

**Executive Summary – Enforcement Matter – Case No. 48181**  
**Tommy Fisher dba Acuff Steak House**  
**RN102319571**  
**Docket No. 2014-0137-PWS-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

**Media:**

PWS

**Small Business:**

Yes

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

Acuff Steak House, 11599 East Farm-to-Market Road 40, Lubbock County

**Type of Operation:**

Restaurant with a public water supply

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** June 13, 2014

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$6,480

**Amount Deferred for Expedited Settlement:** \$6,480

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

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - N/A

Site/RN - N/A

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002 and September 2011

***Investigation Information***

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

**Complaint Information:** N/A

**Date(s) of Investigation:** December 16, 2013

**Date(s) of NOE(s):** January 17, 2014

**Executive Summary – Enforcement Matter – Case No. 48181**  
**Tommy Fisher dba Acuff Steak House**  
**RN102319571**  
**Docket No. 2014-0137-PWS-E**

***Violation Information***

Failed to comply with the acute maximum contaminant level ("MCL") of 10 milligrams per liter for nitrate [30 TEX. ADMIN. CODE § 290.106(f)(2) and TEX. HEALTH & SAFETY CODE § 341.031(a)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to:

- a. Within 120 days, complete a feasibility study, or update an existing feasibility study, and submit a written report or engineering study conducted by a Texas registered professional engineer regarding the results of the feasibility study to evaluate the necessary corrective actions designed to achieve compliance with the acute MCL for nitrate. The report shall include a tentative schedule describing additional studies, tests, or other methods that may be utilized for the completion of necessary corrective actions within 1,095 days. If the Respondent purchases or sells water, a copy of the purchase water contract must be submitted with the feasibility study report or engineering study;
- b. Within 135 days, submit written certification to demonstrate compliance with Ordering Provision a.;
- c. Within 180 days, submit an acceptable written plan, including a proposed schedule, to the Executive Director that provides for the completion of an alternate water source or treatment technology;
- d. Within 180 days, and on a semi-annual basis thereafter, submit progress reports. These reports shall include information regarding actions taken to provide water which meets the acute MCL for nitrate;
- e. Within 195 days, submit written certification to demonstrate compliance with Ordering Provision c.;
- f. Within 1,095 days, return to compliance with the acute MCL for nitrate; and
- g. Within 1,110 days, submit written certification to demonstrate compliance with Ordering Provision f.

**Executive Summary – Enforcement Matter – Case No. 48181  
Tommy Fisher dba Acuff Steak House  
RN102319571  
Docket No. 2014-0137-PWS-E**

***Litigation Information***

**Date Petition(s) Filed:** N/A  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A  
**TCEQ Enforcement Coordinator:** Abigail Lindsey, Enforcement Division,  
Enforcement Team 2, MC 169, (512) 239-2576; Candy Garrett, Enforcement Division,  
MC 219, (512) 239-1456  
**TCEQ SEP Coordinator:** N/A  
**Respondent:** Tommy Fisher, Owner, Acuff Steak House, 523 Comanche Drive,  
Lubbock, Texas 79404  
**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	21-Jan-2014	<b>Screening</b>	23-Jan-2014	<b>EPA Due</b>	31-Dec-2009
	<b>PCW</b>	27-Jan-2014				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Tommy Fisher dba Acuff Steak House		
<b>Reg. Ent. Ref. No.</b>	RN102319571		
<b>Facility/Site Region</b>	2-Lubbock	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	48181	<b>No. of Violations</b>	1	
<b>Docket No.</b>	2014-0137-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>	Abigail Lindsey	
		<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** **\$1,500**

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

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

**Compliance History** **30.0%** Enhancement **Subtotals 2, 3, & 7** **\$450**

Notes: Enhancement for two NOVs with same/similar violations and one agreed order with a denial of liability.

**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** **50.0%** Enhancement\* **Subtotal 6** **\$750**

Total EB Amounts **\$23,359**  
 Approx. Cost of Compliance **\$40,000**  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$2,700**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount** **\$2,700**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$2,700**

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

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

Notes

No deferral is recommended for Findings Orders.

**PAYABLE PENALTY** **\$2,700**

**Screening Date** 23-Jan-2014

**Docket No.** 2014-0137-PWS-E

**PCW**

**Respondent** Tommy Fisher dba Acuff Steak House

Policy Revision 2 (September 2002)

**Case ID No.** 48181

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN102319571

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Abigail Lindsey

**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> )	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	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)** 30%

>> **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 two NOVs with same/similar violations and one agreed order with a denial of liability.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 30%

Screening Date 23-Jan-2014

Docket No. 2014-0137-PWS-E

PCW

Respondent Tommy Fisher dba Acuff Steak House

Policy Revision 2 (September 2002)

Case ID No. 48181

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102319571

Media [Statute] Public Water Supply

Enf. Coordinator Abigail Lindsey

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.106(f)(2) and Tex. Health & Safety Code § 341.031(a)

Violation Description Failed to comply with the acute maximum contaminant level ("MCL") of 10 milligrams per liter ("mg/L") for nitrate. Specifically, it was documented that the single sample concentration for nitrate was 23 mg/L for the first quarter of 2009, 11 mg/L for the third quarter 2009, and 13 mg/L for the second quarter of 2011.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	x			50%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Exceeding the acute MCL for nitrate caused the customers of the Facility to be exposed to pollutants which exceed levels protective of human health.

Adjustment \$500

\$500

Violation Events

Number of Violation Events 3 270 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,500

Three quarterly events are 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 \$1,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$23,359

Violation Final Penalty Total \$2,700

This violation Final Assessed Penalty (adjusted for limits) \$2,700

# Economic Benefit Worksheet

**Respondent** Tommy Fisher dba Acuff Steak House  
**Case ID No.** 48181  
**Req. Ent. Reference No.** RN102319571  
**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	Overtime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$40,000	31-Mar-2009	1-Aug-2017	8.34	\$1,112	\$22,247	\$23,359
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

The delayed cost includes the estimated amount to investigate, identify, and implement the necessary corrective actions to return to compliance with the acute MCL for nitrate, calculated from the last day of the first quarter of noncompliance 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

\$40,000

**TOTAL**

\$23,359



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

**DATES** Assigned  PCW  Screening  EPA Due

## RESPONDENT/FACILITY INFORMATION

Respondent   
 Reg. Ent. Ref. No.   
 Facility/Site Region  Major/Minor Source

## CASE INFORMATION

Enf./Case ID No.  No. of Violations   
 Docket No.  Order Type   
 Media Program(s)  Government/Non-Profit   
 Multi-Media  Enf. Coordinator   
 EC's Team

Admin. Penalty \$ Limit Minimum  Maximum

## 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 23-Jan-2014

Docket No. 2014-0137-PWS-E

PCW

Respondent Tommy Fisher dba Acuff Steak House

Policy Revision 3 (September 2011)

Case ID No. 48181

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102319571

Media [Statute] Public Water Supply

Enf. Coordinator Abigail Lindsey

### 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> )	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	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) 30%

#### >> 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 two NOVs with same/similar violations and one agreed order with a denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 30%

#### >> Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 30%

Screening Date 23-Jan-2014

Docket No. 2014-0137-PWS-E

PCW

Respondent Tommy Fisher dba Acuff Steak House

Policy Revision 3 (September 2011)

Case ID No. 48181

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102319571

Media [Statute] Public Water Supply

Enf. Coordinator Abigail Lindsey

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 290.106(f)(2) and Tex. Health & Safety Code § 341.031(a)

Violation Description

Failed to comply with the acute maximum contaminant level ("MCL") of 10 milligrams per liter ("mg/L") for nitrate. Specifically, it was documented that the single sample concentration for nitrate was 14 mg/L for the fourth quarter of 2011, 16 mg/L for the first quarter 2012, 19 mg/L for the second quarter of 2012, 18 mg/L for the third quarter of 2012, 20 mg/L for the fourth quarter 2012, 20 mg/L for the first quarter 2013, and 19 mg/L for the second quarter 2013.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual		x			30.0%
Potential					

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

Matrix Notes

Exceeding the acute MCL for nitrate caused the customers of the Facility to be exposed to pollutants which exceed levels protective of human health.

Adjustment \$700

\$300

Violation Events

Number of Violation Events 7 Number of violation days 638

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

Violation Base Penalty \$2,100

Seven quarterly events are recommended.

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDPRP/Settlement Offer

\$0

Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal \$2,100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$23,359

Violation Final Penalty Total \$3,780

This violation Final Assessed Penalty (adjusted for limits) \$3,780

# Economic Benefit Worksheet

**Respondent** Tommy Fisher dba Acuff Steak House

**Case ID No.** 48181

**Reg. Ent. Reference No.** RN102319571

**Media** Public Water Supply

**Violation No.** 1

**Percent Interest** 5.0  
**Years of Depreciation** 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)	\$40,000	31-Mar-2009	1-Aug-2017	8.34	\$1,112	\$22,247	\$23,359
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

The delayed cost includes the estimated amount to investigate, identify, and implement the necessary corrective actions to return to compliance with the acute MCL for nitrate, calculated from the last day of the first quarter of noncompliance to the estimated date of compliance.

**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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$40,000

**TOTAL**

\$23,359

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.



## TCEQ Compliance History Report

**PUBLISHED** Compliance History Report for CN601225550, RN102319571, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

**Customer, Respondent, or Owner/Operator:** CN601225550, Tommy Fisher      **Classification:** NOT APPLICABLE      **Rating:** N/A

**Regulated Entity:** RN102319571, ACUFF STEAK HOUSE      **Classification:** NOT APPLICABLE      **Rating:** N/A

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

**CH Group:** 14 - Other

**Location:** 11599 EAST FARM-TO-MARKET ROAD 40, LUBBOCK COUNTY, TEXAS

**TCEQ Region:** REGION 02 - LUBBOCK

**ID Number(s):**

PUBLIC WATER SYSTEM/SUPPLY REGISTRATION  
1520120

**Compliance History Period:** September 01, 2008 to August 31, 2013      **Rating Year:** 2013      **Rating Date:** 09/01/2013

**Date Compliance History Report Prepared:** January 22, 2014

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** January 22, 2009 to January 22, 2014

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

**Name:** Abigail Lindsey

**Phone:** (512) 239-2576

**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:**

- 1      Effective Date: 12/09/2013      ADMINORDER 2012-1403-PWS-E (1660 Order-Agreed Order With Denial)  
    Classification: Moderate  
    Citation: 30 TAC Chapter 290, SubChapter F 290.106(e)  
    Description: Failed to provide the results of triennial metal sampling to the Executive Director.  
    Classification: Moderate  
    Citation: 30 TAC Chapter 290, SubChapter F 290.106(e)  
    Description: Failed to provide the results of quarterly nitrate sampling to the Executive Director.  
    Classification: Moderate  
    Citation: 30 TAC Chapter 290, SubChapter F 290.106(e)  
    Description: Failed to provide the results of quarterly nitrate sampling to the Executive Director.  
    Classification: Moderate  
    Citation: 30 TAC Chapter 290, SubChapter F 290.106(e)  
    Description: Failed to provide the results of quarterly nitrate sampling to the Executive Director.  
    Classification: Moderate  
    Citation: 30 TAC Chapter 290, SubChapter F 290.106(e)  
    Description: Failed to provide the results of quarterly nitrate sampling to the Executive Director.

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

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

Item 1	November 16, 2010	(877657)
Item 2	August 19, 2013	(1113987)

**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.

- |   |              |  |           |                       |
|---|--------------|--|-----------|-----------------------|
| 1 | Date:        | 02/22/2013   | (1139753) | CN601225550           |
|   | Self Report? | NO   |           | Classification: Major |
|   | Citation:    | 30 TAC Chapter 290, SubChapter F 290.106(f)(2)   |           |                       |
|   | Description: | NO3 AMCL 1Q2013 - This system exceeded the MCL of 10 mg/L for nitrate (as nitrogen) with a sample result of 20 mg/L collected on 02/05/2013. |           |                       |
| 2 | Date:        | 05/17/2013   | (1139753) | CN601225550           |
|   | Self Report? | NO   |           | Classification: Major |
|   | Citation:    | 30 TAC Chapter 290, SubChapter F 290.106(f)(2)   |           |                       |
|   | Description: | NO3 AMCL 2Q2013 - This system exceeded the MCL of 10 mg/L for nitrate (as nitrogen) with a sample result of 19 mg/L collected on 05/02/2013. |           |                       |

**F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



<b>IN THE MATTER OF AN</b>	<b>§</b>	<b>BEFORE THE</b>
<b>ENFORCEMENT ACTION</b>	<b>§</b>	
<b>CONCERNING</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>TOMMY FISHER DBA ACUFF STEAK</b>	<b>§</b>	
<b>HOUSE</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>RN102319571</b>	<b>§</b>	

**AGREED ORDER**  
**DOCKET NO. 2014-0137-PWS-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Tommy Fisher dba Acuff Steak House (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that he 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, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement 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 the Respondent.

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

## I. FINDINGS OF FACT

1. The Respondent owns and operates a restaurant with a public water supply at 11599 East Farm-to-Market Road 40 in Lubbock County, Texas (the "Facility") that has approximately two nonresidential service connections and one residential service connection and serves at least 25 people per day for at least 60 days per year.
2. During a record review conducted on December 16, 2013, TCEQ staff documented that the single sample concentration for nitrate was 23 milligrams per liter ("mg/L") for the first quarter of 2009, 11 mg/L for the third quarter of 2009, 13 mg/L for the second quarter 2011, 14 mg/L for the fourth quarter 2011, 16 mg/L for the first quarter 2012, 19 mg/L for the second quarter 2012, 18 mg/L for the third quarter 2012, 20 mg/L for the fourth quarter 2012, 20 mg/L for the first quarter 2013, and 19 mg/L for the second quarter 2013.
3. The Respondent received notice of the violations on February 5, 2014.

## II. CONCLUSIONS OF LAW

1. The 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 Findings of Fact No. 2, the Respondent failed to comply with the acute maximum contaminant level ("MCL") of 10 mg/L for nitrate, in violation of 30 TEX. ADMIN. CODE § 290.106(f)(2) and TEX. HEALTH & SAFETY CODE § 341.031(a).
3. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Six Thousand Four Hundred Eighty Dollars (\$6,480) 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(b). Six Thousand Four Hundred Eighty Dollars (\$6,480) of the administrative penalty is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order and shall be waived only upon full compliance with all the the terms and conditions contained in this Agreed Order. If the Respondent fails to timely and satisfactorily comply with any requirement contained in this Agreed Order, the deferred amount of the administrative penalty shall become immediately due and payable without demand or notice, and the Executive Director may request the Respondent to pay all or part of the deferred administrative penalty.

### III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Six Thousand Four Hundred Eighty Dollars (\$6,480) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Tommy Fisher dba Acuff Steak House, Docket No. 2014-0137-PWS-E" to:

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

2. The Respondent shall undertake the following technical requirements:
  - a. Within 120 days after the effective date of this Agreed Order, complete a feasibility study, or update an existing feasibility study, and submit a written report or engineering study conducted by a Texas registered professional engineer regarding the results of the feasibility study to evaluate the necessary corrective actions designed to achieve compliance with the acute MCL for nitrate. The report shall include a tentative schedule describing additional studies, tests, or other methods that may be utilized for the completion of necessary corrective actions within 1,095 days after the effective date of this Agreed Order. If the Respondent purchases or sells water, a copy of the purchase water contract must be submitted with the feasibility study report or engineering study. The evaluation shall be sent to the addresses listed in Ordering Provision No. 2.g.;
  - b. Within 135 days after the effective date of this Agreed Order, submit written certification as described in Ordering provision No. 2.g. below to demonstrate compliance with Ordering Provision No. 2.a.;
  - c. Within 180 days after the effective date of this Agreed Order, submit an acceptable written plan, including a proposed schedule, to the Executive Director that provides for the completion of an alternate water source or treatment technology to the addresses listed in Ordering Provision No. 2.g.;
  - d. Within 180 days after the effective date of this Agreed Order, and on a semi-annual basis thereafter, submit progress reports to the addresses listed in

Ordering Provision No. 2.g. below. These reports shall include information regarding actions taken to provide water which meets the acute MCL for nitrate;

- e. Within 195 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.g. below to demonstrate compliance with Ordering Provision No. 2.c.;
- f. Within 1,095 days after the effective date of this Agreed Order return to compliance with the acute MCL for nitrate, in accordance with 30 TEX. ADMIN. CODE § 290.106; and
- g. Within 1,110 days after the effective date of this Agreed Order, 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. 2.f. 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:

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

and to:

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

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. 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 the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
6. 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.
7. This Agreed Order, issued by the Commission, shall not be admissible against the 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.
8. 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.
9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

Tommy Fisher dba Acuff Steak House  
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### SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

7/7/14

Date

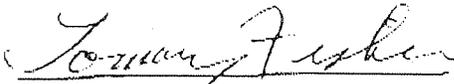
I, the undersigned, have read and understand the attached Agreed Order in the matter of Tommy Fisher dba Acuff Steak House. I am authorized to agree to the attached Agreed Order on behalf of Tommy Fisher dba Acuff Steak House, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Tommy Fisher dba Acuff Steak House waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this 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 submitted;
- 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, any falsification of any compliance documents may result in criminal prosecution.

  
Signature

6-27-14  
Date

Tommy Fisher  
Name (Printed or typed)  
Authorized Representative of  
Tommy Fisher dba Acuff Steak House

Owner  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section III, Paragraph 1 of this Agreed Order.