

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NUMBER: 2005-1683-PWS-E TCEQ ID NO:RN104393004 CASE NO: 26943**  
**RESPONDENT NAME: MARTI M. CARDER DBA PIER 57**

**ORDER TYPE:**

<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> SHUTDOWN ORDER	<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> EMERGENCY ORDER	

**CASE TYPE:**

<input type="checkbox"/> AGRICULTURE	<input type="checkbox"/> AIR	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE	<input type="checkbox"/> MUNICIPAL SOLID WASTE
<input type="checkbox"/> OCCUPATIONAL CERTIFICATION	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> RADIOACTIVE WASTE
<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL	<input type="checkbox"/> USED OIL
<input type="checkbox"/> USED OIL FILTER	<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> DRY CLEANER REGISTRATION	

**SITE WHERE VIOLATION(S) OCCURRED:** 27446 Farm-to-Market Road 457, Sargent, Matagorda County

**TYPE OF OPERATION:** Restaurant with a public water supply system

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are no previous complaints. There is no record of additional pending enforcement actions regarding this facility.

**INTERESTED PARTIES:** No one other than the ED and the Respondent has expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on February 12, 2007. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019; Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

**TCEQ Enforcement Coordinator:** Mr. Tel Croston, Enforcement Division, Section I, MC 169, (512) 239-5717

**TCEQ Regional Contact:** Mr. Stephen Smith, Houston Regional Office, MC R-12, (713) 767-3581

**Respondent:** Ms. Marti M. Carder, Owner, Pier 57, 27446 F.M. 457, Sargent, Texas 77414

**Respondent's Attorney:** Not represented by counsel.

**RESPONDENT'S NAME: MARTI M. CARDER DBA PIER 57**  
**DOCKET NO.: 2005-1683-PWS-E**

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b> <input type="checkbox"/> Complaint <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date(s) of Investigation(s) Relating to this Case:</b> July 1, 2005</p> <p><b>Date(s) of NOV(s)/NOE(s) Relating to this Case:</b> July 27, 2005 (NOV) and August 19, 2005 (NOE)</p> <p><b>Background Facts:</b></p> <p>The EDPRP was filed on August 29, 2006. The Respondent received notice of the EDPRP on August 30, 2006, as evidenced by the signature on the green card. The Respondent has not filed an answer, requested a hearing, or scheduled 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 routine water samples for bacteriological analysis for the months of August and September 2004, and February 2005, and failed to post public notification of those sampling violations [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and TEX. HEALTH &amp; SAFETY CODE § 341.033(d)].</p> <p>2. Failed to pay the Public Health Service Fee for fiscal year 2004 for TCEQ Financial Administration Account No. 91610042 [TEX. WATER CODE § 5.702].</p>	<p><b>Total Assessed:</b> \$1,118</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>Total Due to General Revenue:</b> \$1,118</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 Provision(s):</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <p>(1) Immediately, begin collecting monthly bacteriological samples which are representative of the water system.</p> <p>(2) Within 30 days, submit payment for all outstanding fees, including any associated penalties and interest.</p> <p>(3) Within 45 days, submit written certification verifying compliance.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

<b>DATES</b>	Assigned	06-Sep-2005			
	PCW	06-Apr-2006	Screening	26-Sep-2005	EPA Due 01-Feb-2006

<b>RESPONDENT/FACILITY INFORMATION</b>					
Respondent	Marti M. Carder dba Pier 57				
Reg. Ent. Ref. No.	RN104393004				
Facility/Site Region	12-Houston		Major/Minor Source	Minor Source	

<b>CASE INFORMATION</b>					
Enf./Case ID No.	26943		No. of Violations	2	
Docket No.	2005-1683-PWS-E		Order Type	Findings	
Media Program(s)	Public Water Supply		Enf. Coordinator	Tel Croston	
Multi-Media			EC's Team	Enforcement Team 2	
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000		

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1 \$750

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** 49% Enhancement Subtotals 2, 3, & 7 \$368

Notes Respondent was issued nine same or similar violations and two unrelated NOV's in the past five years.

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

Notes Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** 0% Reduction Subtotal 5 \$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes Respondent is not yet in compliance.

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

Total EB Amounts	\$182	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$300	

**SUM OF SUBTOTALS 1-7** Final Subtotal \$1,118

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

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

**Final Penalty Amount** \$1,118

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty \$1,118

**DEFERRAL** 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 offered with a Findings order.

**PAYABLE PENALTY** \$1,118

<b>Screening Date</b> 26-Sep-2005	<b>Docket No.</b> 2005-1683-PWS-E	<b>PCW</b>
<b>Respondent</b> Marti M. Carder dba Pier 57	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 26943	<i>PCW Revision May 19, 2005</i>	
<b>Reg. Ent. Reference No.</b> RN104393004		
<b>Media [Statute]</b> Public Water Supply		
<b>Enf. Coordinator</b> Tel Croston		

### Compliance History Worksheet

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

Component	Number of...	<i>Enter Number Here</i>	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	9	45%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were</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	N/A	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	N/A	0%
	Participation in a voluntary pollution reduction program	N/A	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	N/A	0%

**Adjustment Percentage (Subtotal 2)** 49%

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

N/A <

**Adjustment Percentage (Subtotal 3)** 0%

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

N/A <

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes** Respondent was issued nine same or similar violations and two unrelated NOVs in the past five years.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 49%

<b>Screening Date</b>	26-Sep-2005	<b>Docket No.</b>	2005-1683-PWS-E	<b>PCW</b>
<b>Respondent</b>	Marti M. Carder dba Pier 57	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b>	26943	<i>PCW Revision May 19, 2005</i>		
<b>Reg. Ent. Reference No.</b>	RN104393004			
<b>Media [Statute]</b>	Public Water Supply			
<b>Enf. Coordinator</b>	Tel Croston			
<b>Violation Number</b>	1			
<b>Primary Rule Cite(s)</b>	30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B)			
<b>Secondary Rule Cite(s)</b>	Tex. Health & Safety Code § 341.033(d)			
<b>Violation Description</b>	Respondent failed to collect routine water samples for bacteriological analysis and failed to post a public notification for the months of August and September 2004 and February 2005, as documented during the TCEQ central office record review investigation conducted on July 1, 2005			
<b>Base Penalty</b>				\$1,000

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

OR	<b>Harm</b>				Percent
	<b>Release</b>	Major	Moderate	Minor	
	Actual				
	Potential	X			25%

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent

**Matrix Notes**

Failure to sample may allow undetected contaminants that exceed levels that are protective of human health or environmental receptors being distributed to the public for human consumption.

**Adjustment** -\$750

**Base Penalty Subtotal** \$250

**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** \$750

Three monthly events are recommended.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount <input type="text" value="\$182"/>	Violation Final Penalty Total <input type="text" value="\$1,118"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,118"/>	

### Economic Benefit Worksheet

Respondent: Marti M. Carder dba Pier 57  
 Case ID No. 26943  
 Reg. Ent. Reference No. RN104393004  
 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)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$300	01-Aug-2004	28-Feb-2005	0.6	\$9	\$173	\$182
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 Estimated cost to conduct routine sampling and to post public notice of the violation. The beginning date is the first month sampling was required, the end date is the last month the sampling was not conducted.							

Approx. Cost of Compliance \$300

**TOTAL** \$182

<b>Screening Date</b>	26-Sep-2005	<b>Docket No.</b>	2005-1683-PWS-E	<b>PCW</b>
<b>Respondent</b>	Marti M. Carder dba Pier 57	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b>	26943	<i>PCW Revision May 19, 2005</i>		
<b>Reg. Ent. Reference No.</b>	RN104393004			
<b>Media [Statute]</b>	Public Water Supply			
<b>Enf. Coordinator</b>	Tel Croston			
<b>Violation Number</b>	2			
<b>Primary Rule Cite(s)</b>	Tex. Water Code § 5.702			
<b>Secondary Rule Cite(s)</b>				
<b>Violation Description</b>	Failure to pay the Public Health Service Fee for fiscal year 2004 (TCEQ Financial Administration Account No. 91610042).			
<b>Base Penalty</b>				\$1,000

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

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

>> **Programmatic Matrix**

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

**Adjustment** -\$1,000

**Base Penalty Subtotal** \$0

**Violation Events**

Number of Violation Events

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

**Violation Base Penalty** \$0

No administrative penalty is recommended because the penalty and interest will be assessed at the next billing.

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

### Economic Benefit Worksheet

Respondent: Marti M. Carder dba Pier 57  
 Case ID No. 26943  
 Reg. Ent. Reference No. RN104393004  
 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				N/A			

**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				N/A			

Approx. Cost of Compliance \$0

TOTAL \$0



2 Date: 07/18/2005 (398751)

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(A)  
Description: Failure to locate well at least 150' from septic drainfield.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)  
Description: Failure to obtain a sanitary easement for the well.

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(v)  
Description: Failure to provide well wiring in an approved electrical conduit.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(B)  
Description: Failure to provide a well casing that is at least 18 inches above surrounding area.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(J)  
Description: Failure to provide a slab around the well.

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(K)  
Description: Failure to provide a vent on the well casing.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(N)  
Description: Failure to provide a meter on the well.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(M)  
Description: Failure to provide a raw water sample tap on the well.

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.43(e)  
Description: Failure to provide barbed wire on the 6' fence around the plant.

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)[G]  
Description: Failure to keep the well site mowed.

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)  
Description: Failure to keep the gate to the well site locked.

3 Date: 05/02/2005 (404438)

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
5A THC Chapter 341, SubChapter A 341.033(d)  
Description: FAILURE TO COLLECT ANY ROUTINE MONITORING SAMPLES IN 03/2005.

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 COLLECTING ANY ROUTINE MONITORING SAMPLES IN 03/2005.

4 Date: 12/08/2004 (404433)

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
5A THC Chapter 341, SubChapter A 341.033(d)  
Description: FAILURE TO COLLECT ANY ROUTINE MONITORING SAMPLES IN 10/2004.

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 COLLECTING ANY ROUTINE MONITORING SAMPLES IN 10/2004.

- 5 Date: 11/01/2004 (404432)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
5A THC Chapter 341, SubChapter A 341.033(d)  
Description: FAILURE TO COLLECT ANY ROUTINE MONITORING SAMPLES IN 09/2004.  
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 COLLECTING ANY ROUTINE MONITORING  
SAMPLES IN 09/2004.
- 6 Date: 07/27/2005 (404440)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
5A THC Chapter 341, SubChapter A 341.033(d)  
Description: FAILURE TO COLLECT ANY ROUTINE MONITORING SAMPLES IN 06/2005.  
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 COLLECTING ANY ROUTINE MONITORING  
SAMPLES IN 06/2005.
- 7 Date: 12/28/2004 (404434)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
5A THC Chapter 341, SubChapter A 341.033(d)  
Description: FAILURE TO COLLECT ANY ROUTINE MONITORING SAMPLES IN 11/2004.  
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 COLLECTING ANY ROUTINE MONITORING  
SAMPLES IN 11/2004.
- 8 Date: 09/28/2004 (334405)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(A)  
Description: Failure to locate well at least 150' from septic drainfield.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)  
Description: Failure to obtain a sanitary easement for the well.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(v)  
Description: Failure to provide well wiring in an approved electrical conduit.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(B)  
Description: Failure to provide a well casing that is at least 18 inches above surrounding area.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(J)  
Description: Failure to provide a slab around the well.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(K)  
Description: Failure to provide a vent on the well casing.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(N)  
Description: Failure to provide a meter on the well.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(M)  
Description: Failure to provide a raw water sample tap on the well.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.43(e)  
Description: Failure to provide barbed wire on the 6' fence around the plant.

- 9      Date: 03/03/2005      (404435)  
 Self Report? NO      Classification: Moderate  
 Citation:      30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
                  5A THC Chapter 341, SubChapter A 341.033(d)  
 Description:      FAILURE TO COLLECT ANY ROUTINE MONITORING SAMPLES IN 01/2005.  
 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 COLLECTING ANY ROUTINE MONITORING  
                  SAMPLES IN 01/2005.
- 10      Date: 05/31/2005      (404439)  
 Self Report? NO      Classification: Moderate  
 Citation:      30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
                  5A THC Chapter 341, SubChapter A 341.033(d)  
 Description:      FAILURE TO COLLECT ANY ROUTINE MONITORING SAMPLES IN 04/2005.  
 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 COLLECTING ANY ROUTINE MONITORING  
                  SAMPLES IN 04/2005.
- 11      Date: 04/01/2005      (404436)  
 Self Report? NO      Classification: Moderate  
 Citation:      30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
                  5A THC Chapter 341, SubChapter A 341.033(d)  
 Description:      FAILURE TO COLLECT ANY ROUTINE MONITORING SAMPLES IN 02/2005.  
 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 COLLECTING ANY ROUTINE MONITORING  
                  SAMPLES IN 02/2005.

- 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  
MARTI M. CARDER DBA PIER 57;  
RN104393004

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2005-1683-PWS-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. HEALTH & SAFETY CODE ch. 341, TEX. WATER CODE 5, 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 Marti M. Carder dba Pier 57 ("Ms. Carder").

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

**FINDINGS OF FACT**

1. Ms. Carder owns and operates a restaurant with a public water supply system located at 27446 Farm-to-Market Road 457, Sargent, Matagorda County, Texas (the "Facility").
2. The Facility has two service connections and serves at least 25 people per day for at least 60 days per year.
3. During a record review conducted on July 1, 2005, a TCEQ Central Office investigator documented that Ms. Carder:
  - a. Failed to collect routine water samples for bacteriological analysis for the months of August and September 2004, and February 2005, and failed to post public notification of those sampling violations; and
  - b. Failed to pay the Public Health Service Fee for fiscal year 2004 for TCEQ Financial Administration Account No. 91610042.
4. Ms. Carder received notice of the violations on or about August 1, 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 Marti Carder dba Pier 57" (the "EDPRP") in the TCEQ Chief Clerk's office on August 29, 2006.
6. By letter dated August 29, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Carder with notice of the EDPRP. According to the return receipt "green card," Ms. Carder received notice of the EDPRP on August 30, 2006, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Ms. Carder received notice of the EDPRP, provided by the Executive Director. Ms. Carder failed to file an answer to the EDPRP, 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, Ms. Carder is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341, TEX. WATER CODE ch. 5, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Ms. Carder failed to collect routine water samples for bacteriological analysis for the months of August and September 2004, and February 2005, and failed to post public notification of those sampling violations, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B), and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. As evidenced by Finding of Fact No. 3.b., Ms. Carder failed to pay the Public Health Service Fee for fiscal year 2004 for TCEQ Financial Administration Account No. 91610042, in violation of TEX. WATER CODE § 5.702.
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Ms. Carder with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 7, Ms. Carder 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 Ms. Carder and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Ms. Carder 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.
7. An administrative penalty in the amount of one thousand one hundred eighteen dollars (\$1,118.00) 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.
8. 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. Ms. Carder is assessed an administrative penalty in the amount of one thousand one hundred eighteen dollars (\$1,118.00) for violations of the Texas Health & Safety Code and rules of the TCEQ. The payment of this administrative penalty and Ms. Carder'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: Marti Carder dba Pier 57; Docket No. 2005-1683-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. Ms. Carder shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Commission Order, Ms. Carder shall begin collecting monthly bacteriological samples which are representative of the water system, according to the Facility's Monitoring Plan, as required by 30 TEX. ADMIN. CODE § 290.109 and properly notifying persons served by the system of any

MCL or monitoring violation, in accordance with 30 TEX. ADMIN. CODE § 290.122(b) and (c).

- b. Within 30 days after the effective date of this Order, Ms. Carder shall submit payment for all outstanding fees, including any associated penalties and interest, with the notation, "Re: Marti M. Carder dba Pier 57, FA Account No. 91610042" 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 Commission Order, Ms. Carder shall demonstrate compliance with Ordering Provision Nos. 2.a. and b. by submitting written certification, as described below, along with detailed supporting documentation.

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."

Ms. Carder shall submit the certification 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:

E. Buck Henderson, Manager  
Public Drinking Water Section, MC 155  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Ms. Carder. Ms. Carder 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 Ms. Carder shall be made in writing to the Executive Director. Extensions are not effective until Ms. Carder 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 Ms. Carder if the Executive Director determines that Ms. Carder 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.

Marti M. Carder dba Pier 57  
Docket No. 2005-1683-PWS-E  
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## 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 Marti M. Carder dba Pier 57” (the “EDPRP”) was filed with the Office of the Chief Clerk on August 29, 2006.

The EDPRP was mailed to Ms. Carder at her last known address on August 29, 2006 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Ms. Carder received notice of the EDPRP on August 30, 2006, as evidenced by the signature on the card.

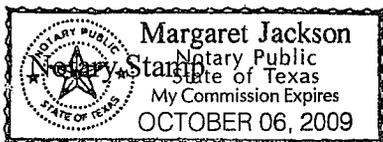
More than 20 days have elapsed since Ms. Carder received notice of the EDPRP. Ms. Carder failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



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Lena Roberts  
Attorney  
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 19<sup>th</sup> day of December, A.D., 2006.

  
\_\_\_\_\_  
Notary Signature