

Executive Summary – Enforcement Matter – Case No. 40608  
Loyal Lybarger d/b/a Ponderosa Mobile Home Park  
RN101456333  
Docket No. 2010-1755-MLM-E

**Order Type:**  
Default Order

**Findings Order Justification:**  
N/A

**Media:**  
MLM

**Small Business:**  
Yes

**Location(s) Where Violation(s) Occurred:**  
10423 Olga Lane, Trailer 12, Houston, Harris County

**Type of Operation:**  
Public water system

**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

**Texas Register Publication Date:** September 16, 2011

**Comments Received:** None

***Penalty Information***

<b>Total Penalty Assessed:</b>	\$2,620
<b>Amount Deferred for Expedited Settlement:</b>	N/A
<b>Amount Deferred for Financial Inability to Pay:</b>	N/A
<b>Total Paid to General Revenue:</b>	\$0
<b>Total Due to General Revenue:</b>	\$2,620

**Compliance History Classifications:**  
Person/CN – N/A  
Site/RN – N/A

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

***Investigation Information***

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** October 12, 2010; October 27, 2010  
**Date(s) of NOV(s):** November 12, 2009; December 8, 2009; July 14, 2010; September 30, 2010  
**Date(s) of NOE(s):** October 22, 2010; November 19, 2010

***Violation Information***

1. Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform positive sample result on routine samples collected for the months of October and November 2009, and failed to provide a public notification of the failure to collect [30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A)(i), 290.109(c)(3)(A)(ii), and 290.122(c)(2)(A)].
2. Failed to collect at least five distribution coliform samples the month following a total coliform-positive sample result for the month of December 2009, and failed to provide a public notification of the failure to sample for the month of December 2009 [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(A)].
3. Failed to comply with the Maximum Contaminant Level (“MCL”) for total coliform during the months of November 2009 and July 2010, and failed to provide public notice for exceeding the MCL for total coliform for the month of November 2009 [30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(A) and TEX. HEALTH & SAFETY CODE § 341.031(a)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

1. Within 10 days:
  - a. Implement procedures to ensure all necessary public notifications are provided in a timely manner to the customers of the Facility; and
  - b. Begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples and providing water that meets the provisions regarding microbial contaminants.
2. Within 30 days, adopt and submit to the Executive Director for approval an emergency preparedness plan.
3. Submit written certification to demonstrate compliance:
  - a. Within 45 days for Technical Requirements Nos. 1.a. and 2;
  - b. Within 195 days for Technical Requirement No. 1.b.

***Litigation Information***

**Date Petition(s) Filed:** May 20, 2011  
**Date(s) Green Card(s) Signed:** June 8, 2011  
**Date(s) Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A

**Executive Summary – Enforcement Matter – Case No. 40608**  
**Loyal Lybarger d/b/a Ponderosa Mobile Home Park**  
**RN101456333**  
**Docket No. 2010-1755-MLM-E**

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***Contact Information***

**TCEQ Attorneys:** Peipey Tang, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400

**TCEQ Enforcement Coordinator:** Katy Schumann, Water Enforcement Section, (512) 239-2602

**TCEQ Regional Contact:** Stephen Smith, Houston Regional Office, (713) 767-3581

**Respondent:** Loyal Lybarger, P.O. Box 40214, Houston, Texas 77240

**Respondent's Attorney:** N/A

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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	25-Oct-2010	<b>Screening</b>	26-Oct-2010	<b>EPA Due</b>	
	<b>PCW</b>	12-Apr-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>						
<b>Respondent</b>	Loyal Lybarger dba Ponderosa Mobile Home Park					
<b>Reg. Ent. Ref. No.</b>	RN101456333					
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor			

<b>CASE INFORMATION</b>						
<b>Enf./Case ID No.</b>	40608	<b>No. of Violations</b>	1			
<b>Docket No.</b>	2010-1755-MLM-E	<b>Order Type</b>	1660			
<b>Media Program(s)</b>	Public Water Utilities	<b>Government/Non-Profit</b>	No			
<b>Multi-Media</b>	Public Water Supply	<b>Enf. Coordinator</b>	Katy Schumann			
		<b>EC's Team</b>	Enforcement Team 2			
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$500			

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$400
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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>	11.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$44
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Notes: Enhancement for one NOV with same/similar violations and three NOVs with dissimilar violations.

<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: \$22  
 Approx. Cost of Compliance: \$328  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$444
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$444
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$444
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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 indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	\$444
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**Screening Date** 26-Oct-2010

**Docket No.** 2010-1755-MLM-E

**PCW**

**Respondent** Loyal Lybarger dba Ponderosa Mobile Home Park

*Policy Revision 2 (September 2002)*

**Case ID No.** 40608

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN101456333

**Media [Statute]** Public Water Utilities

**Enf. Coordinator** Katy Schumann

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	3	6%
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)** 11%

**>> 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 for one NOV with same/similar violations and three NOVs with dissimilar violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 11%

Screening Date 26-Oct-2010

Docket No. 2010-1755-MLM-E

PCW

Respondent Loyal Lybarger dba Ponderosa Mobile Home Park

Policy Revision 2 (September 2002)

Case ID No. 40608

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101456333

Media [Statute] Public Water Utilities

Enf. Coordinator Katy Schumann

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.39(o)(1), 291.162(a) and (j) and Tex. Water Code § 13.1395(b)(2)

Violation Description Failed to adopt and submit to the Executive Director for approval by March 1, 2010, an emergency preparedness plan that demonstrates the Facility's ability to provide emergency operations.

Base Penalty \$500

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		
100% of the rule requirement was not met.					

Adjustment \$450

\$50

Violation Events

Number of Violation Events 8 239 Number of violation days

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

Violation Base Penalty \$400

Eight monthly events are recommended, calculated from the due date, March 1, 2010, to the screening date, October 26, 2010.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$400

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$22

Violation Final Penalty Total \$444

This violation Final Assessed Penalty (adjusted for limits) \$444

## Economic Benefit Worksheet

**Respondent** Loyal Lybarger dba Ponderosa Mobile Home Park  
**Case ID No.** 40608  
**Req. Ent. Reference No.** RN101456333  
**Media** Public Water Utilities  
**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)	\$328	1-Mar-2010	1-Jul-2011	1.33	\$22	n/a	\$22

Notes for DELAYED costs

The delayed cost includes the estimated amount (\$41/hr labor and administrative cost x 8 hours) to develop and submit an emergency preparedness plan. Date required is the deadline the plan was due to the Executive Director. Final date is 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

\$328

**TOTAL**

\$22



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	22-Nov-2010	<b>Screening</b>	30-Nov-2010	<b>EPA Due</b>	
	<b>PCW</b>	12-Apr-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Loyal Lybarger dba Ponderosa Mobile Home Park
<b>Reg. Ent. Ref. No.</b>	RN101456333
<b>Facility/Site Region</b>	12-Houston
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	40608	<b>No. of Violations</b>	3
<b>Docket No.</b>	2010-1755-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>	Public Water Utilities	<b>Enf. Coordinator</b>	Katy Schumann
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit 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>	\$1,250
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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>	17.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$212
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Notes: Enhancement for three NOVs with same/similar violations and one NOV with dissimilar violations.

<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: \$718  
 Approx. Cost of Compliance: \$800  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$1,462
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	48.8%	<b>Adjustment</b>	\$714
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to recover avoided costs of compliance.

<b>Final Penalty Amount</b>	\$2,176
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$2,176
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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 indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	\$2,176
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**Screening Date** 30-Nov-2010

**Docket No.** 2010-1755-MLM-E

**PCW**

**Respondent** Loyal Lybarger dba Ponderosa Mobile Home Park

*Policy Revision 2 (September 2002)*

**Case ID No.** 40608

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN101456333

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Katy Schumann

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	3	15%
	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)** 17%

#### >> 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 for three NOVs with same/similar violations and one NOV with dissimilar violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 17%

Screening Date 30-Nov-2010

Docket No. 2010-1755-MLM-E

PCW

Respondent Loyal Lybarger dba Ponderosa Mobile Home Park

Policy Revision 2 (September 2002)

Case ID No. 40608

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101456333

Media [Statute] Public Water Supply

Enf. Coordinator Katy Schumann

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(3)(A)(i) and (ii) and 290.122(c)(2)(A)

Violation Description Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform positive sample result on routine samples collected for the months of October and November 2009, and failed to provide a public notification of the failure to collect repeat samples for the months of October and November 2009. Specifically, for the month of November 2009, the Facility only collected five repeat distribution coliform samples and needed to collect 15 for November and four for October.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%). Includes 'OR' label.

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0%).

Matrix Notes Failure to sample may allow a significant amount of undetected contaminants which exceed levels that are protective of human health or environmental receptors to be distributed to the public for human consumption.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 2 61 Number of violation days

Table for event frequency: daily, weekly, monthly (x), quarterly, semiannual, annual, single event.

Violation Base Penalty \$500

Two monthly events are recommended, one for each month all repeat distribution coliform samples were not taken.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (x), (mark with x).

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

Violation Subtotal \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$532

Violation Final Penalty Total \$871

This violation Final Assessed Penalty (adjusted for limits) \$871

## Economic Benefit Worksheet

**Respondent** Loyal Lybarger dba Ponderosa Mobile Home Park  
**Case ID No.** 40608  
**Req. Ent. Reference No.** RN101456333  
**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)	\$100	27-Oct-2010	30-Apr-2011	0.51	\$0	\$3	\$4
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

The delayed cost includes the estimated amount to implement training on procedures necessary to ensure that all public notifications are provided in a timely manner to the customers of the Facility. The date required is the date of the file review. The final date is 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]	\$50	1-Nov-2009	28-Feb-2010	1.24	\$3	\$50	\$53
Other (as needed)	\$475	7-Oct-2009	4-Nov-2009	0.00	\$0	\$475	\$475

Notes for AVOIDED costs

The avoided costs include the estimated amount necessary to collect repeat samples (estimated at \$25 each for 19 samples) and to provide public notice (estimated at \$25 per month). The beginning date is the first month that repeat samples were required, the end date is the last month that repeat samples were due. Dates for public notice was the time period that public notice was required.

Approx. Cost of Compliance

\$625

**TOTAL**

\$532

**Screening Date** 30-Nov-2010 **Docket No.** 2010-1755-MLM-E  
**Respondent** Loyal Lybarger dba Ponderosa Mobile Home Park  
**Case ID No.** 40608  
**Reg. Ent. Reference No.** RN101456333  
**Media [Statute]** Public Water Supply  
**Enf. Coordinator** Katy Schumann

**PCW**

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

**Violation Number**

**Rule Cite(s)**

**Violation Description**

Failed to collect at least five distribution coliform samples the month following a total coliform-positive sample result for the month of December 2009, and failed to provide a public notification of the failure to sample for the month of December 2009. Specifically, for the month of December 2009, the Facility only collected four distribution samples.

**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 sample may allow a significant amount of undetected contaminants which exceed levels that are protective of human health or environmental receptors to be distributed to the public for human consumption.

**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**

One monthly event is recommended for the month in which not all distribution samples were taken.

**Good Faith Efforts to Comply**

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
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** Loyal Lybarger dba Ponderosa Mobile Home Park  
**Case ID No.** 40608  
**Req. Ent. Reference No.** RN101456333  
**Media** Public Water Supply  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]	\$25	1-Jan-2010	31-Mar-2010	1.16	\$1	\$25	\$26
Other (as needed)	\$25	1-Dec-2009	31-Dec-2009	1.00	\$1	\$25	\$27

Notes for AVOIDED costs

The avoided costs include the estimated amount necessary to conduct routine sampling (estimated at \$25 per sample) and to provide public notice (estimated at \$25 per month). The beginning date is the date sampling was required, the end date is the last of the month the sampling was not conducted. Dates for public notice was the time period that public notice was required.

Approx. Cost of Compliance \$50

**TOTAL** \$53

Screening Date 30-Nov-2010

Docket No. 2010-1755-MLM-E

PCW

Respondent Loyal Lybarger dba Ponderosa Mobile Home Park

Policy Revision 2 (September 2002)

Case ID No. 40608

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101456333

Media [Statute] Public Water Supply

Enf. Coordinator Katy Schumann

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(f)(3) and 209.122(b)(2)(A) and Tex. Health & Safety Code § 341.031(a)

Violation Description Failed to comply with the Maximum Contaminant Level ("MCL") for total coliform during the months of November 2009 and July 2010, and failed to provide public notice for exceeding the MCL for total coliform for the month of November 2009.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

The presence of coliform bacteria is an indication that the water supply is contaminated with a significant amount of contaminants which do not exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 2 61 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$500

Two monthly events are recommended for the months of exceedance.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$133

Violation Final Penalty Total \$871

This violation Final Assessed Penalty (adjusted for limits) \$871

## Economic Benefit Worksheet

**Respondent** Loyal Lybarger dba Ponderosa Mobile Home Park  
**Case ID No.** 40608  
**Req. Ent. Reference No.** RN101456333  
**Media** Public Water Supply  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]	\$100	2-Nov-2009	8-Jul-2010	1.60	\$8	\$100	\$108
Other (as needed)	\$25	3-Nov-2009	2-Dec-2009	0.00	\$0	\$25	\$25

Notes for AVOIDED costs

The avoided costs include the estimated amount to investigate and identify the source of contamination and implement procedures to increase chlorination and flushing of the water system, calculated from the date of the first sample collected indicating an exceedance to the date of the last sample collected indicating an exceedance. Estimated cost (\$25 per notice) to provide public notice, calculated for the 30 day period that notice was required.

Approx. Cost of Compliance \$125

**TOTAL** \$133

# Compliance History

Customer/Respondent/Owner-Operator: CN600663256 LYBARGER, LOYAL Classification: Rating:  
Regulated Entity: RN101456333 PONDEROSA MOBILE HOME PARK Classification: Site Rating:  
REGISTRATION 1012957  
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY  
Location: 10423 OLGA LANE TRAILER 12, HOUSTON, HARRIS COUNTY, TEXAS  
TCEQ Region: REGION 12 - HOUSTON  
Date Compliance History Prepared: November 22, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: November 22, 2005 to November 22, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Katy Schumann Phone: (512) 239 - 2602

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? YES
2. Has there been a (known) change in ownership/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 judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 09/02/2010(858241)  
2 10/21/2010 (870362)  
3 10/27/2010 (872126)  
4 11/03/2010 (872294)  
5 11/03/2010 (872302)  
6 11/19/2010 (873013)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |  |                 |                          |
|--------------|--|-----------------|--------------------------|
| <b>Date:</b> | <b>11/12/2009</b>  | <b>(872294)</b> | <b>CN600663256</b>       |
| Self Report? | NO   |                 | Classification: Moderate |
| Citation:    | 30 TAC Chapter 290, SubChapter F 290.109(f)(3)   |                 |                          |
| Description: | TCR MCL Violation 11/2009 - System exceeded a Maximum Contaminant Level (MCL) Violation.   |                 |                          |
| Self Report? | NO   |                 | Classification: Moderate |
| Citation:    | 30 TAC Chapter 290, SubChapter F 290.122(b)(2)(A)  |                 |                          |
| Description: | TCR PN MCL Violation 11/2009 - Failure to post public notice for exceeding a Maximum Contaminant Level (MCL) Violation.                        |                 |                          |
| <b>Date:</b> | <b>12/08/2009</b>  | <b>(872126)</b> | <b>CN600663256</b>       |
| Self Report? | NO   |                 | Classification: Moderate |
| Citation:    | 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)  |                 |                          |
| Description: | TCR Repeat Monitoring Violation 10/2009 - Failure to collect all repeats following a coliform found result.                                    |                 |                          |
| Self Report? | NO   |                 | Classification: Moderate |
| Citation:    | 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  |                 |                          |
| Description: | TCR PN Repeat Monitoring Violation 10/2009 - Failure to post a public notice for not collecting any repeats following a coliform found result. |                 |                          |
| <b>Date:</b> | <b>07/14/2010</b>  | <b>(872302)</b> | <b>CN600663256</b>       |
| Self Report? | NO   |                 | Classification: Moderate |
| Citation:    | 30 TAC Chapter 290, SubChapter F 290.109(f)(3)   |                 |                          |
| Description: | TCR MCL Violation 07/2010 - System exceeded a Maximum Contaminant Level (MCL) Violation.   |                 |                          |
| <b>Date:</b> | <b>09/03/2010</b>  | <b>(858241)</b> | <b>CN600663256</b>       |
| Self Report? | NO   |                 | Classification: Moderate |
| Citation:    | 2B TWC Chapter 13, SubChapter A 13.1395(b)(2)<br>30 TAC Chapter 290, SubChapter D 290.39(o)(1)   |                 |                          |
| Description: | Failure to submit an Emergency Preparedness Plan by the required date.   |                 |                          |

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  
LOYAL LYBARGER  
D/B/A PONDEROSA MOBILE  
HOME PARK;  
RN101456333**

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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2010-1755-MLM-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 13, 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 Loyal Lybarger d/b/a Ponderosa Mobile Home Park ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns and operates a public water system located at 10423 Olga Lane, Trailer 12 in Houston, Harris County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 23 service connections, 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). Respondent owns and operates, for compensation, equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use. Therefore, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 13 and TEX. HEALTH & SAFETY CODE ch. 341.
2. During a record review conducted on October 12, 2010, a TCEQ Central Office investigator documented that Respondent failed to adopt and submit to the Executive Director for approval by March 1, 2010, an emergency preparedness plan that demonstrates the Facility's ability to provide emergency operations.
3. During a record review conducted on October 27, 2010, a TCEQ Central Office investigator documented that Respondent:
  - a. Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform positive sample result on routine samples collected for the months of October and November 2009, and failed to provide a public notification of the failure to collect repeat samples for the months of October and November 2009;

- b. Failed to collect at least five distribution coliform samples the month following a total coliform positive sample result for the month of December 2009, and failed to provide a public notification of the failure to sample for the month of December 2009; and
  - c. Failed to comply with the Maximum Contaminant Level ("MCL") for total coliform during the months of November 2009 and July 2010, and failed to provide public notice for exceeding the MCL for total coliform for the month of November 2009.
4. Respondent received notice of the violation alleged in Findings of Fact No. 2 on or about October 27, 2010. Respondent received notice of the violations alleged in Findings of Fact Nos. 3.a. through 3.c. on or about November 24, 2010.
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 Loyal Lybarger d/b/a Ponderosa Mobile Home Park" (the "EDPRP") in the TCEQ Chief Clerk's office on May 20, 2011.
6. By letter dated May 20, 2011, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on June 8, 2011, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent failed to file an answer and failed to request a hearing.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 13, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to adopt and submit to the Executive Director for approval by March 1, 2010, an emergency preparedness plan that demonstrates the Facility's ability to provide emergency operations, in violation of TEX. WATER CODE § 13.1395(b)(2) and 30 TEX. ADMIN. CODE §§ 290.39(o)(1), 291.162(a), and 291.162(j).
3. As evidenced by Finding of Fact No. 3.a., Respondent failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform positive sample result on routine samples collected for the months of October and November 2009, and failed to provide a public notification of the failure to collect repeat samples for the months of October and November 2009, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A)(i), 290.109(c)(3)(A)(ii), and 290.122(c)(2)(A).

4. As evidenced by Finding of Fact No. 3.b., Respondent failed collect at least five distribution coliform samples the month following a total coliform positive sample result for the month of December 2009, and failed to provide a public notification of the failure to sample for the month of December 2009, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(A).
5. As evidenced by Finding of Fact No. 3.c., Respondent failed to comply with the MCL for total coliform during the months of November 2009 and July 2010, and failed to provide public notice for exceeding the MCL for total coliform for the month of November 2009, in violation of 30 TEX. ADMIN. Code §§ 290.109(f)(3) and 209.122(b)(2)(A) and TEX. HEALTH & SAFETY CODE § 341.031(a).
6. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 13.4151, TEX. HEALTH & SAFETY CODE § 341.049, and 30 TEX. ADMIN. CODE § 70.104(a).
7. As evidenced by Finding of Fact No. 7, Respondent failed to file a timely answer as required by TEX. WATER CODE § 13.4151, TEX. HEALTH & SAFETY CODE § 341.049, and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 13.4151, TEX. HEALTH & SAFETY CODE § 341.049, and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 13.4151 and TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
9. An administrative penalty in the amount of two thousand six hundred twenty dollars (\$2,620.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 13.4151 and TEX. HEALTH & SAFETY CODE § 341.049.
10. 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. Respondent is assessed an administrative penalty in the amount of two thousand six hundred twenty dollars (\$2,620.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent'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.

2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Loyal Lybarger d/b/a Ponderosa Mobile Home Park; Docket No. 2010-1755-MLM-E" to:

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

3. Respondent shall undertake the following technical requirements:

- a. Within 10 days after the effective date of this Order, Respondent shall:

- i. Implement procedures to ensure 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; and
- 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 30 days after the effective date of this Order, Respondent shall adopt and submit to the Executive Director for approval an emergency preparedness plan in accordance with 30 TEX. ADMIN. CODE § 290.39(o) using the template in 30 TEX. ADMIN. CODE § 290.47 or another emergency preparedness plan that meets the requirements of 30 TEX. ADMIN. CODE § 290.45. Respondent shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the emergency preparedness plan within 30 days after the date of such requests, or by any other deadline specified in writing. The emergency preparedness plan shall be submitted to:

Technical Review and Oversight Team, MC 159  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- c. Within 45 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 3.e., below, to demonstrate compliance with Ordering Provisions Nos. 3.a.i. and 3.b.
- d. Within 195 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 3.e., below, to demonstrate compliance with Ordering Provision Nos. 3.a.ii.

- e. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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 certifications 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:

Stephen Smith, Water Section Manager  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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 Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
8. 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.

9. 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.

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF PEIPEY TANG**

**STATE OF TEXAS**

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§  
§

**COUNTY OF TRAVIS**

"My name is Peipey Tang. 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 Loyal Lybarger d/b/a Ponderosa Mobile Home Park" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on May 20, 2011.

The EDPRP was mailed to Respondent's last known address on May 20, 2011, 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 June 8, 2011, as evidenced by the signature on the card.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's First Amended 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 Loyal Lybarger d/b/a Ponderosa Mobile Home Park" (the "EDFARP") was filed in the TCEQ Chief Clerk's office on July 19, 2011.

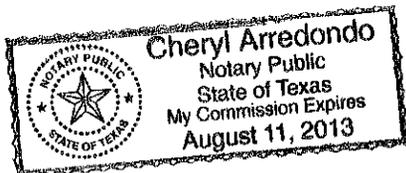
The EDFARP was mailed to Respondent's last known address on July 19, 2011, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDFARP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDFARP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since Respondent received notice of the EDPRP and the EDFARP. Respondent failed to file an answer and failed to request a hearing."

Peipey Tang  
Peipey Tang, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 18th day of August, A.D. 2011.



Cheryl Arredondo  
Notary Signature