

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 47066  
Reyna A. Martinez d/b/a Reyna's Mexican Restaurant  
RN106283666  
Docket No. 2013-1159-PWS-E

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Three or more enforcement actions (NOVs) over the prior five year period for the same violations.

**Media:**

PWS

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

3100 South County Road 1210, Midland County

**Type of Operation:**

restaurant with a public water supply

**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:** November 22, 2013

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$578

**Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$178

**Total Due to General Revenue:** \$400

Payment Plan: 4 payments of \$100 each.

**Compliance History Classifications:**

Person/CN -N/A

Site/RN -N/A

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2011

**Investigation Information**

**Complaint Date(s):** N/A

**Date(s) of Investigation:** April 22, 2013

**Date(s) of NOV(s):** See Compliance History – 7 related NOVs

**Date(s) of NOE(s):** June 12, 2013

**Violation Information**

1. Failed to provide public notification for the failure to collect routine coliform monitoring samples [30 TEX. ADMIN. CODE § 290.122(c)(2)(A)].
2. Failed to provide the results of quarterly nitrates sampling to the Executive Director [30 TEX. ADMIN. CODE § 290.106(e)].
3. Failed to provide public notification for the failure to comply with the acute maximum contaminant level for nitrates [30 TEX. ADMIN. CODE § 290.122(a)(2)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

None

**Technical Requirements:**

1. Within 30 days:
  - a. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to the customers of the Facility including providing public notification for the failure to collect routine samples and providing public notification for the failure to comply with the acute maximum contaminant level for nitrates;
  - b. Either ensure that all delinquent drinking water chemical analysis results are reported to the Executive Director, including the quarterly nitrates sample results for the fourth quarter 2012, or demonstrate that a compliance schedule has been established; and
  - c. Implement improvements to the Facility's process procedures, guidance, training, and/or oversight to ensure that future drinking water chemical sample results are released by the Facility's laboratories and reported to the Executive Director within ten days of Executive Director request or of their receipt by the Facility, whichever is later.
2. Within 45 days, submit written certification to demonstrate compliance.

**Litigation Information**

**Date Petition(s) Filed:** October 21, 2013  
**Date Answer(s) Filed:** N/A  
**Settlement Date:** October 21, 2013

**Contact Information**

**TCEQ Attorneys:** Ryan Rutledge, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Garrett Arthur, Public Interest Counsel, (512) 239-6363  
**TCEQ Enforcement Coordinator:** Katy Montgomery, Enforcement Division, (210) 403-4016  
**TCEQ Regional Contact:** Michael Edmiston, Midland Regional Office, (432) 620-6119  
**Respondent Contact:** Reyna A. Martinez, 3018 South County Road 1210, Midland, Texas 79706  
**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	3-Jun-2013			
	<b>PCW</b>	8-Jul-2013	<b>Screening</b>	11-Jun-2013	<b>EPA Due</b> 31-Mar-2013

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Reyna A. Martinez dba Reyna's Mexican Restaurant				
<b>Reg. Ent. Ref. No.</b>	RN106283666				
<b>Facility/Site Region</b>	7-Midland	<b>Major/Minor Source</b>	Minor		

## CASE INFORMATION

<b>Enf./Case ID No.</b>	47066	<b>No. of Violations</b>	3
<b>Docket No.</b>	2013-1159-PWS-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Katy Montgomery
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$1,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$400

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** 35.0% Enhancement **Subtotals 2, 3, & 7** \$140

Notes: Enhancement for seven NOV's with same/similar violations.

**Culpability** No 0.0% Enhancement **Subtotal 4** \$0

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** \$0

**Economic Benefit** 0.0% Enhancement\* **Subtotal 6** \$0

Total EB Amounts	\$48	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$260	

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$540

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 7.0% **Adjustment** \$38

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to recover the avoided costs of compliance associated with Violation Nos. 1 and 3.

**Final Penalty Amount** \$578

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$578

**DEFERRAL** 0.0% Reduction **Adjustment** \$0

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

Notes: No deferral is recommended for Findings Orders.

**PAYABLE PENALTY** \$578

**Screening Date** 11-Jun-2013

**Docket No.** 2013-1159-PWS-E

**PCW**

**Respondent** Reyna A. Martinez dba Reyna's Mexican Restaura

*Policy Revision 3 (September 2011)*

**Case ID No.** 47066

*PCW Revision August 3, 2011*

**Reg. Ent. Reference No.** RN106283666

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Katy Montgomery

### 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> )	7	35%
	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)** 35%

>> **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 seven NOVs with same/similar violations.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 35%

>> **Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** 35%

<b>Screening Date</b>	11-Jun-2013	<b>Docket No.</b>	2013-1159-PWS-E	<b>PCW</b>
<b>Respondent</b>	Reyna A. Martinez dba Reyna's Mexican Restaurant			<i>Policy Revision 3 (September 2011)</i>
<b>Case ID No.</b>	47066			<i>PCW Revision August 3, 2011</i>
<b>Reg. Ent. Reference No.</b>	RN106283666			
<b>Media [Statute]</b>	Public Water Supply			
<b>Enf. Coordinator</b>	Katy Montgomery			

**Violation Number**

**Rule Cite(s)**

30 Tex. Admin. Code § 290.122(c)(2)(A)

**Violation Description**

Failed to provide public notification for the failure to collect routine coliform monitoring samples for the months of January, February, March, May and November 2012.

**Base Penalty**

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

**OR**

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Percent**

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor
<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>

**Percent**

**Matrix Notes**

100% of the rule requirement was not met.

**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"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

**Violation Base Penalty**

Five single events are recommended.

**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 checked="" 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** Reyna A. Martinez dba Reyna's Mexican Restaurant  
**Case ID No.** 47066  
**Reg. Ent. Reference No.** RN106283666  
**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)	\$100	22-Apr-2013	31-Jan-2014	0.78	\$4	n/a	\$4

**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, calculated from the date of the record review to the estimated date of compliance.

### Avoided Costs

#### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$25	1-Feb-2012	28-Feb-2013	1.99	\$2	\$25	\$27
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**  
 The avoided cost includes the estimated amount to provide public notice for the failure to collect routine coliform samples (\$5 per notice), calculated for the period that a public notice was required.

**Approx. Cost of Compliance** \$125

**TOTAL** \$31

Screening Date 11-Jun-2013

Docket No. 2013-1159-PWS-E

PCW

Respondent Reyna A. Martinez dba Reyna's Mexican Restaurant

Policy Revision 3 (September 2011)

Case ID No. 47066

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106283666

Media [Statute] Public Water Supply

Enf. Coordinator Katy Montgomery

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 290.106(e)

Violation Description

Failed to provide the results of quarterly nitrates sampling to the Executive Director for the fourth quarter of 2012.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 1

92 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$50

One quarterly event is recommended.

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 \$50

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6

Violation Final Penalty Total \$72

This violation Final Assessed Penalty (adjusted for limits) \$72

# Economic Benefit Worksheet

**Respondent** Reyna A. Martinez dba Reyna's Mexican Restaurant  
**Case ID No.** 47066  
**Reg. Ent. Reference No.** RN106283666  
**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)	\$25	31-Dec-2012	31-Jan-2014	1.08	\$0	\$2	\$2
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)	\$100	22-Apr-2013	31-Jan-2014	0.78	\$4	n/a	\$4

Notes for DELAYED costs

The delayed cost includes the estimated amount to pay any outstanding lab fees (\$25 for nitrates) so that the lab will release all drinking water chemical analysis results. The date required is the last date of the monitoring period for which results were not provided, and the final date is the estimated date of compliance. The other delayed cost includes the estimated amount to implement improvements to the Facility's process, procedures, guidance, training and/or oversight to ensure that future drinking water chemical sample results are released by the Facility's laboratories and reported to the Executive Director, calculated from the date of the record review to the estimated date of compliance.

### Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$125

**TOTAL** \$6

Screening Date 11-Jun-2013

Docket No. 2013-1159-PWS-E

PCW

Respondent Reyna A. Martinez dba Reyna's Mexican Restaurant

Policy Revision 3 (September 2011)

Case ID No. 47066

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106283666

Media [Statute] Public Water Supply

Enf. Coordinator Katy Montgomery

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 290.122(a)(2)

Violation Description

Failed to provide public notification for the failure to comply with the acute maximum contaminant level for nitrates for the third and fourth quarters of 2012.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 2

184 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$100

Two single events are recommended.

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 \$100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$11

Violation Final Penalty Total \$145

This violation Final Assessed Penalty (adjusted for limits) \$145

# Economic Benefit Worksheet

**Respondent** Reyna A. Martinez dba Reyna's Mexican Restaurant  
**Case ID No.** 47066  
**Reg. Ent. Reference No.** RN106283666  
**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

The delayed costs of compliance are captured in the economic benefit for Violation No. 1.

### 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]	\$10	14-Aug-2012	1-Jan-2013	1.30	\$1	\$10	\$11
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount to provide public notice for the failure to comply with the acute maximum contaminant level for nitrates (\$5 per notice x 2 notices), calculated for the period that public notice was required.

Approx. Cost of Compliance

\$10

**TOTAL**

\$11

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



# Compliance History Report

**PUBLISHED** Compliance History Report for CN603992744, RN106283666, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

**Customer, Respondent, or Owner/Operator:** CN603992744, Reyna A. Martinez

**Classification:** NOT APPLICABLE **Rating:** N/A

**Regulated Entity:** RN106283666, REYNA'S MEXICAN RESTAURANT

**Classification:** NOT APPLICABLE **Rating:** N/A

**Complexity Points:** N/A

**Repeat Violator:** N/A

**CH Group:** 14 - Other

**Location:** 3100 SOUTH COUNTY ROAD 1210, MIDLAND COUNTY, TEXAS

**TCEQ Region:** REGION 07 - MIDLAND

**ID Number(s):**

**PUBLIC WATER SYSTEM/SUPPLY REGISTRATION** 1650131

**Compliance History Period:** September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

**Date Compliance History Report Prepared:** June 11, 2013

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** June 10, 2008 to June 10, 2013

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** Katy Montgomery

**Phone:** (210) 403-4016

## Site and Owner/Operator History:

- 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 for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

## Components (Multimedia) for the Site Are Listed in Sections A - J

**A. Final Orders, court judgments, and consent decrees:**

N/A

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**

N/A

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

- |          |  |                          |
|----------|--|--------------------------|
| <b>1</b> | <b>Date:</b> 06/14/2012 (1087887)  | <b>CN603992744</b>       |
|          | Self Report? NO  | Classification: Moderate |
|          | Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)<br>30 TAC Chapter 290, SubChapter F 290.122(f)   |                          |
|          | Description: JAN/2012 TCR Routine MR PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct routine coliform monitoring for the month of 01/2012. |                          |
| <br>     |  |                          |
| <b>2</b> | <b>Date:</b> 07/06/2012 (1087887)  | <b>CN603992744</b>       |
|          | Self Report? NO  | Classification: Moderate |
|          | Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)<br>30 TAC Chapter 290, SubChapter F 290.122(f)   |                          |
|          | Description: FEB/2012 TCR Routine MR PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct routine coliform monitoring for the month of 02/2012. |                          |



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
REYNA A. MARTINEZ D/B/A  
REYNA'S MEXICAN RESTAURANT;  
RN106283666**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2013-1159-PWS-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Reyna A. Martinez d/b/a Reyna's Mexican Restaurant ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent presented this Agreed Order to the Commission.

Respondent understands that she has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Respondent.

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

### **FINDINGS OF FACT**

1. Respondent owns and operates a restaurant with a public water supply at 3100 South County Road 1210 in Midland County, Texas (the "Facility") that has one service connection and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(66).
2. During a record review conducted on April 22, 2013, a TCEQ Central Office investigator documented that Respondent:
  - a. Failed to provide public notification for the failure to collect routine coliform monitoring samples for the months of January, February, March, May, and November 2012;
  - b. Failed to provide the results of quarterly nitrates sampling to the Executive Director for the fourth quarter of 2012; and
  - c. Failed to provide public notification for the failure to comply with the acute maximum contaminant level for nitrates for the third and fourth quarters of 2012.
3. Respondent received notice of the violations on or about June 17, 2013.

### 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 provide public notification for the failure to collect routine coliform monitoring samples, in violation of 30 TEX. ADMIN. CODE § 290.122(c)(2)(A).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to provide the results of quarterly nitrates sampling to the Executive Director, in violation of 30 TEX. ADMIN. CODE § 290.106(e).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to provide public notification for the failure to comply with the acute maximum contaminant level for nitrates, in violation of 30 TEX. ADMIN. CODE § 290.122(a)(2).
5. 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.
6. An administrative penalty in the amount of five hundred seventy-eight dollars (\$578.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049. Respondent paid one hundred seventy-eight dollars (\$178.00) of the administrative penalty. The remaining amount of four hundred dollars (\$400.00) of the administrative penalty shall be payable in four (4) monthly payments of one hundred dollars (\$100.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

### ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 6, above, 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 Agreed Order resolve only the matters set forth by this Agreed Order in this action. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Reyna A. Martinez d/b/a Reyna's Mexican Restaurant, Docket No. 2013-1159-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

2. Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, Respondent shall:
    - i. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to the customers of the Facility including providing public notification for the failure to collect routine samples and providing public notification for the failure to comply with the acute maximum contaminant level for nitrates, in accordance with 30 TEX. ADMIN. CODE § 290.122;
    - ii. Either ensure that all delinquent drinking water chemical analysis results are reported to the Executive Director, including the quarterly nitrates sample results for the fourth quarter 2012, or demonstrate that a compliance schedule has been established, in accordance with 30 TEX. ADMIN. CODE § 290.106; and
    - iii. Implement improvements to the Facility's process procedures, guidance, training, and/or oversight to ensure that future drinking water chemical sample results are released by the Facility's laboratories and reported to the Executive Director within ten days of Executive Director request or of their receipt by the Facility, whichever is later, in accordance with 30 TEX. ADMIN. CODE § 290.106 (Inorganic Contaminants).
  - b. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provision No. 2.a. The certification 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 fine and imprisonment for knowing violations."

Respondent shall submit the written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

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

3. All relief not expressly granted in this Agreed Order is denied.
4. The provisions of this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by 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.
6. This Agreed Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
8. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
9. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
10. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

**SIGNATURE PAGE**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

\_\_\_\_\_  
For the Commission

*M. Sweeney*  
For the Executive Director

*January 29, 2014*  
Date

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

I also understand that failure to comply with the Ordering Provisions in this Agreed Order and/or failure to timely pay the penalty amount may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

*Reyna A. Martinez*  
Signature - Reyna A. Martinez

*10-21-2013*  
Date