

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2009-1443-PWS-E RN104909882 CASE NO. 38214**  
**RESPONDENT NAME: MS. MOLLY'S LLC**

<b>ORDER TYPE:</b>		
<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	

<b>CASE TYPE:</b>		
<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 VIOLATION OCCURRED:** 1005 County Road 107, Columbus, Colorado County

**TYPE OF OPERATION:** 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 Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired September 6, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Rudy Calderon, Litigation Division, MC 175, (512) 239-3400  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ Enforcement Coordinator:** Ms. Amanda Henry, Enforcement Section, MC R-12, (713) 767-3672

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

**Respondent:** Ms. Maria Gandara, Manager, Ms. Molly's LLC, 10325 Briar Forest Drive, Houston, Texas 77042

Ms. Angie Galvan, Member, Ms. Molly's LLC, 21034 Northern Colony Court #1, Katy, Texas 77449

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

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> July 1, 2009</p> <p><b>Date of NOE Relating to this Case:</b> August 4, 2009</p> <p><b>Background Facts:</b> The EDPRP was filed on March 24, 2010, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on March 25, 2010. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> Not yet in compliance.</p> <p><b>PST:</b> Failed to collect routine distribution water samples for coliform analysis during the months of March 2008 through May 2009, and failed to provide public notification of the failure to sample for the months of March 2008 through May 2009 [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B), and TEX. HEALTH &amp; SAFETY CODE § 341.033(d)].</p>	<p><b>Total Assessed:</b> \$6,681</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$6,681</p> <p>This is a Default Order. Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification:</b> N/A</p> <p><b>Person Compliance History Classification:</b> N/A</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provision(s):</b></p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Within 10 days:             <ol style="list-style-type: none"> <li>a. Implement procedures to ensure that all necessary public notifications are provide in a timely manner to the customers of the Facility; and</li> <li>b. Begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples and providing water that meets the provisions regarding microbial contaminants. This provision will be satisfied upon six months of compliant monitoring and reporting.</li> </ol> </li> <li>2. Within 195 days submit written certification and copies of documentation necessary to demonstration compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	10-Aug-2009			
	<b>PCW</b>	20-Aug-2009	<b>Screening</b>	18-Aug-2009	<b>EPA Due</b> 28-Feb-2009

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	Ms. Molly's LLC				
<b>Reg. Ent. Ref. No.</b>	RN104909882				
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	38214	<b>No. of Violations</b>	1		
<b>Docket No.</b>	2009-1443-PWS-E	<b>Order Type</b>	Findings		
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	No		
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Amanda Henry		
		<b>EC's Team</b>	Enforcement Team 2		
<b>Admin. Penalty \$ Limit</b>	<b>Minimum</b>	\$50	<b>Maximum</b>	\$1,000	

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$3,750
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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.

<b>Compliance History</b>	65.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$2,437
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Notes: Enhancement is due to 13 prior Notices of Violation ("NOVs") containing violations that are the same as the violations in the current enforcement action.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$498  
 Approx. Cost of Compliance \$550  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$6,187
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	8.0%	<b>Adjustment</b>	\$494
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Reduces or enhances the Final Subtotal by the indicated percentage.

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

<b>Final Penalty Amount</b>	\$6,681
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$6,681
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	\$6,681
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Screening Date 18-Aug-2009

Docket No. 2009-1443-PWS-E

PCW

Respondent Ms. Molly's LLC

Policy Revision 2 (September 2002)

Case ID No. 38214

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104909882

Media [Statute] Public Water Supply

Enf. Coordinator Amanda Henry

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action ( <i>number of NOV's meeting criteria</i> )	13	65%
	Other written NOV's	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 65%

#### >> 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 is due to 13 prior Notices of Violation ("NOVs") containing violations that are the same as the violations in the current enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 65%

**Screening Date** 18-Aug-2009 **Docket No.** 2009-1443-PWS-E **PCW**  
**Respondent** Ms. Molly's LLC *Policy Revision 2 (September 2002)*  
**Case ID No.** 38214 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN104909882  
**Media [Statute]** Public Water Supply  
**Enf. Coordinator** Amanda Henry

**Violation Number**

**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 routine distribution water samples for coliform analysis during the months of March 2008 through May 2009, and failed to provide public notification of the failure to sample for the months of March 2008 through May 2009.

**Base Penalty**

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

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

**>> Programmatic Matrix**

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

**Matrix Notes** Failure to collect water samples for coliform analysis may expose the public to a significant amount of undetected contaminants that exceed levels that are protective of human health.

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

Fifteen monthly events are recommended.

**Good Faith Efforts to Comply**

Reduction

	Before NOV	NOV to EDRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)

**Notes** The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal**

**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** Ms. Molly's LLC  
**Case ID No.** 38214  
**Reg. Ent. Reference No.** RN104909882  
**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	\$100	1-Jul-2009	1-Apr-2010	0.75	\$4	n/a	\$4
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 costs include the estimated amount to implement procedures, to ensure public notifications are provided when necessary, calculated from the record review date 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]	\$75	1-Apr-2009	31-Aug-2009	1.33	\$5	\$75	\$80
Other (as needed)	\$375	31-Mar-2008	31-May-2009	2.08	\$39	\$375	\$414

Notes for AVOIDED costs

The avoided costs includes the estimated amount to conduct monthly coliform sampling calculated for the months when the violation occurred. The avoided costs for public notice includes the estimated amount to post a notice calculated during the time periods that that the Respondent had the opportunity to issue the notice.

Approx. Cost of Compliance

\$550

**TOTAL**

\$498

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603506270 Ms. Molly's LLC Classification: Rating:  
Regulated Entity: RN104909882 MS MOLLYS Classification: Site Rating:

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0450092

Location: 1005 COUNTY ROAD 107, COLORADO COUNTY, TX

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: August 18, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 18, 2004 to August 18, 2009

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

Name: Amanda Henry Phone: 713-767-3672

## 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	11/27/2007	(599447)
2	07/17/2009	(762018)
3	08/04/2009	(762732)
4	08/04/2009	(762738)
5	08/04/2009	(763002)
6	08/04/2009	(763013)
7	08/04/2009	(763022)
8	08/04/2009	(763027)
9	08/04/2009	(763034)
10	08/04/2009	(763037)
11	08/04/2009	(763041)
12	08/04/2009	(763046)
13	08/04/2009	(763053)
14	08/04/2009	(763061)
15	08/05/2009	(764589)

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

Date: 04/29/2008 (762018) CN603506270  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)

Description: TCR Routine Monitoring Violation 03/2008 - 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 03/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 07/31/2008 (762732) CN603506270  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)

Description: TCR Routine Monitoring Violation 06/2008 - 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 06/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 09/03/2008 (762738) CN603506270  
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 (763002) CN603506270  
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 (763013) CN603506270  
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 (763022) CN603506270  
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 (763027) CN603506270

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 (763034) CN603506270

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).

Date: 04/07/2009 (763037) CN603506270

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
Description: TCR Routine Monitoring Violation 01/2009 - 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 01/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 05/06/2009 (763041) CN603506270

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
Description: TCR Routine Monitoring Violation 02/2009 - 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 02/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 05/26/2009 (763046) CN603506270

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
Description: TCR Routine Monitoring Violation 03/2009 - 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 03/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 06/15/2009 (763053) CN603506270

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
Description: TCR Routine Monitoring Violation 04/2009 - 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 04/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 07/14/2009 (763061) CN603506270

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
Description: TCR Routine Monitoring Violation 05/2009 - 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 05/2009 - 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  
MS. MOLLY'S LLC;  
RN104909882**

§  
§  
§  
§  
§  
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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER  
DOCKET NO. 2009-1443-PWS-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. HEALTH & SAFETY CODE ch. 341 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 Ms. Molly's LLC ("Ms. Molly's").

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

**FINDINGS OF FACT**

1. Ms. Molly's owns and operates a public water system located at 1005 County Road 107, Columbus, Colorado 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. As such, the Facility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(66).
3. During an investigation conducted on July 1, 2009, a TCEQ Central Regional Office investigator documented that Ms. Molly's failed to collect routine distribution water samples for coliform analysis during the months of March 2008 through May 2009, and failed to provide public notification of the failure to sample for the months of March 2008 through May 2009.
4. Ms. Molly's received notice of the violations on or about August 9, 2009.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Ms. Molly's LLC" (the "EDPRP") in the TCEQ Chief Clerk's office on March 24, 2010.

6. By letter dated March 24, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Molly's with notice of the EDPRP. According to the return receipt "green card," Ms. Molly's received notice of the EDPRP on March 25, 2010, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Ms. Molly's received notice of the EDPRP, provided by the Executive Director. Ms. Molly's failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

### CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Ms. Molly's 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. Molly's failed to collect routine distribution water samples for coliform analysis during the months of March 2008 through May 2009, and failed to provide public notification of the failure to sample for the months of March 2008 through May 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. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Ms. Molly's with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Ms. Molly's failed to file a timely answer as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Ms. Molly's and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Ms. Molly's 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.
6. An administrative penalty in the amount of six thousand six hundred eighty-one dollars (\$6,681.00) 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.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

## ORDERING PROVISIONS

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

1. Ms. Molly's is assessed an administrative penalty in the amount of six thousand six hundred eighty-one dollars (\$6,681.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Ms. Molly's'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: Ms. Molly's LLC; Docket No. 2009-1443-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. Molly's shall undertake the following technical requirements:
  - a. Within 10 days after the effective date of this Order, Ms. Molly's shall:
    - i. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to the customers of the Facility, in accordance with 30 TEX. ADMIN. CODE § 290.122;
    - ii. Begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples and providing water that meets the provisions regarding microbial contaminants, in accordance with 30 TEX. ADMIN. CODE § 290.109. This provision will be satisfied upon six months of compliance monitoring and reporting.
  - b. Within 195 days after the effective date of this Order, Ms. Molly's shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provisions Nos. 2.a.i. and 2.a.ii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

Ms. Molly's shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provisions Nos. 2.a.i. and 2.a.ii 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:

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

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Ms. Molly's. Ms. Molly's is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Ms. Molly's shall be made in writing to the Executive Director. Extensions are not effective until Ms. Molly's receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Ms. Molly's if the Executive Director determines that Ms. Molly's has not complied with one or more of the terms or conditions in this Order.

7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
  
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF RUDY CALDERON**

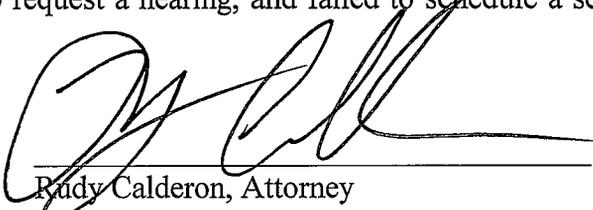
STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Rudy Calderon. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Ms. Molly’s LLC” (the “EDPRP”) was filed with the Office of the Chief Clerk on March 24, 2010.

The EDPRP was mailed to Ms. Molly’s at its last known address on March 24, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Ms. Molly’s received notice of the EDPRP on March 25, 2010, as evidenced by the signature on the card.

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



Rudy Calderon, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rudy Calderon, 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 30<sup>th</sup> day of June, A.D., 2010.

