

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.: 2009-0695-PWS-E TCEQ ID NO.: RN104709944 CASE NO.: 37608
RESPONDENT NAME: BLANCA CRUZ DBA LAS MANANITAS MEXICAN RESTAURANT**

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 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

SITE WHERE VIOLATIONS OCCURRED: 9702 State Highway 16 South, Pipe Creek, Bandera County

TYPE OF OPERATION: Restaurant with a public water system

SMALL BUSINESS: Yes No

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

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

COMMENTS RECEIVED: The *Texas Register* comment period expired February 15, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Ms. Andrea Linson-Mgbeoduru, Water Enforcement Section, MC 169, (512) 239-1482

TCEQ Regional Contact: Mr. Tom Haberle, San Antonio Regional Office, MC R-13, (210) 403-4050

Respondent: Ms. Blanca Cruz, Operator, P.O. Box 63402, Pipe Creek, Texas 78063-3402

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><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>Date of Investigation Relating to this Case: February 1, 2009</p> <p>Date of NOE Relating to this Case: April 14, 2009</p> <p>Background Facts: The EDPRP was filed on July 7, 2009. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the Respondent signed the agreed order on December 11, 2009. A replacement signature page was signed on February 3, 2010.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation certifying compliance.</p> <p>PWS: Failed to collect and submit routine coliform samples for the months of July 2008 through January 2009 and failed to provide public notification of the failure to sample for July 2008 through January 2009 [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i), 290.122(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.033(d)].</p>	<p>Total Assessed: \$2,535</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$120/\$2,415</p> <p>The Respondent paid \$120 of the administrative penalty. The remaining amount of \$2,415 shall be payable in 23 monthly payments of \$105 each.</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>Findings Order Justification: Six repeated enforcement actions (NOVs) over the prior five year period for the same violations.</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately begin collecting and submitting all required coliform samples which are representative of the Facility, according to the Facility's microbiological monitoring plan. 2. Within 10 days, implement procedures to ensure that all necessary public notifications are provided in a timely manner to the customers of the water supply. 3. Within 25 days, submit written certification to demonstrate compliance with Ordering Provision Nos. 1. and 2. 4. Within 180 days, comply with all applicable coliform monitoring requirements and provide water that meets the provisions regarding microbial contaminants for the Facility. 5. Within 195 days, submit written certification to demonstrate compliance with Ordering Provision No. 4.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	4-May-2009			
	PCW	11-May-2009	Screening	4-May-2009	EPA Due 31-Mar-2009

RESPONDENT/FACILITY INFORMATION					
Respondent	Blanca Cruz dba Las Mananitas Mexican Restaurant				
Reg. Ent. Ref. No.	RN104709944				
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	37608	No. of Violations	1		
Docket No.	2009-0695-PWS-E	Order Type	Findings		
Media Program(s)	Public Water Supply	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Andrea Linson-Mgbeoduru		
		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	\$1,750
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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	32.0% Enhancement	Subtotals 2, 3, & 7	\$560
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Notes
Enhancement due to six prior Notices of Violation ("NOV") with same or similar violations as those in the current enforcement action and one prior dissimilar NOV.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$225
Approx. Cost of Compliance	\$210

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,310
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OTHER FACTORS AS JUSTICE MAY REQUIRE	9.7%	Adjustment	\$225
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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	\$2,535
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,535
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes
No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$2,535
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Screening Date 4-May-2009 **Docket No.** 2009-0695-PWS-E
Respondent Blanca Cruz dba Las Mananitas Mexican Restaurant
Case ID No. 37608
Reg. Ent. Reference No. RN104709944
Media [Statute] Public Water Supply
Enf. Coordinator Andrea Linson-Mgbeoduru

PCW

Policy Revision 2 (September 2002)
 PCW Revision October 30, 2008

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>)	6	30%
	Other written NOVs	1	2%
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) 32%

>> **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 six prior Notices of Violation ("NOV") with same or similar violations as those in the current enforcement action and one prior dissimilar NOV.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 32%

Screening Date 4-May-2009 **Docket No.** 2009-0695-PWS-E **PCW**
Respondent Blanca Cruz dba Las Mananitas Mexican Restaurant *Policy Revision 2 (September 2002)*
Case ID No. 37608 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN104709944
Media [Statute] Public Water Supply
Enf. Coordinator Andrea Linson-Mgbeoduru

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i), and 290.122(c)(2)(B) and Tex. Health & Safety Code § 341.033(d)
Violation Description Failed to collect and submit routine coliform samples for the months of July 2008 through January 2009; and failed to provide public notification of the failure to sample for July 2008 through January 2009.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent 25%	
	Release	Major	Moderate		Minor
	Actual				
	Potential	x			

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent 0%

Matrix Notes Failure to have routine coliform samples tested by Commission approved laboratories could expose customers of the water supply to a significant amount of undetected contaminants that could exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 7 184 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,750

Seven monthly events are recommended, calculated for the months in which samples were not taken.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EUP/PP/ Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$1,750

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

Estimated EB Amount \$225 **Violation Final Penalty Total** \$2,535

This violation Final Assessed Penalty (adjusted for limits) \$2,535

Economic Benefit Worksheet

Respondent Blanca Cruz dba Las Mananitas Mexican Restaurant

Case ID No. 37608

Reg. Ent. Reference No. RN104709944

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
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				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]	\$210	31-Jul-2008	31-Jan-2009	1.42	\$15	\$210	\$225
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the amount necessary (\$25 x 7 samples + \$5 x 7 public notices posted on the restaurant door) to collect and submit routine coliform samples for the months of July 2008 through January 2009 and to provide public notification of the failure to sample for July 2008 through January 2009.

Approx. Cost of Compliance \$210

TOTAL \$225

Compliance History Report

Customer/Respondent/Owner-Operator: CN603461039 Blanca Cruz Classification: Rating:
Regulated Entity: RN104709944 LAS MANANITAS MEXICAN Classification: Site Rating:
RESTAURANT
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0100084
Location: 9702 STATE HIGHWAY 16 SOUTH, PIPE CREEK, BANDERA COUNTY, TX
TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: May 04, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: May 04, 2004 to May 04, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Andrea Linson-Mqbeoduru Phone: 512-239-1482

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 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 | 10/30/2007 | (597381) |
| 2 | 05/07/2008 | (654246) |
| 3 | 05/07/2008 | (654396) |
| 4 | 03/25/2009 | (739747) |
| 5 | 03/26/2009 | (740202) |
| 6 | 03/26/2009 | (740204) |
| 7 | 03/26/2009 | (740224) |
| 8 | 03/26/2009 | (740228) |
| 9 | 03/26/2009 | (740231) |
| 10 | 04/17/2009 | (740287) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: **10/24/2007** (597381) CN603461039
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(4)
Description: Failure to maintain a record of water works operations and maintenance activities.
Specifically, failure to maintain records of:
1) Weekly disinfectant residual results from the distribution system;
2) Results of monthly microbiological analyses from the distribution system;
3) Results of annual tank inspections; and
4) Weekly water production and chemical usage data.
The above records are required to be retained for up to 5 years.
- Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(N)
Description: Failure to have a flow measuring device for each well to measure production yields and provide for the accumulation of water production data.
- Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter F 290.110(d)(3)(C)
Description: Failure to have a free chlorine test kit that utilizes the DPD colorimetric method.
- Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)
30 TAC Chapter 290, SubChapter D 290.43(e)

Description: Failure to protect the well and ground storage tank in a lockable building or intruder resistant fence with lockable gates. The intruder resistant fence must be six feet or greater in height, constructed of wood, concrete, masonry, or metal, or with three strands of barbed wire extending outward from the top of the fence at a 45 degree angle. In lieu of the barbed wire, the fence must be eight feet in height. Additionally the roof opening of the ground storage tank must have a lock on it.

Self Report? NO Classification: Moderate

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

Description: Failure to keep a septic tank drainfield a minimum of 150 ft. away from a public water supply well.

Self Report? NO Classification: Minor

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

Description: Failure to provide a recorded sanitary control easement on all adjacent property owner's land within 150 ft. of the well to prevent pollution hazards from developing.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(A)

Description: Failure to submit well completion data and as-built plans to the TCEQ Central Office and obtain final approval of the well before placing it in to service as a public water supply well.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.45(d)(2)(B)(v)

Description: Failure to meet the Commission's minimum water system capacity requirements, specifically failure to provide a minimum of 220 gallons of pressure tank capacity.

Date: **08/08/2008** (739747) CN603461039

Self Report? NO Classification: Moderate

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

Description: TCR Routine Monitoring Violation 07/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: TCR PN Routine Monitoring Violation 07/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: **10/10/2008** (740202) CN603461039

Self Report? NO Classification: Moderate

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

Description: TCR Routine Monitoring Violation 08/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: TCR PN Routine Monitoring Violation 08/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: **11/19/2008** (740204) CN603461039

Self Report? NO Classification: Moderate

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

Description: TCR Routine Monitoring Violation 09/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: TCR PN Routine Monitoring Violation 09/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: **12/09/2008** (740224) CN603461039

Self Report? NO Classification: Moderate

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

Description: TCR Routine Monitoring Violation 10/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: TCR PN Routine Monitoring Violation 10/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: **01/13/2009** (740228) CN603461039

Self Report? NO Classification: Moderate

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

Description: TCR Routine Monitoring Violation 11/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: TCR PN Routine Monitoring Violation 11/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: **03/09/2009** (740231)

CN603461039

Self Report? NO

Classification: Moderate

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

Description: TCR Routine Monitoring Violation 12/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: TCR PN Routine Monitoring Violation 12/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

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
BLANCA CRUZ DBA LAS
MANANITAS MEXICAN
RESTAURANT,
RN104709944**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2009-0695-PWS-E**

At its _____ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Blanca Cruz dba Las Mananitas Mexican Restaurant (“Ms. Cruz”) under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, represented by the Litigation Division, and Ms. Cruz presented this agreement to the Commission.

Ms. Cruz 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, Ms. Cruz agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement 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 Ms. Cruz.

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

FINDINGS OF FACT

1. Ms. Cruz operates a restaurant with a public water system located at 9702 State Highway 16 South, Pipe Creek, Bandera County, Texas (the “Facility”).
2. The Facility provides water for human consumption, has one service connection, and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water

supply system as defined in 30 TEX. ADMIN. CODE § 290.38(63).

3. During a record review conducted on February 1, 2009, a TCEQ Public Water System/Supply Program investigator documented that Ms. Cruz failed to collect and submit routine coliform samples for the months of July 2008 through January 2009 and failed to provide public notification of the failure to sample for July 2008 through January 2009.
4. Ms. Cruz received notice of the violations on or about April 19, 2009.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Ms. Cruz 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, Ms. Cruz failed to collect and submit routine coliform samples for the months of July 2008 through January 2009, and failed to provide public notification of the failure to sample for July 2008 through January 2009 in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Ms. Cruz for violations of 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.
4. An administrative penalty in the amount of two thousand five hundred thirty-five dollars (\$2,535.00) 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). Ms. Cruz has paid one hundred twenty dollars (\$120.00) of the administrative penalty. The remaining amount of two thousand four hundred fifteen dollars (\$2,415.00) of the administrative penalty shall be payable in twenty-three monthly payments of one hundred five dollars (\$105.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be remitted not later than 30 days following the due date of the previous payment. If Ms. Cruz fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his 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 Ms. Cruz to meet the payment schedule of this Agreed

Order constitutes the failure by Ms. Cruz to timely and satisfactorily comply with all of the terms of this Agreed Order.

ORDERING PROVISIONS

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

1. Ms. Cruz is assessed an administrative penalty in the amount of two thousand five hundred thirty-five dollars (\$2,535.00) as set forth in Conclusion of Law No. 4 for violations of TCEQ rules and state statutes. The payment of this administrative penalty and Ms. Cruz'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 "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Blanca Cruz dba Las Mananitas Mexican Restaurant; Docket No. 2009-0695-PWS-E" to:

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

2. Ms. Cruz shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Ms. Cruz shall begin collecting and submitting all required coliform samples which are representative of the Facility, according to the Facility's microbiological monitoring plan, as required by 30 TEX. ADMIN. CODE § 290.109.
 - b. Within 10 days after the effective date of this Agreed Order, Ms. Cruz shall implement procedures to ensure that all necessary public notifications are provided in a timely manner to the customers of the water supply, in accordance with 30 TEX. ADMIN. CODE § 290.122.
 - c. Within 25 days after the effective date of this Agreed Order, Ms. Cruz shall submit written certification as described in Ordering Provision No. 2.f. below and include

detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and b.

- d. Within 180 days after the effective date of this Agreed Order, Ms. Cruz shall comply with all applicable coliform monitoring requirements and provide water that meets the provisions regarding microbial contaminants for the Facility, in accordance with 30 TEX. ADMIN. CODE § 290.109.
- e. Within 195 days after the effective date of this Agreed Order, Ms. Cruz shall submit written certification as described in Ordering Provision No. 2.f. below and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.d.
- f. The certifications required by Ordering Provision Nos. 2.c. and 2.e. shall be notarized by a State of Texas Notary Public and include the following certification language:

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

Ms. Cruz shall submit copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

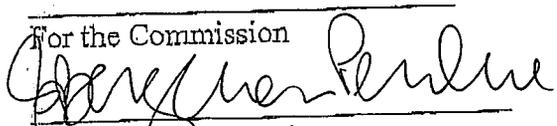
with a copy to:

Tom Haberle, Water Section Manager
Texas Commission on Environmental Quality
San Antonio Regional Office
14250 Judson Road
San Antonio, Texas 78233-4480

3. The provisions of this Agreed Order shall apply to and be binding upon Ms. Cruz. Ms. Cruz is ordered to give notice of this 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 Ms. Cruz shall be made in writing to the Executive Director. Extensions are not effective until Ms. Cruz 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 Ms. Cruz if the Executive Director determines that Ms. Cruz 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 Ms. Cruz 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 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.
9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date is the date of hand-delivery of the Agreed Order to Ms. Cruz, or three days after the date on which the Commission mails notice of this Agreed Order to Ms. Cruz, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

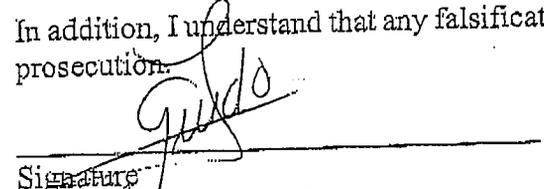
2/24/2010
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Blanca Cruz dba Las Mananitas Mexican Restaurant. I represent that I am authorized to agree to the attached Agreed Order on behalf of Blanca Cruz dba Las Mananitas Mexican Restaurant, 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 also understand that failure to comply with the Ordering Provisions in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on Ms. Cruz's compliance history;
- Greater scrutiny of any permit applications submitted by Ms. Cruz;
- 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 against Ms. Cruz;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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


Signature
Blanca Cruz
Name (printed or typed)

2-03-2010
Date
OWNER
Title