

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-1408-PWS-E **TCEQ ID:** RN103140802 **CASE NO.:** 38265

RESPONDENT NAME: Reyes Cantu dba Spirit Ranch Café

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input 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"/> IMMEDIATE 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: Spirit Ranch Café, 220 Regis Street, Lubbock, Lubbock 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 December 28, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Epifanio Villarreal, Enforcement Division, Enforcement Team 2, MC R-14, (361) 825-3425; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Ms. Reyes Cantu, Owner, Spirit Ranch Café, 917 East Newcomb Street, Lubbock, Texas 79403 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 checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: July 14, 2009</p> <p>Date of NOV/NOE Relating to this Case: August 19, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to provide Facility records to Commission personnel at the time of the investigation [30 TEX. ADMIN. CODE § 290.46(f)(2)].</p> <p>2) Failure to operate the disinfection equipment to maintain a disinfectant residual of at least 0.2 milligrams per liter ("mg/L") free chlorine throughout the distribution system at all times [30 TEX. ADMIN. CODE § 290.46(d)(2)(A) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].</p>	<p>Total Assessed: \$265</p> <p>Total Deferred: \$53 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$212</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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that on July 24, 2009, the chlorinator had been repaired and the Respondent submitted disinfectant residual results showing that the disinfection equipment is being operated to maintain a disinfectant residual of 0.2 mg/L free chlorine.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, begin implementing a record keeping system so that all applicable operating records and reports are organized and kept on file at the Facility or stored electronically; and</p> <p>b. 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 Provision a and submit the following records for review:</p> <p>i. The results of microbiological analyses;</p> <p>ii. Disinfectant residual monitoring results;</p> <p>iii. The amount of each chemical used each week to treat the water; and</p> <p>iv. Weekly meter readings of the volume of water treated each week.</p>

Additional ID No(s): 1520251



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	25-Aug-2009	Screening	28-Aug-2009	EPA Due	
	PCW	28-Aug-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	Reyes Cantu dba Spirit Ranch Café		
Reg. Ent. Ref. No.	RN103140802		
Facility/Site Region	2-Lubbock	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38265	No. of Violations	2
Docket No.	2009-1408-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Epifanio Villarreal
		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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement Subtotals 2, 3, & 7

Notes: The penalty enhancement is due to two prior Notices of Violation ("NOVs") containing violations that are the same as or similar to the violations in the current enforcement action, and five prior dissimilar NOVs.

Culpability Enhancement Subtotal 4

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5

Economic Benefit Enhancement* Subtotal 6

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

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement recommended for recovery of avoided costs of compliance.

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Reduction Adjustment

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY

Screening Date 28-Aug-2009

Docket No. 2009-1408-PWS-E

PCW

Respondent Reyes Cantu dba Spirit Ranch Café

Policy Revision 2 (September 2002)

Case ID No. 38265

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103140802

Media [Statute] Public Water Supply

Enf. Coordinator Epifanio Villarreal

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 (number of NOVs meeting criteria)	2	10%
	Other written NOVs	5	10%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgements or consent decrees meeting criteria)	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 (number of counts)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

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) 20%

>> **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 penalty enhancement is due to two prior Notices of Violation ("NOVs") containing violations that are the same as or similar to the violations in the current enforcement action, and five prior dissimilar NOV's.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 20%

Screening Date 28-Aug-2009	Docket No. 2009-1408-PWS-E	PCW		
Respondent Reyes Cantu dba Spirit Ranch Café	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 38265	<i>PCW Revision October 30, 2008</i>			
Reg. Ent. Reference No. RN103140802				
Media [Statute] Public Water Supply				
Enf. Coordinator Epifanio Villarreal				
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 290.46(f)(2)			
Violation Description	Failed to provide Facility records to Commission personnel at the time of the investigation. Specifically, at the time of the investigation, it was documented that no Facility operation and maintenance records were being maintained.			
Base Penalty		\$1,000		
>> Environmental, Property and Human Health Matrix				
Harm				
Release	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
			Percent <input type="text" value="0%"/>	
>> Programmatic Matrix				
Falsification				
Major			Moderate	Minor
<input type="text"/>			<input type="text" value="x"/>	<input type="text"/>
			Percent <input type="text" value="10%"/>	
Matrix Notes	100% of the rule requirement was not met.			
Adjustment		\$900		
		\$100		
Violation Events				
Number of Violation Events <input type="text" value="1"/>		Number of violation days <input type="text" value="45"/>		
<i>mark only one with an x</i>	daily	Violation Base Penalty <input type="text" value="\$100"/>		
	weekly			
	monthly			
	quarterly			
	semiannual			
	annual			
	single event			<input type="text" value="x"/>
One single event is recommended.				
Good Faith Efforts to Comply		0.0% Reduction <input type="text" value="\$0"/>		
		<small>Before NOV NOV to EDRP/Settlement Offer</small>		
Extraordinary	<input type="text"/>			
Ordinary	<input type="text"/>			
N/A	<input type="text" value="x"/>	<small>(mark with x)</small>		
Notes	The Respondent does not meet the good faith criteria for this violation.			
		Violation Subtotal <input type="text" value="\$100"/>		
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount <input type="text" value="\$4"/>		Violation Final Penalty Total <input type="text" value="\$148"/>		
		This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$148"/>		

Economic Benefit Worksheet

Respondent Reyes Cantu dba Spirit Ranch Café
Case ID No. 38265
Reg. Ent. Reference No. RN103140802
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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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	\$100	14-Jul-2009	1-Apr-2010	0.72	\$4	n/a	\$4
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

The delayed cost includes the estimated amount to properly create and begin maintaining Facility operation and maintenance records, calculated from the date of the investigation to the estimated date of compliance.

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

\$100

TOTAL

\$4

Screening Date 28-Aug-2009	Docket No. 2009-1408-PWS-E	PCW															
Respondent Reyes Cantu dba Spirit Ranch Café		<i>Policy Revision 2 (September 2002)</i>															
Case ID No. 38265		<i>PCW Revision October 30, 2009</i>															
Reg. Ent. Reference No. RN103140802																	
Media [Statute] Public Water Supply																	
Enf. Coordinator Epifanio Villarreal																	
Violation Number 2																	
Rule Cite(s)	30 Tex. Admin. Code § 290.46(d)(2)(A) and Tex. Health & Safety Code § 341.0315(c)																
Violation Description	Failed to operate the disinfection equipment to maintain a disinfectant residual of at least 0.2 milligrams per liter ("mg/L") free chlorine throughout the distribution system at all times. Specifically, at the time of the investigation, a chlorine residual field test conducted at the bathroom sink was 0.02 mg/L of free chlorine.																
	Base Penalty	\$1,000															
>> Environmental, Property and Human Health Matrix																	
	Harm																
	Major	Moderate	Minor														
OR	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">Actual</td> <td style="width:30%;"></td> <td style="width:30%;"></td> <td style="width:30%;"></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td></td> <td style="text-align: center;">x</td> <td></td> </tr> </table>		Actual				Potential		x		Percent 10%						
Actual																	
Potential		x															
>> Programmatic Matrix																	
	Falsification	Major	Moderate	Minor													
				Percent 0%													
Matrix Notes	If the Facility does not maintain proper levels of disinfection, customers of the Facility could be exposed to significant amounts of contaminants which would not exceed levels that are protective of human health.																
	Adjustment	\$900															
		\$100															
Violation Events																	
	Number of Violation Events	1	Number of violation days														
		1															
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td style="text-align: center;">daily</td><td></td></tr> <tr><td style="text-align: center;">weekly</td><td></td></tr> <tr><td style="text-align: center;">monthly</td><td></td></tr> <tr><td style="text-align: center;">quarterly</td><td></td></tr> <tr><td style="text-align: center;">semiannual</td><td></td></tr> <tr><td style="text-align: center;">annual</td><td></td></tr> <tr><td style="text-align: center;">single event</td><td style="text-align: center;">x</td></tr> </table>	daily		weekly		monthly		quarterly		semiannual		annual		single event	x		Violation Base Penalty \$100
daily																	
weekly																	
monthly																	
quarterly																	
semiannual																	
annual																	
single event	x																
<i>mark only one with an x</i>																	
	One single event is recommended.																
Good Faith Efforts to Comply																	
	25.0% Reduction	\$25															
	Before NOV	NOV to EDRP/Settlement Offer															
Extraordinary																	
Ordinary	x																
N/A		(mark with x)															
Notes	The Respondent achieved compliance on July 24, 2009.																
	Violation Subtotal	\$75															
Economic Benefit (EB) for this violation																	
	Estimated EB Amount	\$50	Violation Final Penalty Total \$117														
			This violation Final Assessed Penalty (adjusted for limits) \$117														

Economic Benefit Worksheet

Respondent Reyes Cantu dba Spirit Ranch Café
Case ID No. 38265
Reg. Ent. Reference No. RN103140802
Media Public Water Supply
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]	\$50	14-Jul-2009	24-Jul-2009	0.00	\$0	\$50	\$50
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the amount for additional maintenance, oversight, and an increase in chlorine dosage that could have avoided or prevented the low disinfectant residual levels, calculated for the date when the low chlorine residual was documented to the date of compliance.

Approx. Cost of Compliance

\$50

TOTAL

\$50

Compliance History Report

Customer/Respondent/Owner-Operator:	CN601673593 CANTU, REYES	Classification:	Rating:
Regulated Entity:	RN103140802 SPIRIT RANCH CAFE	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	1520251
Location:	220 REGIS ST, LUBBOCK, LUBBOCK COUNTY, TEXAS		
TCEQ Region:	REGION 02 - LUBBOCK		
Date Compliance History Prepared:	August 28, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	August 28, 2004 to August 28, 2009		

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

Name: Epi Villarreal Phone: 361-825-3425

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator 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 | 09/08/2005 | (404169) |
| 2 | 04/06/2006 | (461562) |
| 3 | 05/26/2006 | (516206) |
| 4 | 06/27/2006 | (516778) |
| 5 | 07/31/2006 | (516783) |
| 6 | 08/25/2006 | (516787) |
| 7 | 09/25/2006 | (516793) |
| 8 | 12/21/2006 | (516883) |
| 9 | 05/25/2007 | (557945) |
| 10 | 11/09/2007 | (600794) |
| 11 | 08/20/2008 | (700456) |
| 12 | 09/22/2008 | (703483) |
| 13 | 02/03/2009 | (725099) |
| 14 | 04/01/2009 | (740211) |
| 15 | 08/18/2009 | (764545) |

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

Date: 05/26/2006 (516206)

Self Report? NO

Classification: Moderate

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

Description: Failure to collect any routine monitoring sample(s) for 04/2006.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: Failure to post PN for not collecting any routine monitoring sample(s) in 04/2006.
 Date: 06/27/2006 (516778)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(I)
 Description: Failure to collect any routine monitoring sample(s) for 05/2006.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: Failure to post PN for not collecting any routine monitoring sample(s) in 05/2006.
 Date: 07/31/2006 (516783)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(I)
 Description: Failure to collect any routine monitoring sample(s) for 06/2006.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: Failure to post PN for not collecting any routine monitoring sample(s) in 06/2006.
 Date: 08/25/2006 (516787)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(I)
 Description: Failure to collect any routine monitoring sample(s) for 07/2006.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: Failure to post PN for not collecting any routine monitoring sample(s) in 07/2006.
 Date: 09/25/2006 (516793)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(I)
 Description: Failure to collect any routine monitoring sample(s) for 08/2006.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: Failure to post PN for not collecting any routine monitoring sample(s) in 08/2006.
 Date: 05/29/2007 (557945)
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(II)(III)
 Description: Failure to keep water use records as required by 30 TAC 290.46(f)(3)(A)(ii)(III).
 Date: 04/03/2009 (740211)
 Self Report? NO Classification: Major
 Citation: 30 TAC Chapter 290, SubChapter D 290.39(m)
 Description: Failure to provide written notification of the reactivation of an existing public water supply system.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)
 Description: Failure to lock the wellhouse.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(d)(2)(A)
 Description: Failure to maintain the minimum free chlorine residual of 0.2 mg/L.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)
 Description: Failure to maintain all records of water works operation and maintenance.

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
REYES CANTU DBA SPIRIT RANCH
CAFE
RN103140802

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-1408-PWS-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Reyes Cantu dba Spirit Ranch Cafe ("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 appear before the Commission and together stipulate that:

1. The Respondent owns and operates a public water supply at 220 Regis Street in Lubbock, Lubbock County, Texas (the "Facility") that has one service connection and serves at least 25 people per day for at least 60 days per year.
2. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
3. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about August 24, 2009.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of Two Hundred Sixty-Five Dollars (\$265) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Twelve Dollars (\$212) of the administrative penalty and Fifty-Three Dollars (\$53) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon

full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
7. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director recognizes that on July 24, 2009, the chlorinator had been repaired and the Respondent submitted disinfectant residual results showing that the disinfection equipment is being operated to maintain a disinfectant residual of 0.2 milligrams per liter ("mg/L") free chlorine.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to provide Facility records to Commission personnel at the time of the investigation, in violation of 30 TEX. ADMIN. CODE § 290.46(f)(2), as documented during an investigation conducted on July 14, 2009.
2. Failed to operate the disinfection equipment to maintain a disinfectant residual of at least 0.2 mg/L free chlorine throughout the distribution system at all times, in violation of 30 TEX. ADMIN. CODE § 290.46(d)(2)(A) and TEX. HEALTH & SAFETY CODE § 341.0315(c), as documented during an investigation conducted on July 14, 2009.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Reyes Cantu dba Spirit Ranch Cafe, Docket No. 2009-1408-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. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, begin implementing a record keeping system so that all applicable operating records and reports are organized and kept on file at the Facility or stored electronically, in accordance with 30 TEX. ADMIN. CODE § 290.46;
 - b. 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 No 2.a and submit the following records for review:
 - i. The results of microbiological analyses;
 - ii. Disinfectant residual monitoring results;
 - iii. The amount of each chemical used each week to treat the water; and
 - iv. Weekly meter readings of the volume of water treated each week.

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 fines 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:

Water Section Manager
Lubbock Regional Office
Texas Commission on Environmental Quality
5012 50th Street, Suite 100
Lubbock, Texas 79414-3421

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. 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.
6. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Solis
For the Executive Director

12/8/2009
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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.

Reyes Cantu 10-7-2009
Signature

10-7-2009
Date

Reyes B. Reyes
Name (Printed or typed)
Authorized Representative of
Reyes Cantu dba Spirit Ranch Cafe

OWNER
Title

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

