

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO. 2010-1055-PWS-E      RN101255628      CASE NO. 39949**  
**RESPONDENT NAME: CIRCLE M BAR & GRILL, INC., INC.**

ORDER TYPE:		
<input type="checkbox"/> AGREED ORDER	<input checked="" 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 HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input 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

**SITE WHERE VIOLATIONS OCCURRED:** 15914 Telge Road, Cypress, Harris County

**TYPE OF OPERATION:** bar and grill with a public water system

**SMALL BUSINESS:**     Yes     No     N/A

**OTHER SIGNIFICANT MATTERS:** There are no complaints related to this enforcement action. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired December 20, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Phillip M. Goodwin, P.G., Litigation Division, MC 175, (512) 239-0675  
 Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ Enforcement Coordinator:** Amanda Henry, Water Enforcement Section, MC R-12 (713) 767-3672

**TCEQ Regional Contact:** Stephen Smith, Houston Regional Office, MC R-12, (713) 767-3500

**Respondent Contact:** Janet Marie Mitchell, Vice President, Circle M Bar & Grill, Inc., Inc., 392 Reading Street NW, Port Charlotte, Florida 33952

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaint(s):</b>                      N/A</p> <p><b>Date(s) of Investigation:</b>                      May 1, 2010 and October 21, 2010</p> <p><b>Date(s) of NOE(s):</b>                      May 19, 2010</p> <p><b>Background Facts:</b>                      The EDPRP was filed on October 7, 2010. Settlement was achieved, and the Agreed Order was signed on October 30, 2010.</p> <p><b>Current Compliance Status:</b>                      Respondent has not yet submitted documentation to certify compliance with the technical requirements. Respondent owes \$250 in past due fees.</p> <p><b>PWS:</b></p> <ol style="list-style-type: none"> <li>Failed to collect routine distribution water samples for coliform analysis for the months of March 2009 through March 2010 [30 TEX. ADMIN. CODE § 290.109(c)(2)(A)(i) and TEX. HEALTH &amp; SAFETY CODE § 341.033(d)].</li> <li>Failed to provide public notification for the failure to collect routine samples for the months of March 2009 through January 2010 [30 TEX. ADMIN. CODE § 290.122(c)(2)(B)].</li> <li>Failed to pay all Public Health Services fees for TCEQ Financial Administration Account No. 91013183 [30 TEX. ADMIN. CODE § 290.51(a)(3) and TEX. WATER CODE § 5.702].</li> </ol>	<p><b>Total Assessed:</b> \$5,973</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid/Due to General Revenue:</b>                      \$198/\$5,775</p> <p>Respondent paid \$198 of the administrative penalty. The remaining amount of \$5,775 shall be payable in 35 monthly payments of \$165 each.</p> <p><b>Compliance History Classifications:</b>  <i>Person/CN</i> – N/A  <i>Site/RN</i> – N/A</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Order Justification:</b>                      Three or more enforcement NOVs over the prior five year period for the same violations.</p>	<p><b>Ordering Provisions:</b></p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Immediately, pay outstanding PHS fees associated with TCEQ Financial Account No. 91013183.</li> <li>Within 10 days, begin complying with applicable coliform monitoring requirements. This provision will be satisfied upon six months of compliance monitoring and reporting.</li> <li>Within 30 days, implement procedures to ensure that all necessary public notifications are provided in a timely manner to the customers of the Facility.</li> <li>Within 195 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	24-May-2010			
	<b>PCW</b>	10-Jun-2010	<b>Screening</b>	10-Jun-2010	<b>EPA Due</b> 28-Feb-2010

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	Circle M Bar & Grill, Inc., Inc.				
<b>Reg. Ent. Ref. No.</b>	RN101255628				
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	39949	<b>No. of Violations</b>	2		
<b>Docket No.</b>	2010-1055-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>	Amanda Henry		
		<b>EC's Team</b>	Enforcement Team 2		
<b>Admin. Penalty \$ Limit</b>	<b>Minimum</b>	\$50	<b>Maximum</b>	\$1,000	

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$3,250
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	71.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$2,307
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<b>Notes</b>	Enhancement due to 13 Notices of Violation ("NOVs") that contain violations that are the same or similar to those in the current enforcement action and three dissimilar violations.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$416	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$380	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$5,557
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	8.3%	<b>Adjustment</b>	\$461
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Recommended enhancement to capture the avoided cost of compliance associated with Violation No. 1.
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<b>Final Penalty Amount</b>	\$6,018
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$6,018
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<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	No deferral is recommended for Findings Orders.
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<b>PAYABLE PENALTY</b>	\$6,018
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Screening Date 10-Jun-2010

Docket No. 2010-1055-PWS-E

PCW

Respondent Circle M Bar & Grill, Inc., Inc.

Policy Revision 2 (September 2002)

Case ID No. 39949

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101255628

Media [Statute] Public Water Supply

Enf. Coordinator Amanda Henry

### 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)	13	65%
	Other written NOVs	3	6%
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 judgements 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%
<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) 71%

#### >> 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 due to 13 Notices of Violation ("NOVs") that contain violations that are the same or similar to those in the current enforcement action and three dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 71%

<b>Screening Date</b>	10-Jun-2010	<b>Docket No.</b>	2010-1055-PWS-E	<b>PCW</b>
<b>Respondent</b>	Circle M Bar & Grill, Inc., Inc.	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b>	39949	<i>PCW Revision October 30, 2008</i>		
<b>Reg. Ent. Reference No.</b>	RN101255628			
<b>Media [Statute]</b>	Public Water Supply			
<b>Enf. Coordinator</b>	Amanda Henry			
<b>Violation Number</b>	1			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and Tex. Health & Safety Code § 341.033(d)			
<b>Violation Description</b>	Failed to collect routine distribution water samples for coliform analysis for the months of March 2009 through March 2010 and failed to provide public notification of the failure to collect routine samples for the months of March 2009 through January 2010.			
<b>Base Penalty</b>	\$1,000			

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

<b>OR</b>	<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor
	Actual			
	Potential	x		
				<b>Percent</b> 25%

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
					<b>Percent</b> 0%
<b>Matrix Notes</b>	Failure to perform routine distribution coliform sampling may allow a significant amount of undetected contaminants that exceed levels protective of human health to be distributed to the public.				
					<b>Adjustment</b> \$750

\$250

**Violation Events**

Number of Violation Events	13	390	Number of violation days
<i>mark only one with an x</i>	daily		
	weekly		
	monthly	x	
	quarterly		
	semiannual		
	annual		
	single event		
			<b>Violation Base Penalty</b> \$3,250
Thirteen monthly events are recommended.			

**Good Faith Efforts to Comply** 0.0% Reduction \$0

	Before NOV	NOV to EDPRP/Settlement
Extraordinary		
Ordinary		
N/A	x	(mark with x)
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.	
		<b>Violation Subtotal</b> \$3,250

**Economic Benefit (EB) for this violation**      **Statutory Limit Test**

<b>Estimated EB Amount</b>	\$416	<b>Violation Final Penalty Total</b>	\$6,019
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>	\$6,019

## Economic Benefit Worksheet

**Respondent** Circle M Bar & Grill, Inc., Inc.  
**Case ID No.** 39949  
**Reg. Ent. Reference No.** RN101255628  
**Media** Public Water Supply  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$325	31-Mar-2009	31-Mar-2010	1.92	\$31	\$325	\$356
Other (as needed)	\$55	1-Jul-2009	1-May-2010	1.75	\$5	\$55	\$60

Notes for AVOIDED costs

The avoided costs includes the estimated amount to collect and submit monthly water samples for bacteriological analysis (\$25/sample) and provide public notice for the failure to collect the sample (\$5 per notice), calculated for the months in which no samples were collected and during the period a public notice was required.

Approx. Cost of Compliance

\$380

**TOTAL**

\$416

**Screening Date** 10-Jun-2010 **Docket No.** 2010-1055-PWS-E **PCW**  
**Respondent** Circle M Bar & Grill, Inc., Inc. *Policy Revision 2 (September 2002)*  
**Case ID No.** 39949 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101255628  
**Media [Statute]** Public Water Supply  
**Enf. Coordinator** Amanda Henry

**Violation Number**   
**Rule Cite(s)**   
**Violation Description**

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
		<input type="text"/>	<input type="text"/>	<input type="text"/>	
<input type="text" value=""/>					
<b>Adjustment</b>					<input type="text" value="\$1,000"/>

**Violation Events**

Number of Violation Events  Number of violation days   
*mark only one with an x*

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

**Violation Base Penalty**

**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"/>	<input type="text" value="(mark with x)"/>
Notes	<input type="text" value="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** Circle M Bar & Grill, Inc., Inc.  
**Case ID No.** 39949  
**Reg. Ent. Reference No.** RN101255628  
**Media** Public Water Supply  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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

\$0

**TOTAL**

\$0

# Compliance History

Customer/Respondent/Owner-Operator: CN603673930 Circle M Bar & Grill, Inc., Inc. Classification: Rating:  
Regulated Entity: RN101255628 WHISKEY ZAPPERS Classification: Site Rating:  
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1013183  
Location: 15914 TELGE RD, CYPRESS, TX, 77429  
TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: January 27, 2011  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: January 27, 2005 to January 27, 2011

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Amanda Henry Phone: (713) 767-3672

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? OWNOPR Circle M Bar & Grill, Inc., Inc.
4. If Yes, who was/were the prior owner(s)/operator(s)? OWNOPR Cypress Lounge, LLC
5. When did the change(s) in owner or operator occur? 10/10/2007

## Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	10/19/2007	(593727)
2	10/03/2008	(701905)
3	05/19/2010	(803294)
4	05/19/2010	(803325)
5	05/19/2010	(803333)
6	05/19/2010	(803340)
7	05/19/2010	(803342)
8	05/19/2010	(803350)
9	05/19/2010	(803361)
10	05/19/2010	(803372)
11	05/19/2010	(803376)
12	05/19/2010	(803379)
13	05/19/2010	(803390)
14	05/19/2010	(803394)
15	05/19/2010	(803403)
16	05/19/2010	(803405)
17	05/20/2010	(803414)

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

Date: 10/18/2007 (593727) CN603673930

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(5)(A)

Description: Failure to perform daily at least once every seven days, chlorine residual tests on water collected from various locations within the distribution system.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(5)

Description: Failure to provide a housed and locked enclosure for the hypochlorinator solution containers and pump, to protect them from vandalism and adverse weather conditions.

Date: 09/03/2008 (701905) CN603673930

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(5)(A)

Description: Failure to perform daily at least once every seven days, chlorine residual tests on water collected from various locations within the distribution system.

Date: 09/11/2008 (701905) CN603673930  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(5)  
 Description: Failure to provide a housed and locked enclosure for the hypochlorinator solution containers and pump, to protect them from vandalism and adverse weather conditions.

Date: 05/26/2009 (803325) CN603673930  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
 Description: TCR Routine Monitoring Violation 03/2009 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
 Description: TCR PN Routine Monitoring Violation 03/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 06/15/2009 (803333) CN603673930  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
 Description: TCR Routine Monitoring Violation 04/2009 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
 Description: TCR PN Routine Monitoring Violation 04/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 07/14/2009 (803340) CN603673930  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
 Description: TCR Routine Monitoring Violation 05/2009 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
 Description: TCR PN Routine Monitoring Violation 05/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 08/04/2009 (803342) CN603673930  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
 Description: TCR Routine Monitoring Violation 06/2009 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
 Description: TCR PN Routine Monitoring Violation 06/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 09/16/2009 (803350) CN603673930  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
 Description: TCR Routine Monitoring Violation 07/2009 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
 Description: TCR PN Routine Monitoring Violation 07/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 10/02/2009 (803361) CN603673930  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
 Description: TCR Routine Monitoring Violation 08/2009 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
 Description: TCR PN Routine Monitoring Violation 08/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 11/05/2009 (803372) CN603673930  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
 Description: TCR Routine Monitoring Violation 09/2009 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
 Description: TCR PN Routine Monitoring Violation 09/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 12/08/2009 (803376) CN603673930  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
 Description: TCR Routine Monitoring Violation 10/2009 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
 Description: TCR PN Routine Monitoring Violation 10/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).  
 Date: 01/13/2010 (803379) CN603673930

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
 Description: TCR Routine Monitoring Violation 11/2009 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
 Description: TCR PN Routine Monitoring Violation 11/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).  
 Date: 01/26/2010 (803390) CN603673930

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
 Description: TCR Routine Monitoring Violation 12/2009 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
 Description: TCR PN Routine Monitoring Violation 12/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).  
 Date: 03/16/2010 (803394) CN603673930

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
 Description: TCR Routine Monitoring Violation 01/2010 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
 Description: TCR PN Routine Monitoring Violation 01/2010 - Failure to post public notice for not collecting any routine monitoring sample(s).  
 Date: 03/29/2010 (803403) CN603673930

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
 Description: TCR Routine Monitoring Violation 02/2010 - Failure to collect any routine monitoring sample(s).  
 Date: 05/03/2010 (803405) CN603673930

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
 Description: TCR Routine Monitoring Violation 03/2010 - Failure to collect any routine monitoring sample(s).

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CIRCLE M BAR & GRILL, INC.,  
INC.;  
RN101255628**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2010-1055-PWS-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Circle M Bar & Grill, Inc., Inc. ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341 and TEX. WATER CODE ch. 5. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent presented this Agreed Order to the Commission.

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

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

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

### **FINDINGS OF FACT**

1. Respondent owns a public water system located at 15914 Telge Road, Cypress, Harris County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately two service connections, 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 May 1, 2010, a TCEQ Central Office investigator documented that Respondent:
  - a. Failed to collect routine distribution water samples for coliform analysis for the months of March 2009 through March 2010; and

- b. Failed to provide public notification of the failure to collect routine samples for the months of March 2009 through January 2010.
3. During a record review conducted on October 21, 2010, a TCEQ Central Office investigator documented that Respondent failed to pay all Public Health Services ("PHS") fees for TCEQ Financial Administration Account No. 91013183.
4. Respondent received notice of the violations on or about May 24, 2010.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent violated 30 TEX. ADMIN. CODE § 290.109(c)(2)(A)(i) and TEX. HEALTH & SAFETY CODE § 341.033(d) by failing to collect routine distribution water samples for coliform analysis for the months of March 2009 through March 2010.
3. As evidenced by Finding of Fact No. 2.b., Respondent violated 30 TEX. ADMIN. CODE § 290.122(c)(2)(B) by failing to provide public notification of the failure to collect routine samples for the months of March 2009 through January 2010.
4. As evidenced by Finding of Fact No. 3, Respondent violated 30 TEX. ADMIN. CODE § 290.51(a)(3) and TEX. WATER CODE § 5.702 by failing to pay all PHS fees for TCEQ Financial Administration Account No. 91013183.
5. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of five thousand nine hundred seventy-three dollars (\$5,973.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049. Respondent paid one hundred ninety-eight dollars (\$198.00) of the administrative penalty. The remaining amount of five thousand seven hundred seventy-five dollars (\$5,775.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of one hundred sixty-five dollars (\$165.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

## ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 6, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the matters set forth by this Agreed Order in this action. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Circle M Bar & Grill, Inc., Inc., Docket No. 2010-1055-PWS-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. Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, Respondent shall pay all outstanding PHS fees for TCEQ Financial Administration Account No. 91013183 (Conclusion of Law No. 4).
  - b. Within 10 days after the effective date of this Agreed Order, Respondent shall begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples and providing water that meets the provisions regarding microbial contaminants, in accordance with 30 TEX. ADMIN. CODE § 290.109. This provision will be satisfied upon six months of compliance monitoring and reporting (Conclusion of Law No. 2).
  - c. Within 30 days after the effective date of this Agreed Order, Respondent shall implement procedures to ensure that all necessary public notifications are provided in a timely manner to the customers of the Facility, in accordance with 30 TEX. ADMIN. CODE § 290.122 (Conclusion of Law No. 3).
  - d. Within 195 days after the effective date of this Agreed Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c. 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 fine and imprisonment for knowing violations."

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

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

and

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

3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
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. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

**SIGNATURE PAGE**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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



\_\_\_\_\_  
For the Executive Director

4/7/2011

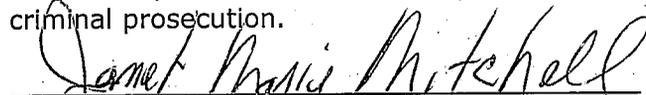
\_\_\_\_\_  
Date

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

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

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

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

  
\_\_\_\_\_  
Signature - Janet Marie Mitchell, Vice President  
Circle M Bar & Grill, Inc., Inc.

10/30/2010

\_\_\_\_\_  
Date