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EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1807-MLM-E TCEQ ID: RN105020333 CASE NO.: 31406

RESPONDENT NAME: JESSE J. GARCIA DBA LONGHORN SANDBLASTING

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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 checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input 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 checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 1706 East 6th Street, Austin, Travis County ("Site No. 1") and at 1107 West 22 ½ Street, Austin, Travis County ("Site No. 2")

TYPE OF OPERATION: residential sandblasting

SMALL BUSINESS: Yes No

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

INTERESTED PARTIES: There was one complaint, but the complainant has not expressed an interest to protest this action or to speak at agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on November 26, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Kathleen Decker, Litigation Division, MC 175, (512) 239-6500
 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

TCEQ Enforcement Coordinator: Ms. Dana Shuler, Air Enforcement Section, MC 128, (512) 239-2505

TCEQ Regional Contact: Mr. Barry Kalda, Austin Regional Office, MC R-11, (512) 339-2929

Respondent: Mr. Jesse J. Garcia, Owner, 2503 Star Grass Circle, Austin, Texas 78745

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

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: October 7, 2006</p> <p>Dates of Investigations Relating to this Case: June 22, 2006 and October 9, 2006</p> <p>Dates of NOEs Relating to this Case: November 21, 2006</p> <p>Background Facts:</p> <p>An EDRP was filed on July 10, 2007. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that the respondent received notice of the EDRP. The respondent failed to file an Answer to the EDRP.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>MLM:</p> <p>1. Failed to prevent the unauthorized disposal of municipal hazardous waste at Site No. 1 so as to cause the endangerment of the public health and welfare [30 TEX. ADMIN. CODE §§ 335.2(a) and 335.4(3)].</p> <p>2. Failed to control the discharge of an air contaminant at Site No. 1 in such concentration and duration as to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property [30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b).]</p> <p>3. Failed to prevent the unauthorized disposal of municipal hazardous waste at Site No. 2 so as to cause the endangerment of the public health and welfare [30 TEX. ADMIN. CODE §§ 335.2(a) and 335.4(3)].</p>	<p>Total Assessed: \$12,500</p> <p>Total Deferred: \$0</p> <p>Total Due to General Revenue: \$12,500</p> <p>This is a Default Order. The Respondent has not paid any of the assessed penalties, but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Technical Requirement(s)</p> <p>The Respondent shall:</p> <p>1) Immediately, cease discharging air contaminants so as to cause the creation of nuisance conditions and cease disposing of municipal hazardous waste so as to cause endangerment of the public health and welfare.</p> <p>2) Within 30 days, submit an Affected Property Assessment Report to the Executive Director for approval. If response actions are necessary, the Respondent shall comply with all applicable requirements of the Texas Risk Reduction Program which may include plans, reports, and notices; financial assurance; and Institutional Controls under Subchapter F.</p> <p>3) Within 45 days, submit written certification and include supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 1 and 2.</p>

4. Failed to control the discharge of an air contaminant at Site No. 2 in such concentration and duration as to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property [30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b)].



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

DATES	Assigned	28-Nov-2006	Screening	6-Dec-2006	EPA Due	
	PCW	26-Apr-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Jesse J. Garcia dba Longhorn Sandblasting
Reg. Ent. Ref. No.	RN105020333
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	31406	No. of Violations	2
Docket No.	2006-1807-MLM-E	Order Type	1660
Media Program(s)	Air Quality	Enf. Coordinator	Dana Shuler
Multi-Media	Industrial and Hazardous Waste	EC's Team	Enforcement Team 8
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Reduction **Subtotal 5**

Before NOV NOV to EDRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

Notes

Total EB Amounts **Subtotal 6**
Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

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

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 6-Dec-2006

Docket No. 2006-1807-MLM-E

PCW

Respondent Jesse J. Garcia dba Longhorn Sandblasting

Policy Revision 2 (September 2002)

Case ID No. 31406

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105020333

Media [Statute] Air Quality

Enf. Coordinator Dana Shuler

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)	0	0%
	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) 0%

>> 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

No adjustments are recommended based on compliance history.

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

Screening Date 6-Dec-2006

Docket No. 2006-1807-MLM-E

PCW

Respondent Jesse J. Garcia dba Longhorn Sandblasting

Policy Revision 2 (September 2002)

Case ID No. 31406

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105020333

Media [Statute] Air Quality

Enf. Coordinator Dana Shuler

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 335.2(a) and 335.4(3)

Violation Description Failed to prevent the unauthorized disposal of municipal hazardous waste so as to cause the endangerment of the public health and welfare, as documented during investigations conducted on June 22 and October 9, 2006. Specifically, sandblast grit contaminated with hazardous levels of lead from lead-based paint removed from the exterior of two homes was discharged to soil at the Sites. Lead levels in the waste sandblast grit collected from 1706 East 6th Street and 1107 West 22 1/2 Street exceeded the hazardous waste limit of 5.0 mg/L for the Toxicity Characteristic Leaching Procedure (TCLP) analysis with lead results of 34.6 and 53.9 mg/L TCLP respectively.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual		X		25%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective to human health or environmental receptors as a result of this violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 3 Number of violation days 225

daily	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$7,500

A total of three quarterly events are recommended. Two quarters from the June 22, 2006 investigation date to the December 6, 2006 screening date for 1706 East 6th Street and one quarter from the October 9, 2006 investigation date to the December 6, 2006 screening date for 1107 West 22 1/2 Street.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$748

Violation Final Penalty Total \$7,500

This violation Final Assessed Penalty (adjusted for limits) \$7,500

Economic Benefit Worksheet

Respondent Jesse J. Garcia dba Longhorn Sandblasting
Case ID No. 31406
Reg. Ent. Reference No. RN105020333
Media Air Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.0	\$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				0.0	\$0	n/a	\$0
Other (as needed)	\$12,000	22-Jun-2006	20-Sep-2007	1.2	\$748	n/a	\$748

Notes for DELAYED costs

Estimated cost to implement controls for emissions of grit blasting dust and other sandblasting waste media and clean up and properly dispose of soil and sand blast grit contaminated with lead-based paint. Date required is based on the earliest documentation of the violation and 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

\$12,000

TOTAL

\$748

Screening Date 6-Dec-2006

Docket No. 2006-1807-MLM-E

PCW

Respondent Jesse J. Garcia dba Longhorn Sandblasting

Policy Revision 2 (September 2002)

Case ID No. 31406

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105020333

Media [Statute] Air Quality

Enf. Coordinator Dana Shuler

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 101.4 and Tex. Health & Safety Code § 382.085(a) and (b)

Violation Description

Failed to control the discharge of an air contaminant in such concentration and duration as to adversely affect human health or welfare, animal life, vegetation, or property, or as interfere with the normal use and enjoyment of animal life, vegetation, or property, as documented during investigations conducted on June 22 and October 9, 2006.

Specifically, dust from sandblasting lead-based paint from the exteriors of residences, at 1706 East 6th Street and 1107 West 22 1/2 Street, impacted adjacent residential receptors. Dusting was observed up to approximately 80 ft. from the property line at the 1706 East 6th Street location. Also, a visible plume was observed traveling across the property boundaries at both Sites.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants as a result of these violations.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2

2 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$5,000

Two single events are recommended (one for each location/ incident).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$5,000

This violation Final Assessed Penalty (adjusted for limits) \$5,000

Economic Benefit Worksheet

Respondent Jesse J. Garcia dba Longhorn Sandblasting
Case ID No. 31406
Reg. Ent. Reference No. RN105020333
Media Air Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.0	\$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				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Economic Benefit included in violation No.1.

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

Economic Benefit included in violation No.1.

Approx. Cost of Compliance

\$0

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator: CN603079682 JESSE J GARCIA Classification: AVERAGE BY Rating: 3.01
DEFAULT

Regulated Entity: RN105020333 LONGHORN SANDBLASTING Classification: AVERAGE BY Site Rating: 3.01
DEFAULT

ID Number(s):

Location: 3505 S LAMAR BLVD APT 1096, AUSTIN, TX, 78704 Rating Date: 9/1/2006 Repeat Violator: NO

TCEQ Region: REGION 11 - AUSTIN.

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: Dana Shuler Phone: (512) 239-2505

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.)
N/A
 - 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
AGAINST
JESSE J. GARCIA DBA
LONGHORN SANDBLASTING
RN105020333**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2006-1807-MLM-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7; TEX. HEALTH & SAFETY CODE chs. 361 and 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Jesse J. Garcia dba Longhorn Sandblasting ("Mr. Garcia").

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

FINDINGS OF FACT

1. At the time of the violations Mr. Garcia owned and operated a sandblasting business located at 3505 South Lamar Boulevard, Apartment No. 1096 in Austin, Travis County, Texas. Mr. Garcia performed residential sandblasting services at 1706 East 6th Street, Austin, Travis County, Texas ("Site No. 1") and at 1107 West 22 ½ Street, Austin, Travis County, Texas ("Site No. 2"), jointly referred to as "the Sites."
2. Mr. Garcia was involved with the management of municipal hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361, and the Sites consisted of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an inspection conducted on June 22, 2006, a TCEQ Austin Regional investigator documented that Mr. Garcia:
 - a. Failed to prevent the unauthorized disposal of municipal hazardous waste so as to cause the endangerment of the public health and welfare. Specifically, sandblast grit contaminated with hazardous levels of lead from lead-based paint removed from the exterior of a home was discharged to soil at Site No.

1. Lead levels in the waste sandblast grit collected from Site No.1 exceeded the hazardous waste limit of 5.0 mg/L for the Toxicity Characteristic Leaching Procedure ("TCLP") analysis with lead results of 34.6 and 53.9 mg/L TCLP respectively.
 - b. Failed to control the discharge of an air contaminant in such concentration and duration as to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property. Specifically, dust from sandblasting lead-based paint from the exterior of the residence at Site No.1 impacted adjacent residential receptors. Dusting was observed up to approximately 80 feet from the property line at Site No.1. In addition, a visible plume was observed traveling across the property boundaries at Site No.1.
4. During an inspection conducted on October 9, 2006, an TCEQ Austin Regional investigator documented that Mr. Garcia:
- a. Failed to prevent the unauthorized disposal of municipal hazardous waste so as to cause the endangerment of the public health and welfare. Specifically, sandblast grit contaminated with hazardous levels of lead from lead-based paint removed from the exterior of a home was discharged to soil at Site No. 2. Lead levels in the waste sandblast grit collected from Site No. 2 exceeded the hazardous waste limit of 5.0 mg/L for the Toxicity Characteristic Leaching Procedure ("TCLP") analysis with lead results of 34.6 and 53.9 mg/L TCLP respectively.
 - b. Failed to control the discharge of an air contaminant in such concentration and duration as to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property. Specifically, dust from sandblasting lead-based paint from the exterior of the residence at Site No. 2 impacted adjacent residential receptors. In addition, a visible plume was observed traveling across the property boundaries at Site No. 2.
5. Mr. Garcia received notice of the violations on or about September 19 and November 26, 2006.
6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Jesse

J. Garcia dba Longhorn Sandblasting” (the “EDPRP”) in the TCEQ Chief Clerk’s office on July 10, 2007.

7. By letter dated July 10, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Garcia with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that the respondent received notice of the EDPRP.
8. More than 20 days have elapsed since Mr. Garcia received notice of the EDPRP provided by the Executive Director. Mr. Garcia failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Garcia is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE §§ 5.013 and 7.002; TEX. HEALTH & SAFETY CODE chs. 361 and 382; and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Garcia failed to prevent the unauthorized disposal of municipal hazardous waste so as to cause the endangerment of the public health and welfare, in violation of 30 TEX. ADMIN. CODE §§ 335.2(a) and 335.4(3). Specifically, sandblast grit contaminated with hazardous levels of lead from lead-based paint removed from the exterior of a home was discharged to soil at Site No.1. Lead levels in the waste sandblast grit collected from Site No.1 exceeded the hazardous waste limit of 5.0 mg/L for the TCLP analysis with lead results of 34.6 and 53.9 mg/L TCLP respectively.
3. As evidenced by Finding of Fact No. 3.b., Mr. Garcia failed to control the discharge of an air contaminant in such concentration and duration as to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property, in violation of 30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b). Specifically, dust from sandblasting lead-based paint from the exteriors of a residence at Site No.1 impacted adjacent residential receptors. Dusting was observed up to approximately 80 feet from the property line at Site No.1. In addition, a visible plume was observed traveling across the property boundaries at Site No. 1.
4. As evidenced by Finding of Fact No. 4.a., Mr. Garcia failed to prevent the unauthorized disposal of municipal hazardous waste so as to cause the endangerment of the public health and welfare, in violation of 30 TEX. ADMIN. CODE §§ 335.2(a) and 335.4(3). Specifically,

sandblast grit contaminated with hazardous levels of lead from lead-based paint removed from the exterior of a home was discharged to soil at Site No. 2. Lead levels in the waste sandblast grit collected from Site No. 2 exceeded the hazardous waste limit of 5.0 mg/L for the Toxicity Characteristic Leaching Procedure ("TCLP") analysis with lead results of 34.6 and 53.9 mg/L TCLP respectively.

5. As evidenced by Finding of Fact No. 4.b., Mr. Garcia failed to control the discharge of an air contaminant in such concentration and duration as to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property, in violation of 30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b). Specifically, dust from sandblasting lead-based paint from the exterior of the residence at Site No. 2 impacted adjacent residential receptors. In addition, a visible plume was observed traveling across the property boundaries at Site No. 2.
6. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Mr. Garcia with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
7. As evidenced by Finding of Fact No. 8, Mr. Garcia failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Garcia and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Garcia for violations of the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statute; or for violations of orders or permits issued under such statute.
9. An administrative penalty in the amount of twelve thousand five hundred dollars (\$12,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Mr. Garcia is assessed an administrative penalty in the amount of twelve thousand five hundred dollars (\$12,500.00) for violations of TEX. HEALTH & SAFETY CODE chs. 361 and 382 and rules of the TCEQ. The payment of this administrative penalty and Mr. Garcia's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Jesse J. Garcia dba Longhorn Sandblasting; Docket No. 2006-1807-MLM-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. Mr. Garcia shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Garcia shall cease discharging air contaminants so as to cause the creation of nuisance conditions and cease disposing of municipal hazardous waste so as to cause endangerment of the public health and welfare.
 - b. Within 30 days after the effective date of this Order, Mr. Garcia shall submit an Affected Property Assessment Report, pursuant to 30 TEX. ADMIN. CODE § 350.91, to the Executive Director for approval. If response actions are necessary, Mr. Garcia shall comply with all applicable requirements of the Texas Risk Reduction Program found in 30 TEX. ADMIN. CODE ch. 350 which may include: plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 to 350.96); financial assurance (30 TEX. ADMIN. CODE § 350.33(1); and Institutional Controls under Subchapter F.

- c. Within 45 days after the effective date of this Order, Mr. Garcia shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that 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 149
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Barry Kalda
Waste and Air Section Manager
Austin Regional Office
Texas Commission on Environmental Quality
1921 Cedar Bend Drive, Suite 150A
Austin, Texas 78758-5327

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Garcia. Mr. Garcia is ordered to give notice of this Order to personnel who maintain day-to-day control over the Sites' operations referenced in this Order.

5. If Mr. Garcia fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Garcia's failure to comply is not a violation of this Order. Mr. Garcia shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Garcia shall notify the Executive Director within seven days after Mr. Garcia becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Garcia shall be made in writing to the Executive Director. Extensions are not effective until Mr. Garcia receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Garcia if the Executive Director determines that Mr. Garcia has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Jesse J. Garcia dba Longhorn Sandblasting
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF KATHLEEN C. DECKER

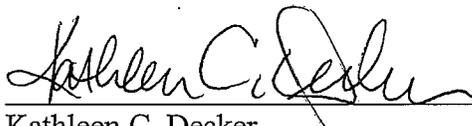
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Kathleen C. Decker. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the ‘Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Jesse J. Garcia dba Longhorn Sandblasting’ (the “EDPRP”) with the Office of the Chief Clerk on July 10, 2007.

I sent the EDPRP to Mr. Garcia at his last known address on July 10, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

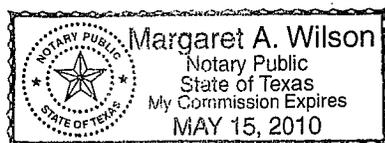
More than 20 days have elapsed since Mr. Garcia received notice of the EDPRP. Mr. Garcia failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



Kathleen C. Decker
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Kathleen C. Decker, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 6th day of September, 2007.



Notary Stamp