

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2010-1509-PWS-E TCEQ ID: RN105970867 CASE NO.: 40390**  
**RESPONDENT NAME: BACK PORCH BAR-B-Q, INC.**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	
<b>CASE TYPE:</b>		
<input type="checkbox"/> <b>AIR</b>	<input type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL AND HAZARDOUS WASTE</b>
<input checked="" type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Back Porch Bar-B-Q, 2871 Garcitas Creek Road, Victoria County</p> <p><b>TYPE OF OPERATION:</b> Public water supply</p> <p><b>SMALL BUSINESS:</b>    <input checked="" type="checkbox"/> <b>Yes</b>    <input type="checkbox"/> <b>No</b></p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on January 24, 2011. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Katy Schumann, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-2602; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Michael Sacky, Owner, BACK PORCH BAR-B-Q, 1269 Hollybrook Drive, Inez, Texas 77968  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> July 13, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> September 1, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WATER</b></p> <p>1) Failed to provide disinfection facilities for microbiological control and distribution protection [30 TEX. ADMIN. CODE § 290.42(b)(1)].</p> <p>2) Failed to provide written notification to the Commission of the startup of a new public water supply system and failed to submit engineering plans and specifications for a new public water supply system [30 TEX. ADMIN. CODE § 290.39(e)(1) and (m) and TEX. HEALTH &amp; SAFETY CODE § 341.035(c)].</p>	<p><b>Total Assessed:</b> \$850</p> <p><b>Total Deferred:</b> \$170  <input checked="" type="checkbox"/> Expedited Settlement  <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> \$120 (remaining \$560 due in 5 monthly payments of \$112 each)</p> <p><b>Compliance History Classification:</b>                  Person/CN – N/A                  Site/RN – 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>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 10 days after the effective date of this Agreed Order, provide notification of the installation of disinfection equipment;</p> <p>b. Within 25 days after the effective date of this Agreed Order, submit written certification and include supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a;</p> <p>c. Within 30 days after the effective date of this Agreed Order, ensure that the installed disinfection equipment is providing continuous and adequate disinfection throughout the distribution system at all times;</p> <p>d. Within 180 days after the effective date of this Agreed Order, submit as-built plans, specifications, and engineering reports for the Facility. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning as-built plans and specifications, within 30 days after the date of such requests, or by any other deadline specified in writing; and</p> <p>e. Within 195 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions c and d.</p>

Additional ID No(s): PWS 2350069



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	7-Sep-2010	<b>Screening</b>	14-Sep-2010	<b>EPA Due</b>	
	<b>PCW</b>	20-Sep-2010				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	BACK PORCH BAR-B-Q, INC.				
<b>Reg. Ent. Ref. No.</b>	RN105970867				
<b>Facility/Site Region</b>	14-Corpus Christi	<b>Major/Minor Source</b>	Minor		

## CASE INFORMATION

<b>Enf./Case ID No.</b>	40390	<b>No. of Violations</b>	2
<b>Docket No.</b>	2010-1509-PWS-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Katy Schumann
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit 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>	\$850
---	-------------------	-------

### 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>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
---------------------------	------------------	--------------------------------	-----

Notes: No adjustment for compliance history.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
--------------------	----	------------------	-------------------	-----

Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
--	-------------------	-----

<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts: \$486  
 Approx. Cost of Compliance: \$5,550  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$850
-----------------------------	-----------------------	-------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$850
-----------------------------	-------

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$850
-----------------------------------	-------------------------------	-------

<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$170
-----------------	-----------------	-------------------	--------

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

Notes:

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$680
------------------------	-------

Screening Date 14-Sep-2010

Docket No. 2010-1509-PWS-E

PCW

Respondent BACK PORCH BAR-B-Q, INC.

Policy Revision 2 (September 2002)

Case ID No. 40390

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105970867

Media [Statute] Public Water Supply

Enf. Coordinator Katy Schumann

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%

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) 0%

#### >> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

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

N/A

Adjustment Percentage (Subtotal 7) 0%

#### >> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

Screening Date 14-Sep-2010

Docket No. 2010-1509-PWS-E

PCW

Respondent BACK PORCH BAR-B-Q, INC.

Policy Revision 2 (September 2002)

Case ID No. 40390

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105970867

Media [Statute] Public Water Supply

Enf. Coordinator Katy Schumann

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 290.42(b)(1)

Violation Description

Failed to provide disinfection facilities for microbiological control and distribution protection. Specifically, at the time of the investigation, it was documented that the Facility did not have any disinfection facilities to disinfect the groundwater supplied from the water well.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failing to provide disinfection facilities would not allow a means for microbiological control and proper disinfection of the water exposing customers of the Facility to significant amounts of contaminants, which would exceed levels that are protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 3

63 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$750

Three monthly events are recommended, calculated from the date of the investigation, July 13, 2010, to the date of screening, September 14, 2010.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Reduction	
	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 \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$31

Violation Final Penalty Total \$750

This violation Final Assessed Penalty (adjusted for limits) \$750

# Economic Benefit Worksheet

**Respondent** BACK PORCH BAR-B-Q, INC.  
**Case ID No.** 40390  
**Reg. Ent. Reference No.** RN105970867  
**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	\$550	13-Jul-2010	30-Apr-2011	0.80	\$1	\$29	\$31
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the estimated amount to provide disinfection facilities for microbiological control and distribution protection, calculated from the date of the investigation 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

\$550

**TOTAL**

\$31

**Screening Date** 14-Sep-2010  
**Respondent** BACK PORCH BAR-B-Q, INC.  
**Case ID No.** 40390

**Docket No.** 2010-1509-PWS-E

**PCW**

Policy Revision 2 (September 2002)  
 PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN105970867  
**Media [Statute]** Public Water Supply  
**Enf. Coordinator** Katy Schumann  
**Violation Number** 2

**Rule Cite(s)** 30 Tex. Admin. Code § 290.39(e)(1) and (m) and Tex. Health & Safety Code § 341.035(c)

**Violation Description** Failed to provide written notification to the Commission of the startup of a new public water supply system and failed to submit engineering plans and specifications for a new public water supply system.

**Base Penalty** \$1,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
	x			10%

**Matrix Notes** 100% of the rule requirement was not met.

**Adjustment** \$900

\$100

**Violation Events**

Number of Violation Events 1 Number of violation days 63

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**

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

**Notes** The Respondent does not meet the Good Faith criteria for this violation.

**Violation Subtotal** \$100

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$455

**Violation Final Penalty Total** \$100

**This violation Final Assessed Penalty (adjusted for limits)** \$100

## Economic Benefit Worksheet

**Respondent** BACK PORCH BAR-B-Q, INC.  
**Case ID No.** 40390  
**Reg. Ent. Reference No.** RN105970867  
**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)	\$5,000	13-Jul-2010	31-Oct-2011	1.30	\$22	\$434	\$455
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 submit plans and specifications to the Commission, calculated from the date of the investigation 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

\$5,000

**TOTAL**

\$455

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603709528 BACK PORCH BAR-B-Q, INC. Classification: Rating:  
Regulated Entity: RN105970867 BACK PORCH BAR B Q Classification: Site Rating:  
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2350069  
Location: 2871 GARCITAS CREEK RD, VICTORIA COUNTY, TEXAS  
TCEQ Region: REGION 14 - CORPUS CHRISTI  
Date Compliance History Prepared: September 14, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: September 14, 2005 to September 14, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Katy Schumann Phone: (512) 239 - 2602

## 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? 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

## 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 09/01/2010 (850758)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas:  
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
BACK PORCH BAR-B-Q, INC.  
RN105970867

§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY

**AGREED ORDER  
DOCKET NO. 2010-1509-PWS-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 BACK PORCH BAR-B-Q, INC. ("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 appear before the Commission and together stipulate that:

1. The Respondent owns and operates a restaurant with a public water supply at 2871 Garcitas Creek Road in Victoria County, Texas (the "Facility") that has one service connection and serves at least 25 people per day for at least 60 days per year.
2. 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.
3. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 6, 2010.
4. 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.
5. An administrative penalty in the amount of Eight Hundred Fifty Dollars (\$850) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Twenty Dollars (\$120) of the

administrative penalty and One Hundred Seventy Dollars (\$170) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Five Hundred Sixty Dollars (\$560) of the administrative penalty shall be payable in five (5) monthly payments of One Hundred Twelve Dollars (\$112) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's 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, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order

6. 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.
7. 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.
8. 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.
9. 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.
10. 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 provide disinfection facilities for microbiological control and distribution protection, in violation of 30 TEX. ADMIN. CODE § 290.42(b)(1), as documented during an investigation conducted on July 13, 2010.
2. Failed to provide written notification to the Commission of the startup of a new public water supply system and failed to submit engineering plans and specifications for a new public water supply system, in violation of 30 TEX. ADMIN. CODE § 290.39(e)(1) and (m)

and TEX. HEALTH & SAFETY CODE § 341.035(c), as documented during an investigation conducted on July 13, 2010.

### 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 5 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: BACK PORCH BAR-B-Q, INC., Docket No. 2010-1509-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. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 10 days after the effective date of this Agreed Order, provide notification of the installation of disinfection equipment, in accordance with 30 TEX. ADMIN. CODE § 290.39. The notification shall be sent to:

Water Supply Division  
Utility Creation & Plan Review Team, MC 153  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- b. Within 25 days after the effective date of this Agreed Order, submit written certification as described below in Ordering Provision 2.d, and include supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a;
  - c. Within 30 days after the effective date of this Agreed Order, ensure that the installed disinfection equipment is providing continuous and adequate disinfection throughout the distribution system at all times, in accordance with 30 TEX. ADMIN. CODE. § 290.42;

- d. Within 180 days after the effective date of this Agreed Order, submit as-built plans, specifications, and engineering reports for the Facility, in accordance with 30 TEX. ADMIN. CODE § 290.39. The plans, specifications and reports shall be submitted to the address specified in Ordering Provision No. 2.a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning as-built plans and specifications, within 30 days after the date of such requests, or by any other deadline specified in writing; and
- e. Within 195 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.c and 2.d. 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:

Water Section Manager  
Corpus Christi Regional Office  
Texas Commission on Environmental Quality  
6300 Ocean Drive, Suite 1200  
Corpus Christi, Texas 78412-5503

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. 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.
6. 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.
7. 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

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

\_\_\_\_\_  
Date 12/16/2010

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.

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 11-17-10

MICHAEL SACKY  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
BACK PORCH BAR-B-Q, INC.

\_\_\_\_\_  
OWNER  
\_\_\_\_\_  
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.