

Executive Summary – Enforcement Matter – Case No. 40797
Oscar Benitez d/b/a Los Arcos Mexican Restaurant
RN101217511
Docket No. 2010-1939-PWS-E

Order Type:
Default Order

Findings Order Justification:
N/A

Media:
PWS

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
13811 Highway 6, Arcola, Fort Bend County

Type of Operation:
public water system

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	\$718.30
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: June 24, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed:	\$3,077
Amount Deferred for Expedited Settlement:	N/A
Amount Deferred for Financial Inability to Pay:	N/A
Total Paid to General Revenue:	\$0
Total Due to General Revenue:	\$3,077

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

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 40797
Oscar Benitez d/b/a Los Arcos Mexican Restaurant
RN101217511
Docket No. 2010-1939-PWS-E

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: November 3, 2010
Date(s) of NOV(s): May 31, 2007; April 17, 2008; May 22, 2008; December 9, 2008;
June 15, 2009; Sept. 16, 2009; October 2, 2009; January 26, 2010
Date(s) of NOE(s): November 19, 2010

Violation Information

1. Failed to comply with the maximum contaminant level (“MCL”) for total coliform for the month of April 2008 and failed to provide public notice to the persons served by the Facility for exceeding the MCL for total coliform for the month of April 2008 [30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.031(a)].
2. Failed to collect a set of four repeat samples within 24 hours of being notified of a total coliform-positive result on a routine sample collected during the month of April 2008 and failed to provide public notice to the persons served by the Facility regarding the failure to collect repeat samples during the month of April 2008 [30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A)(ii) and 290.122(c)(2)(B)].
3. Failed to collect routine distribution water samples for coliform analysis and failed to provide public notification to the persons service by the Facility regarding the failure to sample for the months of October 2008 and April, July, August, and December 2009 [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i), 290.122(c)(2)(B) and TEX. HEALTH & SAFETY CODE-§ 341.033(d)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. Within 10 days:
 - a. Implement procedures to ensure compliance with total coliform MCL and 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. This provision will be satisfied upon six consecutive months of compliant monitoring and reporting.
2. Within 195 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: April 1, 2011
Date(s) Green Card(s) Signed: Refused
Date(s) Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A

Executive Summary – Enforcement Matter – Case No. 40797
Oscar Benitez d/b/a Los Arcos Mexican Restaurant
RN101217511
Docket No. 2010-1939-PWS-E

Contact Information

TCEQ Attorneys: Steven M. Fishburn, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ Enforcement Coordinator: Raymond Marlow, Air Enforcement Section, (409) 898-3838

TCEQ Regional Contact: Elston Johnson, Water Supply Division, (512) 239- 6266

Respondent: Oscar Benitez, 13811 Highway 6, Arcola, Texas 77583

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	22-Nov-2010	Screening	2-Dec-2010	EPA Due	19-Nov-2011
	PCW	9-Mar-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	Oscar Benitez dba Los Arcos Mexican Restaurant
Reg. Ent. Ref. No.	RN101217511
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	40797	No. of Violations	3
Docket No.	2010-1939-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Raymond Marlow
		EC's Team	Enforcement Team 5
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	40.0% Enhancement	Subtotals 2, 3, & 7	\$700
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Notes	Enhancement for eight NOV's with same/similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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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	\$627	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$600	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,450
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OTHER FACTORS AS JUSTICE MAY REQUIRE	25.6%	Adjustment	\$627
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Enhancement to capture avoided costs for the violations.
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Final Penalty Amount	\$3,077
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,077
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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 offered for a Findings Order.
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PAYABLE PENALTY	\$3,077
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Screening Date 2-Dec-2010

Docket No. 2010-1939-PWS-E

PCW

Respondent Oscar Benitez dba Los Arcos Mexican Restaurant

Policy Revision 2 (September 2002)

Case ID No. 40797

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101217511

Media [Statute] Public Water Supply

Enf. Coordinator Raymond Marlow

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>)	8	40%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<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) 40%

>> 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 eight NOVs with same/similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 40%

Screening Date 2-Dec-2010

Docket No. 2010-1939-PWS-E

PCW

Respondent Oscar Benitez dba Los Arcos Mexican Restaurant

Policy Revision 2 (September 2002)

Case ID No. 40797

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101217511

Media [Statute] Public Water Supply

Enf. Coordinator Raymond Marlow

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(f)(3) and 290.122(b)(2)(B) and Tex. Health & Safety Code § 341.031(a)

Violation Description Failed to comply with the maximum contaminant level ("MCL") for total coliform for the month of April 2008 and failed to provide public notice to the persons served by the Facility for exceeding the MCL for total coliform for the month of April 2008.

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	Harm				Percent
	Falsification	Major	Moderate	Minor	
					0%
As a result of the exceedance, persons served by this Facility have been exposed to significant amounts of contaminants, which do not exceed levels that are protective of human health.					

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1 60 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$250

One monthly event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

	Before NOV	NOV to EDRP/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 \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$225

Violation Final Penalty Total \$440

This violation Final Assessed Penalty (adjusted for limits) \$440

Economic Benefit Worksheet

Respondent Oscar Benitez dba Los Arcos Mexican Restaurant
Case ID No. 40797
Req. Ent. Reference No. RN101217511
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]	\$200	1-Apr-2008	30-Apr-2008	0.00	\$0	\$200	\$200
Other (as needed)	\$25	1-May-2008	30-May-2008	0.00	\$0	\$25	\$25

Notes for AVOIDED costs

The avoided costs include the estimated amount for additional oversight to properly treat the water to prevent the presence of coliform (\$200) and to provide a public notice (\$25), calculated for the month in which the exceedance occurred and public notice was required.

Approx. Cost of Compliance \$225

TOTAL \$225

Screening Date 2-Dec-2010

Docket No. 2010-1939-PWS-E

PCW

Respondent Oscar Benitez dba Los Arcos Mexican Restaurant

Policy Revision 2 (September 2002)

Case ID No. 40797

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101217511

Media [Statute] Public Water Supply

Enf. Coordinator Raymond Marlow

Violation Number 2

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

Violation Description Failed to collect a set of four repeat samples within 24 hours of being notified of a total coliform-positive result on a routine sample collected during the month of April 2008 and failed to provide public notice to the persons served by the Facility regarding the failure to collect repeat samples during the month of April 2008.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes Failure to conduct repeat sampling and provide public notice could result in persons served by the Facility becoming exposed to significant amounts of undetected contaminants, which would exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1 30 Number of violation days

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

Violation Base Penalty \$250

One monthly event is recommended for the sampling that was not conducted.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$125

Violation Final Penalty Total \$440

This violation Final Assessed Penalty (adjusted for limits) \$440

Economic Benefit Worksheet

Respondent Oscar Benitez dba Los Arcos Mexican Restaurant
Case ID No. 40797
Req. Ent. Reference No. RN101217511
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]	\$100	1-Apr-2008	30-Apr-2008	0.00	\$0	\$100	\$100
Other (as needed)	\$25	1-May-2008	30-May-2008	0.00	\$0	\$25	\$25

Notes for AVOIDED costs

The avoided costs include the estimated amount to collect repeat samples and to provide a public notice, calculated for the month in which the exceedance occurred and public notice was required.

Approx. Cost of Compliance

\$125

TOTAL

\$125

Screening Date 2-Dec-2010

Docket No. 2010-1939-PWS-E

PCW

Respondent Oscar Benitez dba Los Arcos Mexican Restaurant

Policy Revision 2 (September 2002)

Case ID No. 40797

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101217511

Media [Statute] Public Water Supply

Enf. Coordinator Raymond Marlow

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i), 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 and failed to provide public notification to the persons served by the Facility regarding the failure to sample for the months of October 2008 and April, July, August and December 2009.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Failure to perform routine coliform monitoring and failure to provide notice could result in employees and customers of the Facility being exposed to significant amounts of undetected contaminants, which would exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 5 154 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,250

Five monthly events are recommended for the months sampling was not conducted.

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 \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$277

Violation Final Penalty Total \$2,198

This violation Final Assessed Penalty (adjusted for limits) \$2,198

Economic Benefit Worksheet

Respondent Oscar Benitez dba Los Arcos Mexican Restaurant
Case ID No. 40797
Req. Ent. Reference No. RN101217511
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]	\$125	1-Oct-2008	31-Dec-2009	2.17	\$14	\$125	\$139
Other (as needed)	\$125	30-Nov-2008	30-Jan-2010	2.08	\$13	\$125	\$138

Notes for AVOIDED costs

The one-time avoided cost and the other cost include the estimated amount to conduct routine monthly sampling (\$25 per month) and the estimated amount to provide public notice to the Facility's employees and customers (\$25 per month), calculated for the months in which routine sampling and public notice did not occur.

Approx. Cost of Compliance

\$250

TOTAL

\$277

Compliance History

Customer/Respondent/Owner-Operator: CN602509598 BENITEZ, OSCAR Classification: N/A (PWS) Rating: N/A (PWS)
 Regulated Entity: RN101217511 LOS ARCOS MEXICAN RESTAURANT Classification: N/A (PWS) Site Rating: N/A (PWS)

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0790372
 Location: 13811 HIGHWAY 6, ARCOLA, TX, 77583

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: December 02, 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: Raymond Marlow, P.G. Phone: (409) 899-8785

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? Yes
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)?

RESP	N/A
OWN	BENITEZ, OSCAR
5. When did the change(s) in owner or operator occur?

07/25/2007	RESP	N/A
	OWN	BENITEZ, OSCAR
6. Rating date: N/A Repeat Violator: N/A (PWS)

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 05/31/2007(561380)
- 2 11/03/2010 (872965)
- 3 11/17/2010 (873479)
- 4 11/17/2010 (873505)
- 5 11/17/2010 (873518)
- 6 11/17/2010 (873539)
- 7 11/17/2010 (873547)
- 8 11/19/2010 (878006)

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

Date: 05/31/2007 (561380)CN602509598
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)
Description: Failure to maintain the well site locked.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.45(d)(2)(A)(ii)
Description: Failure to provide a minimum pressure tank capacity of 220 gallons.
Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(B)(iii)
30 TAC Chapter 290, SubChapter F 290.110(c)(5)(A)
Description: Failure to monitor the chlorine residual once every seven days and record the results.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(M)
Description: Failure to provide a suitable sampling tap on the well discharge.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)
Description: Failure to initiate maintenance and housekeeping practices specifically for the well house.

Date: 04/17/2008 (872965) CN602509598
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)
Description: TCR MCL Violation 04/2008 System exceeded a Maximum Contaminant Level (MCL) Violation.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(b)(2)(B)
Description: TCR PN MCL Violation 04/2008 Failure to post a public notice for exceeding a Maximum Contaminant Level (MCL) Violation.

Date: 05/22/2008 (872965) CN602509598
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)
Description: TCR Repeat Monitoring Violation 04/2008 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)(B)
Description: TCR PN Repeat Monitoring Violation 04/2008 Failure to post a public notice for not collecting any repeats following a coliform found result.

Date: 12/09/2008 (873479) CN602509598
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: 06/15/2009 (873505) CN602509598
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: 09/16/2009 (873518)

CN602509598

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 07/2009 - 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 07/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 10/02/2009 (873539)

CN602509598

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 08/2009 - 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 08/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 01/26/2010 (873547)

CN602509598

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 12/2009 - 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 12/2009 - 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
OSCAR BENITEZ D/B/A LOS
ARCOS MEXICAN
RESTAURANT;
RN101217511**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-1939-PWS-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. 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 Oscar Benitez d/b/a Los Arcos Mexican Restaurant ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns a public water system located at 13811 Highway 6 in Arcola, Fort Bend County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately one (1) 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).
2. During a record review conducted on November 3, 2010, a TCEQ Central Office investigator documented that Respondent:
 - a. Failed to comply with the maximum contaminant level ("MCL") for total coliform for the month of April 2008, and failed to provide public notice to the persons served by the Facility for exceeding the MCL for total coliform for the month of April 2008;
 - b. Failed to collect a set of four repeat samples within 24 hours of being notified of a total coliform-positive result on a routine sample collected during the month of April 2008, and failed to provide public notice to the persons served by the Facility regarding the failure to collect repeat samples during the month of April 2008; and
 - c. Failed to collect routine distribution water samples for coliform analysis, and failed to provide public notification to the persons served by the Facility regarding the failure to sample for the months of October 2008 and April, July, August, and December 2009.

3. Respondent received notice of the violations on or about November 24, 2010.
4. 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 Oscar Benitez d/b/a Los Arcos Mexican Restaurant" (the "EDPRP") in the TCEQ Chief Clerk's office on April 1, 2011.
5. By letter dated April 1, 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. The United States Postal Service returned the EDPRP sent by certified mail as "refused."¹ The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
6. 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. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Finding of Fact No.2.a, Respondent failed to comply with the MCL for total coliform for the month of April 2008, and failed to provide public notice to the persons served by the Facility for exceeding the MCL for total coliform for the month of April 2008, in violation of TEX. HEALTH & SAFETY CODE § 341.031(a) and 30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(B).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to collect a set of four repeat samples within 24 hours of being notified of a total coliform-positive result on a routine sample collected during the month of April 2008, and failed to provide public notice to the persons served by the Facility regarding the failure to collect repeat samples during the month of April 2008, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A)(ii) and 290.122(c)(2)(B).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to collect routine distribution water samples for coliform analysis, and failed to provide public notification to the persons served by the Facility regarding the failure to sample for the months of October 2008 and April, July, August, and December 2009, in violation of TEX. HEALTH & SAFETY CODE § 341.033(d) and 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i), and 290.122(c)(2)(B).

¹ "When a letter is returned as "refused" or "unclaimed," the notice is sufficient if it is apparent that the address was valid and could be located by the postal office." *Wright v. Wentzel*, 749 S.W.2d 228, 232 (Tex. App.--Houston [1st Dist.] Mar. 31, 1988, no pet.); *Zuyus v. No'Mis Communications, Inc.*, 930 S.W.2d 743, 747 (Tex. App.--Corpus Christi Aug. 22, 1996, no pet.).

5. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
6. As evidenced by Finding of Fact No. 6, Respondent 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 Respondent and assess the penalty recommended by the Executive Director.
7. Pursuant to 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.
8. An administrative penalty in the amount of three thousand seventy-seven dollars (\$3,077.00) 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.
9. 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 three thousand seventy-seven dollars (\$3,077.00) 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: Oscar Benitez d/b/a Los Arcos Mexican Restaurant; Docket No. 2010-1939-PWS-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 compliance with total coliform MCL and 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 §§ 290.109 and 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 consecutive months of compliant monitoring and reporting.
 - b. Within 195 days after the effective date of this Order, Respondent shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 13.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

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

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

For the Commission

AFFIDAVIT OF STEVEN M. FISHBURN

STATE OF TEXAS

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COUNTY OF TRAVIS

"My name is Steven M. Fishburn. 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 Oscar Benitez d/b/a Los Arcos Mexican Restaurant" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on April 1, 2011.

The EDPRP was mailed to Respondent's last known address on April 1, 2011 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "refused." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

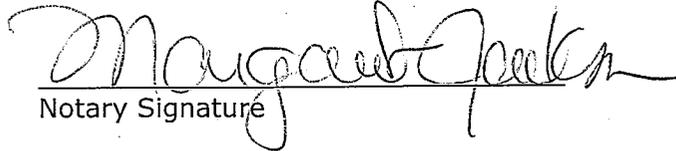
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."



Steven M. Fishburn, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Steven M. Fishburn, 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 1 day of June, A.D. 2011.



Notary Signature

