.Y. Enterprises, Inc. dba Chances Night Club		Policy Revision 2 (September 2002)	
<b>Case ID No.</b>	25741	PCW Revision May 19, 2005		
<b>Reg. Ent. Reference No.</b>	RN101199552			
<b>Media [Statute]</b>	Public Water Supply			
<b>Enf. Coordinator</b>	Mike Limos			
<b>Violation Number</b>	2			
<b>Primary Rule Cite(s)</b>	30 Tex. Admin. Code § 290.109(f)(3)			
<b>Secondary Rule Cite(s)</b>	30 Tex. Admin. Code § 290.122(b)(2)(A)			
<b>Violation Description</b>	Failure to comply with the maximum contaminant level (MCL) for coliform bacteria during the month of July 2003 and failure to notify the public of this noncompliance, as documented during the record review investigation conducted on January 1, 2005.			
<b>Base Penalty</b>	\$1,000			

>> **Environmental, Property and Human Health Matrix**

OR	<b>Harm</b>			Percent <input type="text" value="25%"/>	
	<b>Release</b>	Major	Moderate		Minor
	Actual	<input type="text"/>	X		<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"/>	

**Matrix Notes**

As a result of this violation, contaminated water was distributed and customers were not notified to take precautions. Human health was exposed to significant levels of pollutants which did not exceed levels that are protective of human health as a result of the violation.

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	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 July 2003.

**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 N.D.N.Y. Enterprises, Inc. dba Chances Night Club  
 Case ID No. 25741  
 Reg. Ent. Reference No. RN101199552  
 Media [Statute] Public Water Supply  
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$150	01-Jul-2003	31-Jul-2003	1.0	\$8	\$150	\$158
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost of additional oversight to insure compliance with the MCL for coliform bacteria and to notify the public of any noncompliances.

Approx. Cost of Compliance \$150

TOTAL \$158

**Screening Date** 07-Jun-2005 **Docket No.** 2005-1016-PWS-E **PCW**  
**Respondent** N.D.N.Y. Enterprises, Inc. dba Chances Night Club *Policy Revision 2 (September 2002)*  
**Case ID No.** 25741 *PCW Revision May 19, 2005*  
**Reg. Ent. Reference No.** RN101199552  
**Media [Statute]** Public Water Supply  
**Enf. Coordinator** Mike Limos  
**Violation Number**   
**Primary Rule Cite(s)**   
**Secondary Rule Cite(s)**   
**Violation Description**   
**Base Penalty**

>> **Environmental, Property and Human Health Matrix**

**Harm**  

Release	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Percent**

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Percent**   
**Matrix Notes**

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

**Number of Violation Events**   

<i>mark only one use a small x</i>	<i>daily</i>	<input type="text"/>
	<i>monthly</i>	<input checked="" type="checkbox"/>
	<i>quarterly</i>	<input type="text"/>
	<i>semiannual</i>	<input type="text"/>
	<i>annual</i>	<input type="text"/>
	<i>single event</i>	<input type="text"/>

**Violation Base Penalty**

Economic Benefit (EB) for this violation	Statutory Limit Test
<b>Estimated EB Amount</b> <input type="text" value="\$330"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$1,200"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,200"/>	

### Economic Benefit Worksheet

Respondent N.D.N.Y. Enterprises, Inc. dba Chances Night Club

Case ID No. 25741

Reg. Ent. Reference No. RN101199552

Media [Statute] Public Water Supply

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$300	31-Jan-2003	31-Dec-2004	2.0	\$30	\$300	\$330
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

The Respondent avoided the costs of coliform sampling and notifying customers that the tests were not done.

Approx. Cost of Compliance \$300

**TOTAL** \$330

**Screening Date** 07-Jun-2005      **Docket No.** 2005-1016-PWS-E      **PCW**  
**Respondent** N.D.N.Y. Enterprises, Inc. dba Chances Night Club      *Policy Revision 2 (September 2002)*  
**Case ID No.** 25741      *PCW Revision May 19, 2005*  
**Reg. Ent. Reference No.** RN101199552  
**Media [Statute]** Public Water Supply  
**Enf. Coordinator** Mike Limos  
**Violation Number**   
**Primary Rule Cite(s)**   
**Secondary Rule Cite(s)**   
**Violation Description**   
**Base Penalty**

>> **Environmental, Property and Human Health Matrix**

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> **Programmatic Matrix**

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

Matrix Notes

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input checked="" type="checkbox"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$210"/>	Violation Final Penalty Total <input type="text" value="\$800"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$800"/>	

### Economic Benefit Worksheet

**Respondent** N.D.N.Y. Enterprises, Inc. dba Chances Night Club  
**Case ID No.** 25741  
**Reg. Ent. Reference No.** RN101199552  
**Media [Statute]** Public Water Supply  
**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$200	31-Jul-2004	30-Sep-2004	1.0	\$10	\$200	\$210
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

The Respondent avoided the costs of routine bacteriological sampling and notifying customers that the samples were not taken.

Approx. Cost of Compliance \$200

**TOTAL** \$210

<b>Screening Date</b> 07-Jun-2005	<b>Docket No.</b> 2005-1016-PWS-E	<b>PCW</b>
<b>Respondent</b> N.D.N.Y. Enterprises, Inc. dba Chances Night Club	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 25741	<i>PCW Revision May 19, 2005</i>	
<b>Reg. Ent. Reference No.</b> RN101199552		
<b>Media [Statute]</b> Public Water Supply		
<b>Enf. Coordinator</b> Mike Limos		
<b>Violation Number</b>	5	
<b>Primary Rule Cite(s)</b>	30 Tex. Admin. Code § 290.51(a)(3)	
<b>Secondary Rule Cite(s)</b>	Tex. Water Code § 5.702	
<b>Violation Description</b>	Failure to pay the required Fiscal Year 2005 Public Health Service fees for Financial Administration Account No. 90040051.	
<b>Base Penalty</b>		\$1,000

<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>								
OR	Harm							
	<b>Release</b>	Major	Moderate		Minor			
	Actual							
	Potential							
				<b>Percent</b> <input style="width: 50px;" type="text"/>				
<b>&gt;&gt; Programmatic Matrix</b>								
Falsification    Major    Moderate    Minor								
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:25%; border: 1px solid black;"></td> </tr> </table>								<b>Percent</b> <input style="width: 50px;" type="text"/>
<b>Matrix Notes</b>	N/A							
				<b>Adjustment</b> <input style="width: 50px;" type="text" value="-1,000"/>				

<b>Base Penalty Subtotal</b>	\$0
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<b>Violation Events</b>		
<b>Number of Violation Events</b>		
<i>mark only one use a small x</i>	<i>daily</i>	
	<i>monthly</i>	
	<i>quarterly</i>	
	<i>semiannual</i>	
	<i>annual</i>	
	<i>single event</i>	
		<b>Violation Base Penalty</b> <input style="width: 50px;" type="text" value="\$0"/>
No additional penalty is recommended because interest and penalties will be assessed during the next billing cycle.		

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input style="width: 50px;" type="text" value="\$0"/>	<b>Violation Final Penalty Total</b> <input style="width: 50px;" type="text" value="\$0"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input style="width: 50px;" type="text" value="\$0"/>	

### Economic Benefit Worksheet

Respondent N.D.N.Y. Enterprises, Inc. dba Chances Night Club  
 Case ID No. 25741  
 Reg. Ent. Reference No. RN101199552  
 Media [Statute] Public Water Supply  
 Violation No. 5

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				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs There is no economic benefit associated with this violation.

**Avoided Costs**

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$0

**TOTAL** \$0

# Compliance History

Customer/Respondent/Owner-Operator: CN602816043 N.D.N.Y. Enterprises, Inc. Classification: N/A Rating: 0.000

Regulated Entity: RN101199552 CHANCES NIGHT CLUB Classification: N/A Site Rating: 0.00

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0040051

Location: 201 HIGHWAY 35 S, ROCKPORT, TX, 78382

TCEQ Region: REGION 14 - CORPUS CHRISTI

Date Compliance History Prepared: June 10, 2005

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: May 16, 2000 to May 16, 2005

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

Name: Mike Limos Phone: (512) 239-5839

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? N.D.N.Y. Enterprises, Inc.
4. If Yes, who was/were the prior owner(s)? J. Frank Corry
5. When did the change(s) in ownership occur? March 17, 2000

## Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 11/2/02

ADMINORDER 2001-1477-PWS-E

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)[G]  
4G THC Chapter 321, SubChapter D 341.033(d)

Description: Failure to collect and submit routine monthly samples for the months of January, February, March, April, June, July, August and September 2001.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(g)[G]

Description: Failure to provide public notice of sampling deficiencies.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)

Description: Failure to provide a microbial contaminant monitoring plan.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(n)(2)

Description: Failure to provide a distribution map.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(p)(2)

Description: Failure to perform annual inspection of the pressure tank.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(5)(B)

Description: Failure to test the chlorine residual once every seven days.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)

Description: Failure to provide a copy of the sanitary control easement.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

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

- 1 09/17/2003 (347418)
- 2 12/28/2004 (347581)
- 3 10/29/2004 (347466)
- 4 10/19/2001 (IE0017075001001)
- 5 12/08/2003 (345991)
- 6 03/25/2003 (347427)
- 7 02/24/2005 (371759)
- 8 08/28/2004 (347463)
- 9 01/28/2005 (349464)

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

- Date: 03/25/2003 (347427) Classification: Moderate  
Self Report? NO  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)  
Description: FAILURE TO TAKE SOME OF THE 5 DISTRIBUTION SAMPLES IN 01/2003 FOLLOWING A COLIFORM FOUND MONTH.
- Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
Description: FAILURE TO POST PN FOR NOT TAKING ALL 5 DISTRIBUTION SAMPLES IN 01/2003 FOLLOWING A COLIFORM FOUND MONTH.
- Date: 10/29/2004 (347466) Classification: Moderate  
Self Report? NO  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
Description: FAILURE TO TAKE ROUTINE MONITORING SAMPLES FOR 09/2004.
- Date: 01/28/2005 (349464) Classification: Moderate  
Self Report? NO  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)  
Description: FAILURE TO TAKE 5 DISTRIBUTION SAMPLES IN 12/2004 FOLLOWING A COLIFORM FOUND MONTH.
- Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
Description: FAILURE TO POST A PN FOR NOT TAKING 5 DISTRIBUTION SAMPLES IN 12/2004 FOLLOWING A COLIFORM FOUND MONTH.
- Date: 07/30/2003 (347418) Classification: Moderate  
Self Report? NO  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)  
Description: EXCEEDED A MAXIMUM CONTAMINANT LEVEL (MCL) VIOLATION IN 07/2003.
- Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(b)(2)(A)  
Description: FAILURE TO POST PN AFTER EXCEEDING A MAXIMUM CONTAMINANT LEVEL (MCL) VIOLATION IN 07/2003. THIS PN WAS POSTED IN 11/2004 BUT IT HAD EXCEEDED THE 30 DAY TIME FRAME FOR POSTING.
- Date: 12/28/2004 (347581) Classification: Moderate  
Self Report? NO  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)  
Description: FAILURE TO TAKE ANY REPEATS IN 11/2004 AFTER A COLIFORM FOUND RESULT.
- Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
Description: FAILURE TO POST PN FOR NOT TAKING ANY REPEATS IN 11/2004 AFTER A COLIFORM FOUND RESULT.
- Date: 12/08/2003 (345991) Classification: Moderate  
Self Report? NO  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)  
Description: FAILURE TO SUBMIT REPEAT SAMPLES FOR 05/2003 FOLLOWING A COLIFORM FOUND RESULT.
- Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(g)(4)  
Description: FAILURE TO POST PUBLIC NOTICE FOR NO REPEATS SUBMITTED FOR MAY 2003 FOLLOWING A COLIFORM FOUND RESULT.
- Date: 09/17/2003 (347418) Classification: Moderate  
Self Report? NO  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)  
Description: FAILURE TO TAKE 5 DISTRIBUTION SAMPLES IN 07/2003 FOLLOWING A COLIFORM FOUND MONTH.
- Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
Description: FAILURE TO POST PN FOR NOT TAKING 5 DISTRIBUTION SAMPLES IN 07/2003 FOLLOWING A COLIFORM FOUND MONTH.
- Date: 08/28/2004 (347463) Classification: Moderate  
Self Report? NO  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
Description: FAILURE TO TAKE ROUTINE MONITORING SAMPLES FOR 07/2004.

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  
N.D.N.Y. ENTERPRISES, INC. DBA  
CHANCES NIGHT CLUB;  
RN101199552**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER  
DOCKET NO. 2005-1016-PWS-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. WATER CODE ch. 5, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is N.D.N.Y. Enterprises, Inc. dba Chances Night Club ("N.D.N.Y.").

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

**FINDINGS OF FACT**

1. N.D.N.Y. owns and operates a transient non-community public water supply system located at 201 Highway 35 South, Rockport, Aransas County, Texas (the "Facility").
2. The Facility has 1 service connection and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water supply system as defined in 30 TEX. ADMIN. CODE § 290.38(47).
3. During a record review on January 1, 2005, a TCEQ Central Office investigator documented that N.D.N.Y.:
  - a. Failed to collect and submit repeat bacteriological samples following May 2003 and November 2004 coliform-positive sample results, and failed to provide public notice of the violations;
  - b. Failed to comply with the maximum contaminant level ("MCL") for coliform bacteria in July 2003, and failed to provide public notice of the violation;

- c. Failed to collect the required number of additional routine bacteriological samples in January and July 2003, and in December 2004, following coliform-positive sample results, and failed to provide public notice of the violations;
  - d. Failed to collect and submit routine bacteriological samples for the months of July and September 2004; and
  - e. Failed to pay Public Health Service Fees for Fiscal Year 2005 for Financial Administration Account No. 90040051.
4. N.D.N.Y. received notice of the violations on or about February 9, 2005.
  5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of N.D.N.Y. Enterprises, Inc. dba Chances Night Club" (the "EDPRP") in the TCEQ Chief Clerk's office on May 19, 2006.
  6. By letter dated May 19, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served N.D.N.Y. with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that N.D.N.Y. received notice of the EDPRP.
  7. More than 20 days have elapsed since N.D.N.Y. received notice of the EDPRP, provided by the Executive Director. N.D.N.Y. failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.
  8. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of N.D.N.Y. Enterprises, Inc. dba Chances Night Club" (the "EDFARP") in the TCEQ Chief Clerk's office on May 1, 2007.
  9. By letter dated May 1, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served N.D.N.Y. with notice of the EDFARP. According to the return receipt "green card," N.D.N.Y. received notice of the EDFARP on May 8, 2007, as evidenced by the signature on the card.

10. More than 20 days have elapsed since N.D.N.Y. received notice of the EDFARP, provided by the Executive Director. N.D.N.Y. failed to file an answer to the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, N.D.N.Y. is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 5, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., N.D.N.Y. failed to collect and submit repeat bacteriological samples following May 2003 and November 2004 coliform-positive sample results, and failed to provide public notice of the violations, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(3)(A)(ii) and (g)(4).
3. As evidenced by Finding of Fact No. 3.b., N.D.N.Y. failed to comply with the MCL for coliform bacteria in July 2003, and failed to provide public notice of the violation, in violation of 30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(A).
4. As evidenced by Finding of Fact No. 3.c., N.D.N.Y. failed to collect the required number of additional routine bacteriological samples in January and July 2003, and in December 2004, following coliform-positive sample results, and failed to provide public notice of the violations, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and (g), and 290.122(c)(2)(B).
5. As evidenced by Finding of Fact No. 3.d., N.D.N.Y. failed to collect and submit routine bacteriological samples for the months of July and September 2004, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(2)(A)(i) and TEX. HEALTH & SAFETY CODE § 341.033(d).
6. As evidenced by Finding of Fact No. 3.e., N.D.N.Y. failed to pay Public Health Service Fees for Fiscal Year 2005 for Financial Administration Account No. 90040051, in violation of 30 TEX. ADMIN. CODE § 290.51(a)(3) and TEX. WATER CODE § 5.702.
7. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served N.D.N.Y. with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(c)(2).

8. As evidenced by Finding of Fact No. 7, N.D.N.Y. failed to file a timely answer to the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against N.D.N.Y. and assess the penalty recommended by the Executive Director.
9. As evidenced by Finding of Fact Nos. 8 and 9, the Executive Director timely served N.D.N.Y. with proper notice of the EDFARP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).
10. As evidenced by Finding of Fact No. 10, N.D.N.Y. failed to file a timely answer to the EDFARP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against N.D.N.Y. and assess the penalty recommended by the Executive Director.
11. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against N.D.N.Y. 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.
12. An administrative penalty in the amount of three thousand two hundred dollars (\$3,200.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049.
13. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### **ORDERING PROVISIONS**

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

1. N.D.N.Y. is assessed an administrative penalty in the amount of three thousand two hundred dollars (\$3,200.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and N.D.N.Y.'s compliance with all the terms and conditions set forth in this Order completely resolve 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 other violations which are not raised here. All checks submitted to pay the

penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: N.D.N.Y. Enterprises, Inc.; Docket No. 2005-1016-PWS-E" to:

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

2. N.D.N.Y. shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, N.D.N.Y. shall:
    - i. Begin collecting and submitting routine monthly samples which are representative of the Facility's water system, according to the Facility's written monitoring plan, as required by 30 TEX. ADMIN. CODE § 290.109(c)(1);
    - ii. Comply with the MCL for coliform bacteria, in accordance with 30 TEX. ADMIN. CODE § 290.109(f)(3);
    - iii. Collect and submit additional routine bacteriological samples following all coliform-positive results, pursuant to 30 TEX. ADMIN. CODE § 209.109(c)(2) and (g);
    - iv. Collect and submit repeat bacteriological samples following all coliform-positive results, pursuant to 30 TEX. ADMIN. CODE § 290.109(c)(3); and
    - v. Begin providing public notification as applicable, pursuant to the requirements in 30 TEX. ADMIN. CODE § 209.122.
  - b. Within 30 days after the effective date of this Order, N.D.N.Y. shall pay all outstanding fees, including any associated penalties and interest, with the notation "N.D.N.Y. Enterprises, Inc. dba Chances Night Club-Financial Administration Account No. 90040051" to:

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

- c. Within 45 days after the effective date of this Order, N.D.N.Y. shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with ordering provision Nos. 2.a.i. through 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

N.D.N.Y. shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.b. to:

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

with a copy to:

Sinoel Contreras, Water Section Manager  
Texas Commission on Environmental Quality  
Corpus Christi Regional Office  
NRC Building, Ste. 1200  
6300 Ocean Drive, Unit 5839  
Corpus Christi, Texas 78412-5839

3. All relief not expressly granted in this Order is denied.

4. The provisions of this Order shall apply to and be binding upon N.D.N.Y., and N.D.N.Y. is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. 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 N.D.N.Y. shall be made in writing to the Executive Director. Extensions are not effective until N.D.N.Y. 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 N.D.N.Y. if the Executive Director determines that N.D.N.Y. has not complied with one or more of the terms or conditions in this Order.
7. 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.
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

## AFFIDAVIT OF LENA ROBERTS

STATE OF TEXAS           §  
                                  §  
COUNTY OF TRAVIS       §

“My name is Lena Roberts. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of N.D.N.Y. Enterprises, Inc.” (the “EDPRP”) was filed with the Office of the Chief Clerk on May 19, 2006.

The EDPRP was mailed to N.D.N.Y. at its last known address on May 19, 2006, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that N.D.N.Y. received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since N.D.N.Y. received notice of the EDPRP. N.D.N.Y. failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of N.D.N.Y. Enterprises, Inc.” (the “EDFARP”) was filed with the Office of the Chief Clerk on May 1, 2007.

The EDFARP was mailed to N.D.N.Y. at its last known address on May 1, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” N.D.N.Y. received notice of the EDFARP on May 8, 2007, as evidenced by the signature on the card.

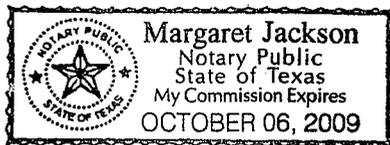
More than 20 days have elapsed since N.D.N.Y. received notice of the EDFARP. N.D.N.Y. failed to file an answer to the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.”



Lena Roberts, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Lena Roberts, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 10<sup>th</sup> day of July, A.D., 2007.



Notary Signature