EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-2195-AIR-E **TCEQ ID:** RN104913926 **CASE NO.:** 31959

RESPONDENT NAME: Joe Perez dba J & R Body Shop

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
X AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: J & R Body Shop, 1750 Butternut Street, Abilene, Taylor County

TYPE OF OPERATION: Automotive collision repair

SMALL BUSINESS: X **Yes** ___ **No**

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

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

COMMENTS RECEIVED: The *Texas Register* comment period expired on May 7, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. John Muennink, Enforcement Division, Enforcement Section III, MC R-14, (361) 825-3423; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
Respondent: Mr. Joe Perez, Owner, J & R Body Shop, 1750 Butternut, Abilene, Texas 79602
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint ___ Routine ___ Enforcement Follow-up _X_ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Record Review Relating to this Case:** November 11, 2006 **Date of NOE Relating to this Case:** November 28, 2006(NOE) **Background Facts:** This was a routine record review. **AIR** Failed to obtain a Permit or satisfy the conditions for a permit-by-rule (PBR) prior to the operation of a painting and automotive repair facility [30 TEX. ADMIN. CODE §§ 116.110(a)(4) and 106.436(5) and (7) and TEX. HEALTH & SAFETY CODE § 382.085(b)].	**Total Assessed:** $1,050 **Total Deferred:** $210 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $840 **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** 1) The Executive Director recognizes that Mr. Perez registered the Plant by PBR No. 79266 on June 29, 2006. **Ordering Provisions:** 2) The Order will require the Respondent to: a) Within 30 days after the effective date of this Agreed Order, ensure that the Plant satisfies the requirements of 30 TEX. ADMIN. CODE §§ 106.436(5) and 106.436(7) for PBR No. 79266; and b) Within 45 days after the effective date of this Agreed Order, submit written certification to demonstrate compliance with Ordering Provision No. 2.a. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision November 17, 2006*

TCEQ

DATES					
Assigned	4-Dec-2006				
PCW	13-Dec-2006	Screening	12-Dec-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Joe Perez dba J & R Body Shop		
Reg. Ent. Ref. No.	RN104913926		
Facility/Site Region	3-Abilene	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	31959	No. of Violations	1
Docket No.	2006-2195-AIR-E	Order Type	1660
Media Program(s)	Air Quality	Enf. Coordinator	John Muennink
Multi-Media		EC's Team	EnforcementTeam 6
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $1,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 5% Enhancement — *Subtotals 2, 3, & 7* $50

Notes: Enhancement due to one NOV with same or similar violations.

Culpability — No — 0% Enhancement — *Subtotal 4* $0

Notes: Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 0% Reduction — *Subtotal 5* $0

	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.

0% Enhancement* — *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$95
Approx. Cost of Compliance	$3,500

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $1,050

OTHER FACTORS AS JUSTICE MAY REQUIRE — *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage. *(Enter number only; e.g. -30 for -30%.)*

Notes:

Final Penalty Amount $1,050

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $1,050

DEFERRAL — 20% Reduction — *Adjustment* -$210

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $840

Screening Date	12-Dec-2006	**Docket No.** 2006-2195-AIR-E	**PCW**
Respondent	Joe Perez dba J & R Body Shop		*Policy Revision 2 (September 2002)*
Case ID No.	31959		*PCW Revision November 17, 2006*
Reg. Ent. Reference No.	RN104913926		
Media [Statute]	Air Quality		
Enf. Coordinator	John Muennink		

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 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%
		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 due to one NOV with same or similar violations.

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

Screening Date	12-Dec-2006	**Docket No.** 2006-2195-AIR-E	**PCW**
Respondent	Joe Perez dba J & R Body Shop		*Policy Revision 2 (September 2002)*
Case ID No.	31959		*PCW Revision November 17, 2006*
Reg. Ent. Reference No.	RN104913926		
Media [Statute]	Air Quality		
Enf. Coordinator	John Muennink		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 116.110(a)(4), 106.436(5) and 106.436(7) and Tex. Health and Safety Code § 382.085(b)

Violation Description Failed to obtain a Permit or satisfy the conditions for a Permit by Rule prior to the operation of a painting and automotive repair facility.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: The respondent failed to meet 100% of the rule requirement.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1

28 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One monthly event is recommended based on the November 14, 2006 investigation to the December 12, 2006 screening date.

Economic Benefit (EB) for this violation

Estimated EB Amount $95

Statutory Limit Test

Violation Final Penalty Total $1,050

This violation Final Assessed Penalty (adjusted for limits) $1,050

Economic Benefit Worksheet

Respondent Joe Perez dba J & R Body Shop
Case ID No. 31959
Reg. Ent. Reference No. RN104913926
Media Air Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs	$3,500	14-Nov-2006	31-May-2007	0.5	$95	n/a	$95
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated cost is based on administrative costs and labor associated with a permit application. Date required is the date of the investigation. Final date is the estimated date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance $3,500

TOTAL $95

Compliance History

Customer/Respondent/Owner-Operator:	CN603054412	Joe Perez dba J & R Body Shop	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN104913926	J & R BODY SHOP	Classification: AVERAGE	Site Rating: 1.50

ID Number(s): AIR NEW SOURCE PERMITS REGISTRATION 79266

Location: 1750 BUTTERNUT ST, ABILENE, TX, 79602 Rating Date: September 01 06 Repeat Violator: NO

TCEQ Region: REGION 03 - ABILENE

Date Compliance History Prepared: December 06, 2006

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: December 06, 2001 to December 06, 2006

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

Name: John Muennink Phone: (361) 825-3423

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 of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. if Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

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 04/07/2006 (460030)
2 11/27/2006 (531501)

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

Date: 04/07/2006 (460030)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(4)

Description: Failure to either obtain a Permit or satisfy the conditions for a Permit by Rule (PBR) prior to operation of the painting and automotive repair operations at the facility in Abilene.

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
JOE PEREZ DBA J & R BODY SHOP	§	
RN104913926	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-2195-AIR-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 Joe Perez dba J & R Body Shop ("Mr. Perez ") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Perez appear before the Commission and together stipulate that:

1. Mr. Perez owns and operates an automotive collision repair facility at 1750 Butternut Street in Abilene, Taylor County, Texas (the "Plant").

2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

3. The Commission and Mr. Perez agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Perez is subject to the Commission's jurisdiction.

4. Mr. Perez received notice of the violations alleged in Section II ("Allegations") on or about December 3, 2006.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Perez of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of One Thousand Fifty Dollars ($1,050) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Perez has paid Eight Hundred Forty Dollars ($840) of the administrative penalty and Two Hundred Ten Dollars ($210) is deferred contingent upon Mr. Perez' 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 Mr. Perez fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. Perez 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 Mr. Perez have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that Mr. Perez registered the Plant by Permit by Rule ("PBR") No. 79266 on June 29, 2006.

10. 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 Mr. Perez has not complied with one or more of the terms or conditions in this Agreed Order.

11. 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.

12. 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 Plant, Mr. Perez is alleged to have failed to obtain a Permit or satisfy the conditions for a PBR prior to the operation of a painting and automotive repair facility, in violation of 30 TEX. ADMIN. CODE §§ 116.110(a)(4), 106.436(5) and 106.436(7) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on November 11, 2006.

III. DENIALS

Mr. Perez generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Perez pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Perez' 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: Joe Perez dba J & R Body Shop, Docket No. 2006-2195-AIR-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 Mr. Perez shall undertake the following technical requirements:

a. Within 30 days after the effective date of this Agreed Order, ensure that the Plant satisfies the requirements of 30 TEX. ADMIN. CODE §§ 106.436(5) and 106.436(7) for Permit by Rule No. 79266. Submit all supporting documentation to:

Air Permits Division, MC 162
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

b. Within 45 days after the effective date of this Agreed Order, submit written certification to demonstrate compliance with Ordering Provision 2.a. The certification shall include detailed supporting documentation including receipts and/or other records to demonstrate compliance, 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."

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:

Air Quality Section, Manager
Abilene Regional Office
Texas Commission on Environmental Quality
1977 Industrial Boulevard
Abilene, Texas 79602-7833

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Perez. Mr. Perez is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the operations referenced in this Agreed Order.

4. If Mr. Perez 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, Mr. Perez' failure to comply is not a violation of this Agreed Order. Mr. Perez shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Perez shall notify the Executive Director within seven days after Mr. Perez 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 Mr. Perez shall be made in writing to the Executive Director. Extensions are not effective until Mr. Perez 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 Mr. Perez 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 agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. Perez, or three days after the date on which the Commission mails notice of the Order to Mr. Perez, 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

6/27/07
~~March 5 - 07~~
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, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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

Joe Perez
Signature

3-5-07
Date

Joe M Perez
Name (Printed or typed)
Authorized Representative of
Joe Perez dba J & R Body Shop

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.

361-825-3437

C. Ed. Div

Rev. Dept.

PH Cashiers Office

MMC

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TCONE Gtt

P.O. Box 3088

Alice Tx

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