

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-1772-MWD-E **TCEQ ID:** RN102844669 **CASE NO.:** 38618

RESPONDENT NAME: Circle Bar Truck Corral, Inc.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Circle Bar Truck Corral, located approximately 6.5 miles east of Ozona at the intersection of Interstate Highway 10 and Taylor Box Road, Crockett County</p> <p>TYPE OF OPERATION: Wastewater treatment facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 5, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Thomas Jecha, P.G., Enforcement Division, Enforcement Team 3, MC 149, (512) 239-2576; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Ms. Lisa Mitchell, Assistant Secretary/Treasurer, Circle Bar Truck Corral, Inc., P.O. Box 1498, Ozona, Texas 76943 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: October 14, 2009</p> <p>Date of NOV/NOE Relating to this Case: October 16, 2009 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>1) Failure to maintain complete records of monitoring activities. Specifically, monitoring records did not included the time of the monitoring activity, the individual performing the monitoring activity, and complete pH calibration bracketing information [30 TEX. ADMIN. CODE §§ 305.125(1), 319.7(a) and 319.7(c), and TCEQ Permit No. WQ0014240001, Monitoring Requirements Nos. 3.b. and 3.c].</p> <p>2) Failure to furnish certification by a Texas Licensed Professional Engineer that the completed pond lining meets the appropriate criteria prior to utilization [30 TEX. ADMIN. CODE § 305.125(1) and TCEQ Permit No. WQ0014240001, Special Provisions No. 15].</p>	<p>Total Assessed: \$1,155</p> <p>Total Deferred: \$231 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$924</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a) Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that all records of monitoring activities are complete and include the time of the monitoring activity, the individual performing the monitoring activity, and complete pH calibration bracketing information;</p> <p>b) Within 90 days after the effective date of this Agreed Order, furnish certification by a Texas Licensed Professional Engineer that the completed pond lining meets the appropriate criteria; and</p> <p>c) Within 105 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 Provisions a. and b.</p>

Additional ID No(s): WQ0014240001



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	26-Oct-2009		
	PCW	30-Oct-2009	Screening	29-Oct-2009
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	Circle Bar Truck Corral, Inc.
Reg. Ent. Ref. No.	RN102844669
Facility/Site Region	8-San Angelo
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38618	No. of Violations	2
Docket No.	2009-1772-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Thomas Jecha, P.G.
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 **\$1,100**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 5.0% Enhancement Subtotals 2, 3, & 7 **\$55**

Notes: Enhancement for one NOV with similar violations issued to the Facility in the past five years.

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 \$42
Approx. Cost of Compliance \$1,050
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal **\$1,155**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$1,155**

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty **\$1,155**

DEFERRAL 20.0% Reduction Adjustment **-\$231**

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

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY **\$924**

Screening Date 29-Oct-2009

Docket No. 2009-1772-MWD-E

PCW

Respondent Circle Bar Truck Corral, Inc.

Policy Revision 2 (September 2002)

Case ID No. 38618

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102844669

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha, P.G.

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgments or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

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) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with similar violations issued to the Facility in the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 29-Oct-2009

Docket No. 2009-1772-MWD-E

PCW

Respondent Circle Bar Truck Corral, Inc.

Policy Revision 2 (September 2002)

Case ID No. 38618

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102844669

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha, P.G.

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(1), 319.7(a) and 319.7(c), and TCEQ Permit No. WQ0014240001, Monitoring Requirements Nos. 3.b. and 3.c.

Violation Description Failed to maintain complete records of monitoring activities. Specifically, monitoring records did not included the time of the monitoring activity, the individual performing the monitoring activity, and complete pH calibration bracketing information.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
				x	
Less than 30% of the rule requirement was not met.					
Adjustment					\$9,900

\$100

Violation Events

Number of Violation Events 1 15 Number of violation days

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

Violation Base Penalty \$100

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EOPRP/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 \$10

Violation Final Penalty Total \$105

This violation Final Assessed Penalty (adjusted for limits) \$105

Economic Benefit Worksheet

Respondent Circle Bar Truck Corral, Inc.
Case ID No. 38618
Reg. Ent. Reference No. RN102844669
Media Water Quality
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
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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)	\$300	14-Oct-2009	21-Jun-2010	0.68	\$10	n/a	\$10

Notes for DELAYED costs

Estimated cost to update operational guidance and conduct employee training to include all required information in the monitoring records. The date required is the investigation date and the final date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$300

TOTAL

\$10

Screening Date 29-Oct-2009

Docket No. 2009-1772-MWD-E

PCW

Respondent Circle Bar Truck Corral, Inc.

Policy Revision 2 (September 2002)

Case ID No. 38618

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102844689

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha, P.G.

Violation Number

2

Rule Cite(s)

30 Tex. Admin. Code § 305.125(1) and TCEQ Permit No. WQ0014240001, Special Provisions No. 15

Violation Description

Failed to furnish certification by a Texas Licensed Professional Engineer that the completed pond lining meets the appropriate criteria prior to utilization.

Base Penalty

\$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment

\$9,000

\$1,000

Violation Events

Number of Violation Events

1

15

Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty

\$1,000

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal

\$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

\$32

Violation Final Penalty Total

\$1,050

This violation Final Assessed Penalty (adjusted for limits)

\$1,050

Economic Benefit Worksheet

Respondent Circle Bar Truck Corral, Inc.
Case ID No. 38618
Reg. Ent. Reference No. RN102844669
Media Water Quality
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
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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)	\$750	14-Oct-2009	20-Aug-2010	0.85	\$32	n/a	\$32

Notes for DELAYED costs

Estimated cost to obtain a pond lining certification by a Texas Licensed Professional Engineer. The date required is the investigation date and the final date is the expected 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

\$750

TOTAL

\$32

Compliance History Report

Customer/Respondent/Owner-Operator: CN600801195 Circle Bar Truck Corral, Inc. Classification: AVERAGE Rating: 11.50
Regulated Entity: RN102844669 CIRCLE BAR TRUCK CORRAL Classification: AVERAGE Site Rating: 4.40
ID Number(s): WASTEWATER PERMIT WQ0014240001
Location: approx. 6.5 mi E of Ozona at intersect of IH 10 and Taylor Box Rd, Crockett, Co., Tx
TCEQ Region: REGION 08 - SAN ANGELO
Date Compliance History Prepared: October 26, 2009
Agency Decision Requiring Compliance Enforcement
Compliance Period: October 26, 2004 to October 26, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Thomas Jecha Phone: 239 - 2576

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
- 6 Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

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

1	02/14/2005	(349349)
2	08/10/2006	(482292)
3	11/14/2008	(706134)
4	04/09/2009	(741560)
5	10/16/2009	(779509)

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

Date: 11/14/2008 (706134) CN600801195

Self NO Classification: Moderate

Citation: 30 TAC Chapter 30, SubChapter J 30.331(b)

30 TAC Chapter 30, SubChapter J 30.350(d)

PPVIII.2 PERMIT

Description: Failure to ensure the treatment plant is operated by a licensed wastewater treatment facility operator holding a valid Category D license or higher.

Self NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

PPVIII.2 PERMIT

Description: Failure to operate the facility a minimum of five days per week.

	Self	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(4)		
		30 TAC Chapter 305, SubChapter F 305.125(5)		
		PPV.2.g. PERMIT		
		TWC Chapter 26 26.121		
Description:		Failure to prevent an unauthorized discharge from the facility.		
Self Report?	NO		Classification:	Moderate
Citation:		30 TAC Chapter 305, SubChapter F 305.125(9)		
		PPIV.7.a. PERMIT		
Description:		Failure to properly report an unauthorized discharge.		
Self Report?	NO		Classification:	Minor
Citation:		30 TAC Chapter 319, SubChapter A 319.11(d)		
Description:		Failure to properly measure flow.		
Self Report?	NO		Classification:	Minor
Citation:		30 TAC Chapter 319, SubChapter A 319.11(b)		
Description:		Failure to properly preserve samples at the required temperature.		
Self Report?	NO		Classification:	Minor
Citation:		30 TAC Chapter 319, SubChapter A 319.7(a)		
		PPIV.3.c. PERMIT		
Description:		Failure to maintain adequate monitoring records.		
Self Report?	NO		Classification:	Moderate
Citation:		30 TAC Chapter 319, SubChapter A 319.7(a)		
		30 TAC Chapter 319, SubChapter A 319.7(c)		
Description:		Failure to maintain calibration records for the pH meter.		
Self Report?	NO		Classification:	Minor
Citation:		30 TAC Chapter 305, SubChapter F 305.125(1)		
		PPVIII.9 PERMIT		
Description:		Failure to submit the results of the annual soil samples during September.		
Self Report?	NO		Classification:	Major
Citation:		30 TAC Chapter 305, SubChapter F 305.125(1)		
		PPVIII.7.d. PERMIT		
Description:		Failure to furnish a certification by a Texas Licensed Professional Engineer that the effluent storage pond lining meets the appropriate design criteria.		

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CIRCLE BAR TRUCK CORRAL, INC.
RN102844669**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-1772-MWD-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Circle Bar Truck Corral, Inc. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a wastewater treatment facility located approximately 6.5 miles east of Ozona at the intersection of Interstate Highway 10 and Taylor Box Road in Crockett County, Texas (the "Facility").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about October 21, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of One Thousand One Hundred Fifty-Five Dollars (\$1,155) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid Nine Hundred Twenty-Four Dollars (\$924) of the administrative penalty and Two Hundred Thirty-One Dollars (\$231) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. 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 the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to maintain complete records of monitoring activities, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1), 319.7(a) and 319.7(c), and TCEQ Permit No. WQ0014240001, Monitoring Requirements Nos. 3.b. and 3.c., as documented during a record review conducted on October 14, 2009. Specifically, monitoring records did not include the time of the monitoring activity, the individual performing the monitoring activity, and complete pH calibration bracketing information.
2. Failed to furnish certification by a Texas Licensed Professional Engineer that the completed pond lining meets the appropriate criteria prior to utilization, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TCEQ Permit No. WQ0014240001, Special Provisions No. 15, as documented during a record review conducted on October 14, 2009.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Circle Bar Truck Corral, Inc., Docket No. 2009-1772-MWD-E" 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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that all records of monitoring activities are complete and include the time of the monitoring activity, the individual performing the monitoring activity, and complete pH calibration bracketing information, in accordance with TCEQ Permit No. WQ0014240001, Monitoring Requirements Nos. 3.b. and 3.c.;
 - b. Within 90 days after the effective date of this Agreed Order, furnish certification by a Texas Licensed Professional Engineer that the completed pond lining meets the appropriate criteria, in accordance with TCEQ Permit No. WQ0014240001, Special Provisions No. 15; and
 - c. Within 105 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 Nos. 2.a. and 2.b. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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:

Water Section, Manager
San Angelo Regional Office
Texas Commission on Environmental Quality
622 South Oakes, Suite K
San Angelo, Texas 76903-7013

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. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
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 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.
6. 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.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the 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

John Ordler
For the Executive Director

4/23/2010
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, 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, 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.

Lisa Mitchell
Signature

11-16-09
Date

Lisa Mitchell
Name (Printed or typed)
Authorized Representative of
Circle Bar Truck Corral, Inc.

asst. sec. / Treas
Title

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

