

DON AYALAS MEXICAN RESTAURANT AND CLUB, INC. d/b/a Don Ayalas Mexican Restaurant
RN102683273
Docket No. 2013-0780-PWS-E

Order Type:

Default Order

Media:

PWS

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

6104 Rollins Road, Granbury, Hood County

Type of Operation:

public water supply

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	\$379.80
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: November 8, 2013

Comments Received: None

Penalty Information

Total Penalty Assessed: \$575

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$575

Compliance History Classifications:

Person/CN –N/A

Site/RN – N/A

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2002 (PCW 1); September 2011 (PCW 2)

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: March 4, 2013
Date(s) of NOV(s): N/A
Date(s) of NOE(s): April 3, 2013

Violation Information

1. Failed to collect raw groundwater source *E. coli* samples from all active sources within 24 hours of being notified of a distribution total coliform-positive result on a routine sample [30 TEX. ADMIN. CODE § 290.109(c)(4)(B)].
2. Failed to provide the results of annual nitrate sampling to the Executive Director [30 TEX. ADMIN. CODE § 290.106(e)].
3. Failed to pay outstanding Public Health Service (PHS) fees for Fiscal Years 2012 and 2013, including any associated late fees and penalties, for TCEQ Financial Account No. 91110099 [TEX. WATER CODE § 5.702 and 30 TEX. ADMIN. CODE § 290.51(a)(6)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent no longer operates the public water system located at the Facility as of October 2013.

Technical Requirements:

1. Within 30 days, pay all outstanding fees, including any associated penalties and interest.
2. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: August 8, 2013; September 5, 2013
Date Green Card(s) Signed: Unclaimed; Unclaimed
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: David A. Terry, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Blas Coy, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Remington Burkland, Enforcement Division, (512) 239-2611

TCEQ Regional Contact: Jeff Tate, Dallas/Fort Worth Regional Office, (817) 588-5800

Respondent: Simon Ramos, President, DON AYALAS MEXICAN RESTAURANT AND CLUB, INC.,
6104 Rollins Road, Granbury, Texas 76049

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	8-Apr-2013	Screening	19-Apr-2013	EPA Due	30-Jun-2012
	PCW	9-Jul-2013				

RESPONDENT/FACILITY INFORMATION

Respondent	DON AYALAS MEXICAN RESTAURANT AND CLUB, INC.		
Reg. Ent. Ref. No.	RN102683273		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	46699	No. of Violations	1
Docket No.	2013-0780-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Remington Burklund
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

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

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 19-Apr-2013

Docket No. 2013-0780-PWS-E

PCW

Respondent DON AYALAS MEXICAN RESTAURANT AND CLUB, INC.

Policy Revision 2 (September 2002)

Case ID No. 46699

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102683273

Media [Statute] Public Water Supply

Enf. Coordinator Remington Burklund

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>)	0	0%
	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) 0%

>> **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

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date	19-Apr-2013	Docket No.	2013-0780-PWS-E	PCW
Respondent	DON AYALAS MEXICAN RESTAURANT AND CLUB, INC.			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	46699			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN102683273			
Media [Statute]	Public Water Supply			
Enf. Coordinator	Remington Burklund			

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 290.109(c)(4)(B)

Violation Description

Failed to collect raw groundwater source Escherichla coli samples from all active sources within 24 hours of being notified of a distribution total coliform-positive result on a routine sample during the month of September 2010.

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 checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>

Percent

>> **Programmatic Matrix**

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

Percent

Matrix Notes

Failure to perform raw groundwater source monitoring could result in persons served by the Facility being exposed to undetected contaminants, which would exceed levels protective of human health.

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input checked="" 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.

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 DON AYALAS MEXICAN RESTAURANT AND CLUB, INC.
Case ID No. 46699
Reg. Ent. Reference No. RN102683273
Media Violation No. Public Water Supply
 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	15-Sep-2010	16-Sep-2010	0.00	\$0	\$25	\$25
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount to collect one raw groundwater source sample (\$25 per sample), calculated for the 24-hour period following the coliform-positive result.

Approx. Cost of Compliance \$25

TOTAL \$25



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	8-Apr-2013	Screening	19-Apr-2013	EPA Due	30-Jun-2012
	PCW	9-Jul-2013				

RESPONDENT/FACILITY INFORMATION

Respondent	DON AYALAS MEXICAN RESTAURANT AND CLUB, INC.	
Reg. Ent. Ref. No.	RN102683273	
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No.	46699	No. of Violations	2
Docket No.	2013-0780-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Remington Burklund
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **0.0%** Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability **0.0%** Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit **0.0%** Enhancement* **Subtotal 6**

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

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 19-Apr-2013

Docket No. 2013-0780-PWS-E

PCW

Respondent DON AYALAS MEXICAN RESTAURANT AND CLUB,

Policy Revision 3 (September 2011)

Case ID No. 46699

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102683273

Media [Statute] Public Water Supply

Enf. Coordinator Remington Burklund

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>)	0	0%
	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)

>> **Repeat Violator (Subtotal 3)**

Adjustment Percentage (Subtotal 3)

>> **Compliance History Person Classification (Subtotal 7)**

Adjustment Percentage (Subtotal 7)

>> **Compliance History Summary**

Compliance History Notes

No adjustment for compliance history.

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

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100%

Screening Date	19-Apr-2013	Docket No.	2013-0780-PWS-E	PCW
Respondent	DON AYALAS MEXICAN RESTAURANT AND CLUB, INC.			<i>Policy Revision 3 (September 2011)</i>
Case ID No.	46699			<i>PCW Revision August 3, 2011</i>
Reg. Ent. Reference No.	RN102683273			
Media [Statute]	Public Water Supply			
Enf. Coordinator	Remington Burklund			

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

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

OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="15.0%"/>

>> **Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0.0%"/>
	<input type="text" value="100% of the rule requirement was not met."/>				

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text" value="x"/>
	single event	<input type="text"/>

Violation Base Penalty

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

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 DON AYALAS MEXICAN RESTAURANT AND CLUB, INC.
Case ID No. 46699
Reg. Ent. Reference No. RN102683273
Media Violation No. Public Water Supply
 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)	\$50	31-Dec-2011	1-Sep-2013	1.67	\$0	\$6	\$6
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	\$250	4-Mar-2013	1-Sep-2013	0.50	\$6	n/a	\$6
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 pay any outstanding lab fees so that the lab will release the nitrate/nitrite results (\$25 x2 reports) and update the Facility's operational guidance and conduct employee training to ensure that all sampling and reporting requirements are properly accomplished, calculated from the last date of the first monitoring period for which results were not provided and the record review date to the estimated date of compliance.

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance	\$300	TOTAL	\$12
-----------------------------------	-------	--------------	------

Screening Date 19-Apr-2013 **Docket No.** 2013-0780-PWS-E **PCW**
Respondent DON AYALAS MEXICAN RESTAURANT AND CLUB, INC. *Policy Revision 3 (September 2011)*
Case ID No. 46699 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN102683273
Media [Statute] Public Water Supply
Enf. Coordinator Remington Burklund

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 290.51(a)(6) and Tex. Water Code § 5.702

Violation Description

Failed to pay outstanding public health service ("PHS") fees, for Fiscal Years 2012 and 2013, including any associated late fees and penalties, for TCEQ Financial Account No. 91110099 .

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 type="text"/>	<input type="text"/>	<input type="text"/>

Percent

Matrix Notes

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 type="text"/>

Violation Base Penalty

No additional administrative penalty was calculated for this violation as penalties and interest will be assessed on the next billing cycle.

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"/>	(mark with x)

Notes

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 DON AYALAS MEXICAN RESTAURANT AND CLUB, INC.
Case ID No. 46699
Reg. Ent. Reference No. RN102683273
Media Violation No. Public Water Supply
 2

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description 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

N/A

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

N/A

Approx. Cost of Compliance

TOTAL

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 CN601362254, RN102683273, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN601362254, DON AYALAS MEXICAN RESTAURANT AND CLUB, INC. **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN102683273, DON AYALAS MEXICAN RESTAURANT **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: 6104 ROLLINS RD GRANBURY, TX 76049-6448, HOOD COUNTY

TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s): **PUBLIC WATER SYSTEM/SUPPLY** REGISTRATION 1110099

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

Date Compliance History Report Prepared: April 18, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: April 18, 2008 to April 18, 2013

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

Name: Remington Burklund **Phone:** (512) 239-2611

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.):

Item 1 April 17, 2009 (736652)

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.

N/A

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

THIS PAGE INTENTIONALLY LEFT BLANK

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DON AYALAS MEXICAN
RESTAURANT AND CLUB, INC.
D/B/A DON AYALAS
MEXICAN RESTAURANT;
RN102683273**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

§
§
§
§
§
§
§

DEFAULT ORDER

DOCKET NO. 2013-0780-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. WATER CODE ch. 5, 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 DON AYALAS MEXICAN RESTAURANT AND CLUB, INC. d/b/a Don Ayalas Mexican Restaurant ("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 6104 Rollins Road in Granbury, Hood County, Texas (the "Facility"). The Facility provides water for human consumption, has one service connection, and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(66).
2. During a record review conducted on March 4, 2013, a TCEQ Central Office investigator documented that Respondent:
 - a. Failed to collect raw groundwater source *Escherichia coli* ("*E. coli*") samples from all active sources within 24 hours of being notified of a distribution total coliform-positive result on a routine sample during the month of September 2010;
 - b. Failed to provide the results of annual nitrate sampling to the Executive Director for the 2011 and 2012 monitoring periods; and
 - c. Failed to pay outstanding public health service ("PHS") fees for Fiscal Years 2012 and 2013, including any associated late fees and penalties, for TCEQ Financial Account No. 91110099.
3. Respondent received notice of the violations on or about April 8, 2013.
4. The Executive Director recognizes that Respondent no longer operates the public water system located at the Facility as of October 2013.
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 DON AYALAS MEXICAN RESTAURANT AND CLUB, INC. d/b/a Don

Ayalas Mexican Restaurant" (the "EDPRP") in the TCEQ Chief Clerk's office on August 8, 2013.

6. The EDPRP was mailed to Respondent's last known address on August 8, 2013, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."
7. The Executive Director re-filed the EDPRP in the TCEQ Chief Clerk's office on September 5, 2013.
8. By letter dated September 5, 2013, 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 "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
9. 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.

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. 5, 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 collect raw groundwater source *E. coli* samples from all active sources within 24 hours of being notified of a distribution total coliform-positive result on a routine sample, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(4)(B).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to provide the results of annual nitrate 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 pay outstanding PHS fees for Fiscal Years 2012 and 2013, including any associated late fees and penalties, for TCEQ Financial Account No. 91110099, in violation of TEX. WATER CODE § 5.702 and 30 TEX. ADMIN. CODE § 290.51(a)(6).
5. As evidenced by Findings of Fact Nos. 5 through 8, 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. 9, 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 five hundred seventy-five dollars (\$575.00) 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 five hundred seventy-five dollars (\$575.00) 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: DON AYALAS MEXICAN RESTAURANT AND CLUB, INC. d/b/a Don Ayalas Mexican Restaurant; Docket No. 2013-0780-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 30 days after the effective date of this Order, Respondent shall pay all outstanding fees, including any associated penalties and interest, with the notation "Re: DON AYALAS MEXICAN RESTAURANT AND CLUB, INC. d/b/a Don Ayalas Mexican Restaurant, TCEQ Financial Account No. 91110099, to:

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

- b. Within 45 days after the effective date of this Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provision No. 3.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

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 DAVID A. TERRY

STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

"My name is David A. Terry. 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.

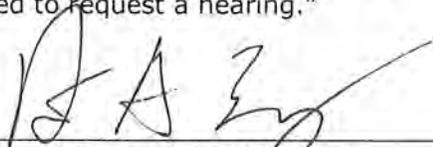
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of DON AYALAS MEXICAN RESTAURANT AND CLUB, INC. d/b/a Don Ayalas Mexican Restaurant" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on August 8, 2013.

The EDPRP was mailed to Respondent's last known address on August 8, 2013, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the EDPRP was re-filed in the TCEQ Chief Clerk's office on September 5, 2013.

The EDPRP was mailed to Respondent's last known address on September 5, 2013, 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 "unclaimed." 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."



David A. Terry, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared David A. Terry, 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 16th day of October, A.D. 2013.

Notary Signature 
Notary without Bond