

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2005-0253-PWS-E TCEQ ID: RN101259653 CASE NO.: 26744
RESPONDENT NAME: MIKE WALSH DBA THE PIER

ORDER TYPE:		
<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	
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: 1703 North River Hills Road, Austin, Travis County</p> <p>TYPE OF OPERATION: Public water supply</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 3, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Mr. Tel Croston, Water Enforcement Section, MC 169, (512) 239-5717 TCEQ Regional Contact: Ms. Carolyn Runyon, Austin Regional Office, MC R-11, (512) 239-2929 Respondent: Mr. Mike Walsh, Owner, The Pier, 18200 Lakepoint Cove, Point Venture, Texas 78645 Respondent's Attorney: Not represented by counsel.</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 of Complaint Relating to this Case: None</p> <p>Dates of Investigations Relating to this Case: November 5, 2004 and July 1, 2005</p> <p>Date of NOEs Relating to this Case: March 1, 2005, and July 6, 2005</p> <p>Background Facts: An EDPRP was filed and mailed on August 11, 2005. No service was achieved. An EDFARP was filed and mailed on January 29, 2008. No service was achieved. An EDSARP was filed and mailed on May 28, 2008. The certified mail signed "green card" was received on May 30, 2008. The Respondent did not file an answer.</p> <p>Current Compliance Status: The Facility is no longer in operation.</p> <p>PWS:</p> <ol style="list-style-type: none"> Failed to collect and submit the required number of additional routine samples following a month in which a coliform-positive sample was obtained [30 TEX. ADMIN. CODE § 290.109(c)(2)(F)]. Failed to collect and submit routine monthly water samples for bacteriological analysis for the months of May 2003, and August and September 2004 [30 TEX. ADMIN. CODE § 290.109(c)(1)(A) and TEX. HEALTH & SAFETY CODE § 341.033(d)]. Failed to collect and submit repeat samples in October 2003, and April, May and June 2004, following a coliform-positive sample [30 TEX. ADMIN. CODE § 290.109(c)(3)(A)(ii)]. Failed to collect and submit the required number of additional routine samples following a month in which a coliform-positive sample was obtained and failed to post public notice for this noncompliance [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(B)]. Exceeded the AMCL for total fecal coliform bacteria in April 2005 [30 TEX. ADMIN. CODE § 290.109(f)(1)(B) and TEX. HEALTH & SAFETY CODE § 341.031(a)]. Exceeded the MCL for total coliform bacteria in May 2005 [30 TEX. ADMIN. CODE § 290.109(f)(3) and TEX. HEALTH & SAFETY CODE § 341.031(a)]. 	<p>Total Assessed: \$4,688</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$4,688</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>Site Compliance History Classification: N/A</p> <p>Person Compliance History Classification: N/A</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>The Executive Director recognizes that the Facility was closed in September of 2005.</p>

Penalty Calculation Worksheet (PCW)
 Policy Revision 2 (September 2002) PCW Revision May 19, 2005

TCEQ	DATES	Assigned 15-Aug-2005	Screening 31-Aug-2005	EPA Due 31-May-2006
		PCW 01-Dec-2005		

RESPONDENT/FACILITY INFORMATION	
Respondent	Mike Walsh dba The Pier
Reg. Ent. Ref. No.	RN101259653
Facility/Site Region	11-Austin <input type="button" value="<"/>
Major/Minor Source	Minor Source <input type="button" value="<"/>

CASE INFORMATION			
Enf./Case ID No.	26744	No. of Violations	5
Docket No.	2005-0253-PWS-E	Order Type	Findings <input type="button" value="<"/>
Media Program(s)	Public Water Supply <input type="button" value="<"/>	Enf. Coordinator	Mike Limos
Multi-Media		EC's Team	Enforcement Team 8 <input type="button" value="<"/>
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 25% Enhancement Subtotals 2, 3, & 7

Notes

Culpability No 0% Enhancement Subtotal 4

Notes

Good Faith Effort to Comply 0% Reduction Subtotal 5

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	<i>(mark with a small x)</i>

Notes

Economic Benefit 0% Enhancement* Subtotal 6

Total EB Amounts	\$2,038	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$2,040	

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

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

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL 0% Reduction Adjustment

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 31-Aug-2005 **Docket No.** 2005-0253-PWS-E **PCW**
Respondent Mike Walsh dba The Pier *Policy Revision 2 (September 2002)*
Case ID No. 26744 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN101259653
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>)	5	25%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	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%
<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) 25%

>> 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 Enhancement due to the five NOVs for same or similar violations at this site within the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 25%

Screening Date 31-Aug-2005	Docket No. 2005-0253-PWS-E	PCW
Respondent Mike Walsh dba The Pier	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 26744	<i>PCW Revision May 19, 2005</i>	
Reg. Ent. Reference No. RN101259653		
Media [Statute] Public Water Supply		
Enf. Coordinator Mike Limos		
Violation Number <input type="text" value="1"/>		
Primary Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 290.109(c)(2)(F)"/>	
Secondary Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 290.122(c)(2)(B)"/>	
Violation Description	<div style="border: 1px solid black; padding: 5px;"> Failure to collect and submit the required number of additional routine samples following a month in which a coliform-positive sample was obtained and failed to post public notice for this noncompliance, as documented during record review investigations conducted on November 5, 2004 and July 1, 2005. Specifically, the required sampling was not performed during May, June and July 2004, and May and June 2005. In addition, public notice was not posted in May and June 2005. </div>	

Base Penalty

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

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

Matrix Notes

Failure to collect and submit additional routine samples following a total coliform-positive sample result may result in contaminated water being distributed to the public resulting in illness.

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	<table border="1" style="border-collapse: collapse;"> <tr><td style="padding: 2px;">daily</td><td style="width: 40px;"><input type="text"/></td></tr> <tr><td style="padding: 2px;">monthly</td><td style="text-align: center;"><input checked="" type="checkbox"/></td></tr> <tr><td style="padding: 2px;">quarterly</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">semiannual</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">annual</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">single event</td><td><input type="text"/></td></tr> </table>	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"/>
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

Five monthly events are recommended for May, June and July 2004, and May and June 2005.

Economic Benefit (EB) for this violation

Estimated EB Amount

Statutory Limit Test

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Mike Walsh dba The Pier
Case ID No. 26744
Reg. Ent. Reference No. RN101259653
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
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)			Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$500	01-May-2004	30-Jun-2005	1.2	\$29	\$582	\$611
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 collect and submit 25 distribution samples (five samples per month) following a coliform-positive month.

Approx. Cost of Compliance \$500

TOTAL \$611

Screening Date 31-Aug-2005	Docket No. 2005-0253-PWS-E	PCW
Respondent Mike Walsh dba The Pier	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 26744	<i>PCW Revision May 19, 2005</i>	
Reg. Ent. Reference No. RN101259653		
Media [Statute] Public Water Supply		
Enf. Coordinator Mike Limos		
Violation Number <input type="text" value="2"/>		
Primary Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 290.109(c)(1)(A) and Tex. Health & Safety Code § 341.033(d)"/>	
Secondary Rule Cite(s)	<input type="text"/>	
Violation Description	<input type="text" value="Failure to collect and submit routine monthly water samples for bacteriological analysis for the months of May 2003, and August and September 2004, as documented during a record review investigation conducted on November 5, 2004."/>	

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	X	<input type="text"/>	<input type="text"/>	

>> **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

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

Violation Base Penalty

Three monthly events are recommended for May 2003, and August and September 2004.

Economic Benefit (EB) for this violation

Estimated EB Amount

Statutory Limit Test

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Mike Walsh dba The Pier
 Case ID No. 26744
 Reg. Ent. Reference No. RN101259653
 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
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)			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]	\$60	31-May-2003	31-Oct-2004	2.0	\$6	\$60	\$66
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost of routine bacteriological sampling for three months.

Approx. Cost of Compliance \$60

TOTAL \$66

Screening Date 31-Aug-2005	Docket No. 2005-0253-PWS-E	PCW
Respondent Mike Walsh dba The Pier	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 26744	<i>PCW Revision May 19, 2005</i>	
Reg. Ent. Reference No. RN101259653		
Media [Statute] Public Water Supply		
Enf. Coordinator Mike Limos		
Violation Number <input type="text" value="3"/>		
Primary Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 290.109(c)(3)(A)(ii)"/>	
Secondary Rule Cite(s)	<input type="text"/>	
Violation Description	<input type="text" value="Failure to collect and submit repeat samples in October 2003, April, May and June 2004, following a coliform-positive sample, as documented during a record review investigation conducted on November 5, 2004."/>	
Base Penalty		<input type="text" value="\$1,000"/>

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

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

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<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

Four monthly events are recommended for October 2003, April, May and June 2004.

Economic Benefit (EB) for this violation

Estimated EB Amount

Statutory Limit Test

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Mike Walsh dba The Pier
 Case ID No. 26744
 Reg. Ent. Reference No. RN101259653
 Media [Statute] 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
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

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]	\$1,280	31-Oct-2003	30-Jun-2004	1.0	\$64	\$1,280	\$1,344
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs
 Estimated cost to collect and submit the required number of repeat samples following a coliform-positive sample result.

Approx. Cost of Compliance **\$1,280**

TOTAL \$1,344

Screening Date 31-Aug-2005 **Docket No.** 2005-0253-PWS-E **PCW**

Respondent Mike Walsh dba The Pier *Policy Revision 2 (September 2002)*

Case ID No. 26744 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN101259653

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	X			Percent <input type="text" value="50%"/>
	Potential				

>> **Programmatic Matrix**

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

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	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

Economic Benefit (EB) for this violation

Estimated EB Amount

Statutory Limit Test

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Mike Walsh dba The Pier
Case ID No. 26744
Reg. Ent. Reference No. RN101259653
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
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

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	\$100	01-Apr-2005	30-Apr-2005	0.1	\$0	\$8	\$8
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 properly treat the water.

Approx. Cost of Compliance \$100
TOTAL \$8

Screening Date 31-Aug-2005

Docket No. 2005-0253-PWS-E

PCW

Respondent Mike Walsh dba The Pier

Policy Revision 2 (September 2002)

Case ID No. 26744

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101259653

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 checked="" type="text" value="X"/>	<input type="text"/>	Percent <input type="text" value="25%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

		Falsification	Major	Moderate	Minor	
		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text"/>
Matrix Notes	<input type="text" value="The presence of coliform bacteria is an indication that the water is contaminated and may cause serious human illness."/>					

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="text" value="X"/>
	<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

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Mike Walsh dba The Pier
Case ID No. 26744
Reg. Ent. Reference No. RN101259653
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

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)			Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$100	01-May-2005	31-May-2005	0.1	\$0	\$8	\$9
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 properly treat the water.

Approx. Cost of Compliance \$100

TOTAL \$9

Compliance History

Customer/Respondent/Owner-Operator: CN602729568 WALSH, MIKE Classification: N/A Rating: N/A
Regulated Entity: RN101259653 THE PIER Classification: N/A Site Rating: N/A
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2270123
Location: 1703 N RIVER HILLS RD, AUSTIN, TX, 78733
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: December 01, 2005
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: December 01, 2000 to December 01, 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? No
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 judgements, 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 07/27/2005 (403902)

2 06/02/2005 (399772)

3 12/29/2004 (342261)

4 04/11/2005 (398415)

5 08/12/2005 (402782)

6 11/05/2004 (339777)

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

Date: 04/11/2005 (398415)

Self Report? NO

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(1)(B)

Description: EXCEEDED AN ACUTE MAXIMUM CONTAMINANT LEVEL (AMCL) VIOLATION IN 04/2005.

Date: 07/27/2005 (403902)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)

Description: FAILURE TO COLLECT ANY OF THE DISTRIBUTION SAMPLES IN 06/2005 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 COLLECTING ANY OF THE 5 DISTRIBUTION SAMPLES IN 06/2005 FOLLOWING A COLIFORM FOUND MONTH.

Date: 06/02/2005 (399772)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)

Description: EXCEEDED A MAXIMUM CONTAMINANT LEVEL (MCL) VIOLATION IN 05/2005.

Date: 12/30/2004 (342261)

Self Report? NO

Classification: Minor

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

Description: Failure to monitor chlorine at least once every seven days.

Date: 06/27/2005 (399772)

Self Report? NO

Classification:

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)

Description: FAILURE TO POST A PN FOR NOT COLLECTING ALL OF THE 5 DISTRIBUTION SAMPLES IN 05/2005 FOLLOWING A COLIFORM FOUND MONTH.

Self Report? NO

Classification:

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)

Description: FAILURE TO COLLECT ALL OF THE 5 DISTRIBUTION SAMPLES IN 05/2005 FOLLOWING A COLIFORM FOUND MONTH.

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
MIKE WALSH DBA THE PIER,
RN101259653**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2005-0253-PWS-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Second Amended Report and Petition filed pursuant to 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 Mike Walsh dba The Pier ("Mr. Walsh").

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

FINDINGS OF FACT

1. At the time of the violations, Mr. Walsh owned and operated a public water supply located at 1703 North River Hills Road, Austin, Travis County, Texas (the "Facility").
2. The Facility has one service connection and serves at least 25 people per day for at least 60 days per year.
3. During a record review conducted on November 5, 2004, TCEQ Water Supply Division staff documented that Mr. Walsh violated the following requirements:
 - a. Failed to collect and submit the required number of additional routine samples following a month in which a coliform-positive sample was obtained. Specifically, the required sampling was not performed in May, June and July 2004.
 - b. Failed to collect and submit routine monthly water samples for bacteriological analysis for the months of May 2003, and August and September 2004.
 - c. Failed to collect and submit repeat samples in October 2003, and April, May and June 2004, following a coliform-positive sample.

4. During a record review conducted on July 1, 2005, TCEQ Water Supply Division staff documented that Mr. Walsh violated the following requirements:
 - a. Failed to collect and submit the required number of additional routine samples following a month in which a coliform-positive sample was obtained and failed to post public notice for this noncompliance. Specifically, the required sampling was not performed in May and June 2005. In addition, public notice was not posted in May and June 2005.
 - b. Exceeded the acute maximum containment level ("AMCL") for total fecal coliform bacteria in April 2005.
 - c. Exceeded the maximum containment level ("MCL") for total coliform bacteria in May 2005.
5. Mr. Walsh received notice of the violations in paragraphs 3 on or about March 6, 2005.
6. Mr. Walsh received notice of the violation in paragraph 4 on or about July 11, 2005.
7. The Executive Director recognizes that the Facility was closed in September of 2005.
8. The Executive Director filed the "Executive Director's Second Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Mike Walsh dba The Pier" (the "EDSARP") in the TCEQ Chief Clerk's office on May 28, 2008.
9. By letter dated May 28, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Walsh with notice of the EDSARP. According to the return receipt "green card", Mr. Walsh received notice of the EDSARP on May 30, 2008, as evidenced by the signature on the card.
10. More than 20 days have elapsed since Mr. Walsh received notice of the EDSARP, provided by the Executive Director. Mr. Walsh failed to file an answer to the EDSARP, 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, Mr. Walsh 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 Finding of Fact No. 3.a., Mr. Walsh failed to collect and submit the required number of additional routine samples following a month in which a coliform-positive sample was obtained. Specifically, the required sampling was not performed in May, June and July 2004, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(2)(F).
3. As evidenced by Finding of Fact No. 3.b., Mr. Walsh failed to collect and submit routine monthly water samples for bacteriological analysis for the months of May 2003, and August and September 2004, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(1)(A) and TEX. HEALTH & SAFETY CODE § 341.033(d).
4. As evidenced by Finding of Fact No. 3.c., Mr. Walsh failed to collect and submit repeat samples in October 2003, and April, May and June 2004, following a coliform-positive sample, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(3)(A)(ii).
5. As evidenced by Finding of Fact No. 4.a., Mr. Walsh failed to collect and submit the required number of additional routine samples following a month in which a coliform-positive sample was obtained and failed to post public notice for this noncompliance. Specifically, the required sampling was not performed in May and June 2005. In addition, public notice was not posted in May and June 2005, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(B).
6. As evidenced by Finding of Fact No. 4.b., Mr. Walsh exceeded the AMCL for total fecal coliform bacteria in April 2005, in violation of 30 TEX. ADMIN. CODE § 290.109(f)(1)(B) and TEX. HEALTH & SAFETY CODE § 341.031(a).
7. As evidenced by Finding of Fact No. 4.c., Mr. Walsh exceeded the MCL for total coliform bacteria in May 2005, in violation of 30 TEX. ADMIN. CODE § 290.109(f)(3) and TEX. HEALTH & SAFETY CODE § 341.031(a).
8. As evidenced by Finding of Fact Nos. 8 and 9, the Executive Director has timely served Mr. Walsh with proper notice of the EDSARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

9. As evidenced by Finding of Fact No. 10, Mr. Walsh has failed to file a timely answer to the EDSARP, 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 Mr. Walsh and assess the penalty recommended by the Executive Director.
10. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Mr. Walsh 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.
11. An administrative penalty in the amount of four thousand six hundred eighty-eight dollars (\$4,688.00) 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(b).
12. 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. Mr. Walsh is assessed an administrative penalty in the amount of four thousand six hundred eighty-eight dollars (\$4,688.00) for violations of TEX. HEALTH & SAFETY CODE ch. 341 and rules of the TCEQ. The payment of this administrative penalty and Mr. Walsh'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: Mike Walsh dba The Pier; Docket No. 2005-0253-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. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon Mr. Walsh. Mr. Walsh is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
4. 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 Mr. Walsh shall be made in writing to the Executive Director. Extensions are not effective until Mr. Walsh 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 Mr. Walsh the Executive Director determines that Mr. Walsh has not complied with one or more of the terms or conditions in this Order.
6. 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.
7. 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.

Mike Walsh dba The Pier
DOCKET NO. 2005-0253-PWS-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF XAVIER GUERRA

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

“My name is Xavier Guerra. 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, I filed the “Executive Director’s Second Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Mike Walsh dba The Pier” (the “EDSARP”) with the Office of the Chief Clerk on May 28, 2008.

I sent the EDSARP to Mr. Walsh at his last known address on May 28, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Mr. Walsh received notice of the EDSARP on May 30, 2008, as evidenced by the signature on the card.

More than 20 days have elapsed since Mr. Walsh received notice of the EDSARP. Mr. Walsh ailed to file an answer to the EDSARP, failed to request a hearing, and failed to schedule a settlement conference”.



Xavier Guerra
Attorney
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 20th day of August, A.D., 2008.


CYNTHIA L. WILLIAMS
Notary Public, State of Texas
My Commission Expires
JULY 17, 2010
Notary without Bond



Notary Signature