

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0898-PWS-E **TCEQ ID:** RN101207124 **CASE NO.:** 35981

RESPONDENT NAME: Cynthia Moretti dba Cynthia's Kitchen

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input 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	
CASE TYPE:		
<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>SITE WHERE VIOLATION(S) OCCURRED: Cynthia's Kitchen, 20 Farm-to-Market Road 787 East, Rye, Liberty County</p> <p>TYPE OF OPERATION: Public drinking water system</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on November 17, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Pamela Campbell, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4493; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Ms. Cindy Moretti, Owner, Cynthia's Kitchen, P.O. Box 251, Rye, Texas 77369 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 7 and May 15, 2008</p> <p>Date of NOV/NOE Relating to this Case: May 8, 2008 (NOE)</p> <p>Background Facts: These were record reviews.</p> <p>WATER</p> <p>1) Failure to collect routine monitoring samples during the months of May, June, September, and December 2007; and failure to provide public notification of the failure to conduct monthly sampling as required [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(b)(2) and TEX. HEALTH & SAFETY CODE § 341.033(d)].</p> <p>2) Failure to collect a set of repeat distribution samples within 24 hours of being notified of a coliform positive sample result; and failure to provide public notification of the failure to collect the repeat samples following a coliform positive sample as required [30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A) and 290.122(b)(2)].</p> <p>3) Exceeded the maximum contaminant level (MCL") for total coliform and failed to post public notification for exceeding the MCL [30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2) and TEX. HEALTH & SAFETY CODE § 341.031(a)].</p> <p>4) Failure to collect at least five monitoring samples following a coliform positive sample [30 TEX. ADMIN. CODE § 290.109(c)(2)(F)].</p> <p>5) Failed to pay the public health service fees for Account No. 91460097 for fiscal</p>	<p>Total Assessed: \$3,295</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$195 (remaining \$3,100 due in 31 monthly payments of \$100 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification: The Respondent has three repeated enforcement actions over the prior five year period for the same violation.</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 15 days after the effective date of this Agreed Order, the Respondent shall begin collecting water samples for bacteriological analysis;</p> <p>b. Within 30 days after the effective date of this Agreed Order, pay all outstanding fees, including any associated penalties and interest;</p> <p>c. Within 30 days after the effective date of this Agreed Order, develop and begin maintaining a written protocol that is to be followed to ensure that proper public notification is provided to the customers of the water system in the event of distribution pressures below 20 pounds per square inch, water outages, positive microbiological samples, low chlorine residuals, or other conditions which indicate that potability of the water may be compromised; and</p> <p>d. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a through c.</p>

year 2008 [30 TEX. ADMIN. CODE § 290.51(a)(3) and TEX. HEALTH & SAFETY CODE § 341.041].		
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Additional ID No(s): PWS No. 1460097



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision April 29, 2008

DATES	Assigned	13-May-2008			
	PCW	29-Jun-2008	Screening	1-Jun-2008	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Cynthia Moretti dba Cynthia's Kitchen
Reg. Ent. Ref. No.	RN101207124
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35981	No. of Violations	5
Docket No.	2008-0898-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Enf. Coordinator	Pamela Campbell
Multi-Media		EC's Team	Enforcement Team 1
Admin. Penalty \$	Limit Minimum	\$50	Maximum
			\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	45.0% Enhancement	Subtotals 2, 3, & 7	\$900
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Notes The Respondent has nine NOV's for the same or similar violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0.0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The Respondent does not meet the good faith criteria.

	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$395	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$380	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,900
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OTHER FACTORS AS JUSTICE MAY REQUIRE	13.6%	Adjustment	\$395
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Enhancement recommended for the recovery of avoided costs.

Final Penalty Amount	\$3,295
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,295
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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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 recommended for Findings Orders.

PAYABLE PENALTY	\$3,295
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Screening Date	1-Jun-2008	Docket No.	2008-0898-PWS-E	PCW
Respondent	Cynthia Moretti dba Cynthia's Kitchen	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	35981	<i>PCW Revision April 29, 2008</i>		
Reg. Ent. Reference No.	RN101207124			
Media [Statute]	Public Water Supply			
Enf. Coordinator	Pamela Campbell			

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>	9	45%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 45%

>> **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

The Respondent has nine NOVs for the same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 45%

Screening Date	1-Jun-2008	Docket No.	2008-0898-PWS-E	PCW
Respondent	Cynthia Moretti dba Cynthia's Kitchen			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	35981			<i>PCW Revision April 29, 2008</i>
Reg. Ent. Reference No.	RN101207124			
Media [Statute]	Public Water Supply			
Enf. Coordinator	Pamela Campbell			

Violation Number

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(b)(2), and Tex. Health & Safety Code § 341.033(d)

Violation Description Failed to collect routine monitoring samples during the months of May, June, September, and December 2007; and failed to provide public notification of the failure to collect monthly sampling as required.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent
					<input type="text" value="0%"/>

Matrix Notes Failure to perform routine bacteriological sampling of the public water supply could result in the public being exposed to significant amounts of bacteriological contamination in the drinking water which could exceed levels that are protective of human health.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
monthly	<input checked="" type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Four monthly events are recommended.

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 Cynthia Moretti dba Cynthia's Kitchen
Case ID No. 35981
Reg. Ent. Reference No. RN101207124
Media 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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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				1.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$160	1-May-2007	31-Dec-2007	1.00	\$8	\$160	\$168
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided costs include the amount to conduct monthly bacteriological sampling and/or provide public notification. The date required is the date of the first exceedance. The final date is the date that compliance was due.

Approx. Cost of Compliance

\$160

TOTAL

\$168

Screening Date 1-Jun-2008	Docket No. 2008-0898-PWS-E	PCW
Respondent Cynthia Moretti dba Cynthia's Kitchen	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35981	<i>PCW Revision April 29, 2008</i>	
Reg. Ent. Reference No. RN101207124		
Media [Statute] Public Water Supply		
Enf. Coordinator Pamela Campbell		

Violation Number	2
Rule Cite(s)	30 Tex. Admin. Code §§ 290.109(c)(3)(A) and 290.122(b)(2)
Violation Description	Failed collect a set of repeat distribution coliform samples within 24 hours of being notified of a coliform positive sample result during the months of January and March 2008; and failed to provide public notification of the failure to collect the repeat samples as required.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
					Percent 0%

Matrix Notes	Failure to collect repeat water samples of the public water supply could result in the public being exposed to significant amounts of bacteriological contamination in the drinking water which could exceed levels that are protective of human health.
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Adjustment \$750

\$250

Violation Events

Number of Violation Events	2		60	Number of violation days
<i>mark only one with an x</i>	daily	<input type="checkbox"/>		
	monthly	x		
	quarterly	<input type="checkbox"/>		
	semiannual	<input type="checkbox"/>		
	annual	<input type="checkbox"/>		
	single event	<input type="checkbox"/>		
				Violation Base Penalty \$500

Two monthly events are recommended.

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$80	Violation Final Penalty Total \$824
This violation Final Assessed Penalty (adjusted for limits) \$824	

Economic Benefit Worksheet

Respondent Cynthia Moretti dba Cynthia's Kitchen
Case ID No. 35981
Reg. Ent. Reference No. RN101207124
Media 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
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$40	1-Mar-2008	2-Mar-2008	0.00	\$0	\$40	\$40
Other (as needed)	\$40	1-Jan-2008	2-Jan-2008	0.00	\$0	\$40	\$40

Notes for AVOIDED costs

The avoided costs include the amount to collect repeat samples and/or provide public notification. The date required is the date of the first exceedance. The final date is the date that compliance was due.

Approx. Cost of Compliance

\$80

TOTAL

\$80

Screening Date 1-Jun-2008	Docket No. 2008-0898-PWS-E	PCW
Respondent Cynthia Moretti dba Cynthia's Kitchen	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35981	<i>PCW Revision April 29, 2008</i>	
Reg. Ent. Reference No. RN101207124		
Media [Statute] Public Water Supply		
Enf. Coordinator Pamela Campbell		

Violation Number	3
Rule Cite(s)	30 Tex. Admin. Code §§ 290.109(f)(3) and 290.122(b)(2), and Tex. Health & Safety Code § 341.031(a)
Violation Description	Exceeded the maximum contaminant level ("MCL") for coliform and failed to post public notice for exceeding the MCL in March 2008.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input checked="" type="checkbox"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				Percent <input style="width: 50px;" type="text" value="25%"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
					Percent <input style="width: 50px;" type="text" value="0%"/>

Matrix Notes The presence of coliform bacteria is an indication that the water supply is contaminated with significant amounts of total coliform that do not exceed levels that are protective of human health.

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	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

One monthly event is recommended.

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 Cynthia Moretti dba Cynthia's Kitchen
Case ID No. 35981
Reg. Ent. Reference No. RN101207124
Media Public Water Supply
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				1.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$40	1-Mar-2008	31-Mar-2008	1.00	\$2	\$40	\$42
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided costs include additional oversight to properly treat the water to prevent the total coliform exceedance and the amount to provide public notice of the exceedance. The date required is the date of the first exceedance. The final date is the date that compliance was due.

Approx. Cost of Compliance

\$40

TOTAL

\$42

Screening Date 1-Jun-2008	Docket No. 2008-0898-PWS-E	PCW
Respondent Cynthia Moretti dba Cynthia's Kitchen	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35981	<i>PCW Revision April 29, 2008</i>	
Reg. Ent. Reference No. RN101207124		
Media [Statute] Public Water Supply		
Enf. Coordinator Pamela Campbell		
Violation Number 4		
Rule Cite(s)	30 Tex. Admin. Code § 290.109(c)(2)(F)	
Violation Description	Failed to collect at least five monitoring samples during the month of February 2008 following a coliform positive result.	
Base Penalty		\$1,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
					Percent <input type="text" value="0%"/>

Matrix Notes
 Failure to perform bacteriological sampling of the public water supply could result in the public being exposed to significant amounts of bacteriological contamination in the drinking water which could exceed levels that are protective of human health.

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

One monthly event is recommended.

Economic Benefit (EB) for this violation	Statutory Limit Test
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Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent: Cynthia Moretti dba Cynthia's Kitchen
Case ID No.: 35981
Reg. Ent. Reference No.: RN101207124
Media: 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
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	1-Feb-2008	29-Feb-2008	1.00	\$5	\$100	\$105
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided costs include the amount to conduct monthly bacteriological sampling for the month that the samples were due.

Approx. Cost of Compliance \$100

TOTAL \$105

Screening Date 1-Jun-2008 **Docket No.** 2008-0898-PWS-E **PCW**
Respondent Cynthia Moretti dba Cynthia's Kitchen *Policy Revision 2 (September 2002)*
Case ID No. 35981 *PCW Revision April 29, 2008*
Reg. Ent. Reference No. RN101207124
Media [Statute] Public Water Supply
Enf. Coordinator Pamela Campbell

Violation Number 5
Rule Cite(s) 30 Tex. Admin. Code § 290.51(a)(3) and Tex. Health & Safety Code § 341.041
Violation Description Failed to pay the public health service fees for Account No. 91460097 for fiscal year 2008.

Base Penalty \$1,000

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

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Adjustment \$1,000

\$0

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="checkbox"/>
monthly	<input type="checkbox"/>
quarterly	<input type="checkbox"/>
semiannual	<input type="checkbox"/>
annual	<input type="checkbox"/>
single event	<input type="checkbox"/>

Violation Base Penalty \$0

No penalty is assessed for this violation.

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$0 **Violation Final Penalty Total** \$0

This violation Final Assessed Penalty (adjusted for limits) \$0

Economic Benefit Worksheet

Respondent: Cynthia Moretti dba Cynthia's Kitchen
Case ID No.: 35981
Reg. Ent. Reference No.: RN101207124
Media: 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
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$0

TOTAL \$0

Compliance History

Customer/Respondent/Owner-Operator:	CN803145590 MORETTI, CYNTHIA ANN	Classification:	Rating:
Regulated Entity:	RN101207124 CINDYS KITCHEN	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY		1460097
Location:	20 FM 787 EAST, RYE, TX, 77369		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	May 15, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 15, 2003 to May 15, 2008		
TCEQ Staff Member to Contact for Additional Information	Regarding this Compliance History		
Name: Pamela Campbell	Phone: 512 239-4493		

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | No |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.
N/A
- 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 02/16/2007 (534820)
- 2 06/15/2007 (644969)
- 3 07/15/2007 (645352)
- 4 09/01/2007 (645800)
- 5 10/01/2007 (645983)
- 6 05/09/2008 (669812)

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

Date: 06/15/2007 (644969)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)
 Description: Bact Monitoring 05/2007 - Failure to collect routine monitoring samples for 05/2007.

Date: 07/15/2007 (645352)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)
 Description: Bact Monitoring 06/2007 - Failure to collect routine monitoring samples for 06/2007.

Date: 09/01/2007 (645800)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)
 Description: Bact Public Notice 05/2007 - Failure to post pn for not collecting routine monitoring samples for 05/2007.

Date: 10/01/2007 (645983)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)
 Description: Bact Public Notice 06/2007 - Failure to post pn for not collecting routine monitoring samples for 06/2007.

Date: 12/20/2007
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)
 Description: Bact Monitoring 09/2007 - Failure to collect routine monitoring samples for 09/2007.

Date: 02/21/2008
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)
 Description: Bact Monitoring 12/2007 - Failure to collect routine monitoring samples for 12/2007.

Date: 03/11/2008
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)
 Description: Bact Monitoring 01/2008 - Failure to collect routine monitoring samples for 01/2008.

Date: 04/16/2008
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(b)
Description: Bact Monitoring 02/2008 - Failure to collect routine monitoring samples for 02/2008.

Date: 03/31/2008
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)
Description: Bact Monitoring 12/2007 - Failure to comply with the maximum contaminant level for coliform in 03/2008.

- 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
CYNTHIA MORETTI DBA CYNTHIA'S
KITCHEN
RN101207124

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

**AGREED ORDER
DOCKET NO. 2008-0898-PWS-E**

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Cynthia Moretti dba Cynthia's Kitchen ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that she has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

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

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

I. FINDINGS OF FACT

1. The Respondent owns and operates a public drinking water system located at 20 Farm-to-Market Road 787 East in Rye, Liberty County, Texas (the "Facility") that has approximately one service connection and serves at least 25 people per day for at least 60 days per year.

2. During a record review on May 7, 2008, TCEQ staff documented that the Respondent did not collect the required routine monitoring samples during the months of May, June, September, and December 2007 and did not provide public notice of the failure to collect the routine monitoring samples.
3. During a record review on May 7, 2008, TCEQ staff documented that the Respondent did not collect a set of repeat distribution samples within 24 hours of being notified of a coliform positive sample result during the months of January and March 2008 and did not provide public notice of the failure to collect the repeat samples.
4. During a record review on May 7, 2008, TCEQ staff documented that the Respondent exceeded the Maximum Contaminant Level ("MCL") for total coliform in March 2008 and did not provide public notice of the total coliform exceedance.
5. During a record review on May 7, 2008, TCEQ staff documented that the Respondent did not collect at least five monitoring samples during the month of February 2008 following a coliform positive result.
6. During a record review on May 15, 2008, TCEQ staff documented that the Respondent did not pay the public health service fees for Account No. 91460097 for Fiscal Year 2008.
7. The Respondent received notice of the violations on or about May 13, 2008.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 2, the Respondent failed to collect routine monitoring samples during the months of May, June, September, and December 2007; and failed to provide public notification of the failure to conduct monthly sampling as required, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(b)(2), and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. As evidenced by Findings of Fact No. 3, the Respondent failed to collect a set of repeat distribution samples within 24 hours of being notified of a coliform positive sample result; and failed to provide public notification of the failure to collect the repeat samples following a coliform positive sample as required, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A) and 290.122(b)(2).

4. As evidenced by Findings of Fact No. 4, the Respondent exceeded the MCL for total coliform and failed to post public notification for exceeding the MCL, in violation of 30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2), and TEX. HEALTH & SAFETY CODE § 341.031(a).
5. As evidenced by Findings of Fact No. 5, the Respondent failed to collect at least five monitoring samples following a coliform positive sample, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(2)(F).
6. As evidenced by Findings of Fact No. 6, the Respondent failed to pay the public health service fees for Account No. 91460097 for fiscal year 2008, in violation of 30 TEX. ADMIN. CODE § 290.51(a)(3) and TEX. HEALTH & SAFETY CODE § 341.041.
7. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of Three Thousand Two Hundred Ninety-Five Dollars (\$3,295) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The Respondent has paid One Hundred Ninety-Five Dollars (\$195) of the administrative penalty. The remaining amount of Three Thousand One Hundred Dollars (\$3,100) of the administrative penalty shall be payable in 31 monthly payments of One Hundred Dollars (\$100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Three Thousand Two Hundred Ninety-Five Dollars (\$3,295) as set forth in Section II, Paragraph 8 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made

payable to "TCEQ" and shall be sent with the notation "Re: Cynthia Moretti dba Cynthia's Kitchen, Docket No. 2008-0898-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. The Respondent shall undertake the following technical requirements:

- a. Within 15 days after the effective date of this Agreed Order, the Respondent shall begin collecting water samples for bacteriological analysis, in accordance with 30 TEX. ADMIN CODE § 290.109;
- b. Within 30 days after the effective date of this Agreed Order, pay all outstanding fees, including any associated penalties and interest and with the notation "Cynthia Moretti dba Cynthia's Kitchen - Account No. 91460097", 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 30 days after the effective date of this Agreed Order, develop and begin maintaining a written protocol that is to be followed to ensure that proper public notification is provided to the customers of the water system in the event of distribution pressures below 20 pounds per square inch, water outages, positive microbiological samples, low chlorine residuals, or other conditions which indicate that potability of the water may be compromised, as required by 30 TEX. ADMIN. CODE § 290.46; and
- d. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a through 2.c. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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."

The certification shall be submitted 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:

DBP Compliance Coordinator
Water Supply Division/PDWS, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
6. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Signature]
For the Executive Director

10/14/2008
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Cynthia Moretti dba Cynthia's Kitchen. I am authorized to agree to the attached Agreed Order on behalf of Cynthia Moretti dba Cynthia's Kitchen, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Cynthia Moretti dba Cynthia's Kitchen waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Cindy Moretti
Signature

8-26-08
Date

Cindy Moretti
Name (Printed or typed)
Authorized Representative of
Cynthia Moretti dba Cynthia's Kitchen

Owner
Title

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

