

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2010-0573-AIR-E **TCEQ ID:** RN105796247 **CASE NO.:** 39485  
**RESPONDENT NAME:** Jose E. Alvarez dba Klassic Paint & Body Shop

|  |  |   |
|--|--|---|
| <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 checked="" 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 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> Klassic Paint &amp; Body Shop, 2917 Market Street, Laredo, Webb County</p> <p><b>TYPE OF OPERATION:</b> Auto body refinishing shop</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</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 October 11, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b><br/> <b>TCEQ Attorney/SEP Coordinator:</b> None<br/> <b>TCEQ Enforcement Coordinator:</b> Ms. Miriam Hall, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-1044; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495<br/> <b>Respondent:</b> Mr. Jose E. Alvarez, Owner, Klassic Paint &amp; Body Shop, 2917 Market Street, Laredo, Texas 78043<br/> <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><br/> <input type="checkbox"/> Complaint<br/> <input checked="" type="checkbox"/> Routine<br/> <input type="checkbox"/> Enforcement Follow-up<br/> <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> March 10, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> March 26, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>AIR</b></p> <p>1) Failed to maintain a stack height of at least 1.2 times the height of the tallest building within 200 feet. Specifically, the height of the paint booth exhaust stack is lower than the roof of the two-story apartment building located adjacent to the Shop [30 TEX. ADMIN. CODE § 106.436(11)(A) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>2) Failed to keep the paint booth exhaust stack free of a rain cap [30 TEX. ADMIN. CODE § 106.436(13) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>3) Failed to maintain and provide upon request, Material Safety Data Sheets ("MSDS"), particulate removal efficiency of booth filters, and monthly coating and solvent usage/purchase records [30 TEX. ADMIN. CODE § 106.436(16) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> | <p><b>Total Assessed:</b> \$1,575</p> <p><b>Total Deferred:</b> \$315<br/> <input checked="" type="checkbox"/> Expedited Settlement<br/> <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> \$315 (remaining \$945 due in three monthly payments of \$315 each)</p> <p><b>Site Compliance History Classification</b><br/> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b><br/> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</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 30 days after the effective date of this Agreed Order:</p> <p>i. Raise the height of the paint booth exhaust stack so that it is 1.2 times higher than the top of the roof of the two-story apartment building on the adjacent property to the Shop;</p> <p>ii. Remove the rain cap from the paint booth exhaust stack and keep the exhaust stack free of goose necks or other stack heads that would restrict or obstruct vertical discharge of air contaminants; and</p> <p>iii. Begin maintaining MSDS for all coatings and solvents used, records of the particulate removal efficiency of the booth filters, and monthly coating and solvent usage/purchase records at the Shop.</p> <p>b. Within 45 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 a.i. through a.iii.</p> |

Additional ID No(s): N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

|              |          |             |           |            |         |  |
|--------------|----------|-------------|-----------|------------|---------|--|
| <b>DATES</b> | Assigned | 29-Mar-2010 | Screening | 8-Apr-2010 | EPA Due |  |
|              | PCW      | 12-Apr-2010 |           |            |         |  |

|  |   |                    |       |
|--|---|--------------------|-------|
| <b>RESPONDENT/FACILITY INFORMATION</b> |   |                    |       |
| Respondent                             | Jose E. Alvarez dba Klassic Paint & Body Shop |                    |       |
| Reg. Ent. Ref. No.                     | RN105796247                                   |                    |       |
| Facility/Site Region                   | 16-Laredo                                     | Major/Minor Source | Minor |

|                         |                 |                       |                    |
|-------------------------|-----------------|-----------------------|--------------------|
| <b>CASE INFORMATION</b> |                 |                       |                    |
| Enf./Case ID No.        | 39485           | No. of Violations     | 2                  |
| Docket No.              | 2010-0573-AIR-E | Order Type            | 1660               |
| Media Program(s)        | Air             | Government/Non-Profit | No                 |
| Multi-Media             |                 | Enf. Coordinator      | Miriam Hall        |
|                         |                 | EC's Team             | Enforcement Team 4 |
| Admin. Penalty \$ Limit | Minimum \$0     | Maximum               | \$10,000           |

## Penalty Calculation Section

|   |            |         |
|---|------------|---------|
| <b>TOTAL BASE PENALTY (Sum of violation base penalties)</b> | Subtotal 1 | \$1,500 |
|---|------------|---------|

|  |                  |                           |
|--|------------------|---------------------------|
| <b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>   |                  |                           |
| Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage. |                  |                           |
| Compliance History   | 5.0% Enhancement | Subtotals 2, 3, & 7: \$75 |

Notes: The penalty was enhanced for one NOV for the same violations.

|             |    |                  |            |     |
|-------------|----|------------------|------------|-----|
| Culpability | No | 0.0% Enhancement | Subtotal 4 | \$0 |
|-------------|----|------------------|------------|-----|

Notes: The Respondent does not meet the culpability criteria.

|   |            |     |
|---|------------|-----|
| Good Faith Effort to Comply Total Adjustments | Subtotal 5 | \$0 |
|---|------------|-----|

|                            |                   |                                   |     |
|----------------------------|-------------------|-----------------------------------|-----|
| Economic Benefit           | 0.0% Enhancement* | Subtotal 6                        | \$0 |
| Total EB Amounts           | \$77              | *Capped at the Total EB \$ Amount |     |
| Approx. Cost of Compliance | \$1,000           |                                   |     |

|                             |                |         |
|-----------------------------|----------------|---------|
| <b>SUM OF SUBTOTALS 1-7</b> | Final Subtotal | \$1,575 |
|-----------------------------|----------------|---------|

|   |      |            |     |
|---|------|------------|-----|
| <b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>                         | 0.0% | Adjustment | \$0 |
| Reduces or enhances the Final Subtotal by the indicated percentage. |      |            |     |

Notes:

|                      |         |
|----------------------|---------|
| Final Penalty Amount | \$1,575 |
|----------------------|---------|

|                                   |                        |         |
|-----------------------------------|------------------------|---------|
| <b>STATUTORY LIMIT ADJUSTMENT</b> | Final Assessed Penalty | \$1,575 |
|-----------------------------------|------------------------|---------|

|   |                 |            |        |
|---|-----------------|------------|--------|
| <b>DEFERRAL</b>   | 20.0% Reduction | Adjustment | -\$315 |
| 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> | \$1,260 |
|------------------------|---------|

Screening Date: 8-Apr-2010

Docket No.: 2010-0573-AIR-E

PGW

Respondent: Jose E. Alvarez dba Klassic Paint & Body Shop

Policy Revision 2 (September 2002)

Case ID No.: 39485

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN105796247

Media [Statute]: Air

Enf. Coordinator: Miriam Hall

### 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%      |
| <i>Please Enter Yes or No</i> |  |                   |         |
| Other                         | Environmental management systems in place for one year or more   | No                | 0%      |
|                               | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program  | No                | 0%      |
|                               | Participation in a voluntary pollution reduction program   | No                | 0%      |
|                               | Early compliance with, or offer of a product that meets future state or federal government environmental requirements  | No                | 0%      |

Adjustment Percentage (Subtotal 2) 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

The penalty was enhanced for one NOV for the same violations.

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

Screening Date 8-Apr-2010

Docket No. 2010-0573-AIR-E

PCW

Respondent Jose E. Alvarez dba Klassic Paint & Body Shop

Policy Revision 2 (September 2002)

Case ID No. 39485

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105796247

Media [Statute] Air

Enf. Coordinator Miriam Hall

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 106.436(11)(A) and (13) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to maintain a stack height of at least 1.2 times the height of the tallest building within 200 feet and to keep the stack free of rain caps. Specifically, the height of the paint booth exhaust stack is lower than the roof of the two-story apartment building located adjacent to the Respondent's shop, and the exhaust stack has a rain cap.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

| Release   | Harm  |          |       |
|-----------|-------|----------|-------|
|           | Major | Moderate | Minor |
| Actual    |       |          |       |
| Potential |       |          | x     |

Percent 5%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
|               |       |          |       |

Percent 0%

Matrix Notes

Human health or the environment could be exposed to insignificant emissions which would not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1

29 Number of violation days

|              |   |
|--------------|---|
| daily        |   |
| weekly       |   |
| monthly      |   |
| quarterly    |   |
| semiannual   |   |
| annual       |   |
| single event | x |

mark only one with an x

Violation Base Penalty \$500

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$45

Violation Final Penalty Total \$525

This violation Final Assessed Penalty (adjusted for limits) \$525

# Economic Benefit Worksheet

**Respondent:** Jose E. Alvarez dba Klassic Paint & Body Shop  
**Case ID No.:** 39485  
**Reg. Ent. Reference No.:** RN105796247  
**Media:** Air  
**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                | \$500 | 18-Aug-2009 | 30-Nov-2010 | 1.28 | \$2 | \$43 | \$45 |
| 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 estimated cost of modifying the exhaust stack to make it compliant with the Permit By Rule requirements from the date of the first investigation documenting the violation to the estimated compliance date.

### 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

\$500

**TOTAL**

\$45

Screening Date 8-Apr-2010

Docket No. 2010-0573-AIR-E

PCW

Respondent Jose E. Alvarez dba Klassic Paint & Body Shop

Policy Revision 2 (September 2002)

Case ID No. 39485

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105796247

Media [Statute] Air

Enf. Coordinator Miriam Hall

Violation Number 2

Rule Cite(s)

30.Tex. Admin. Code § 106.436(16) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to maintain and provide upon request, Material Safety Data Sheets, particulate removal efficiency of booth filters, and monthly coating and solvent usage/purchase records.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

| OR        | Release | Harm  |          |       | Percent |
|-----------|---------|-------|----------|-------|---------|
|           |         | Major | Moderate | Minor |         |
| Actual    |         |       |          |       | 0%      |
| Potential |         |       |          |       |         |

>> Programmatic Matrix

| Matrix Notes  | Falsification | Harm  |          |       | Percent |
|---|---------------|-------|----------|-------|---------|
|   |               | Major | Moderate | Minor |         |
|   |               | X     |          |       | 10%     |
| The Respondent failed to comply with more than 70% of the rule requirement. |               |       |          |       |         |

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 29

mark only one with an x

|              |   |
|--------------|---|
| daily        |   |
| weekly       |   |
| monthly      |   |
| quarterly    |   |
| semiannual   |   |
| annual       |   |
| single event | X |

Violation Base Penalty \$1,000

One single event is recommended for the day of the investigation.

Good Faith Efforts to Comply

0.0% Reduction

\$0

|               | Before NOV | NOV to EDCRP/Saltment Offer |
|---------------|------------|-----------------------------|
| Extraordinary |            |                             |
| Ordinary      |            |                             |
| N/A           | X          | (mark with x)               |

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$32

Violation Final Penalty Total \$1,050

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

## Economic Benefit Worksheet

**Respondent:** Jose E. Alvarez dba Klassic Paint & Body Shop  
**Case ID No.:** 39485  
**Reg. Ent. Reference No.:** RN105796247  
**Media:** Air  
**Violation No.:** 2

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0              | 15                    |

| Item Description | Item Cost<br><small>No commas or \$</small> | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|---|---------------|------------|-----|----------------|---------------|-----------|
|------------------|---|---------------|------------|-----|----------------|---------------|-----------|

### Delayed Costs

|                          |       |             |             |      |      |     |      |
|--------------------------|-------|-------------|-------------|------|------|-----|------|
| Equipment                |       |             |             | 0.00 | \$0  | \$0 | \$0  |
| Buildings                |       |             |             | 0.00 | \$0  | \$0 | \$0  |
| Other (as needed)        |       |             |             | 0.00 | \$0  | \$0 | \$0  |
| Engineering/construction |       |             |             | 0.00 | \$0  | \$0 | \$0  |
| Land                     |       |             |             | 0.00 | \$0  | n/a | \$0  |
| Record Keeping System    | \$500 | 18-Aug-2009 | 30-Nov-2010 | 1.28 | \$32 | n/a | \$32 |
| 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 estimated cost for maintaining records at the site from the from the date of the first investigation documenting the violation to the estimated compliance date.

### 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

\$500

**TOTAL**

\$32



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  
JOSE E. ALVAREZ DBA KLASSIC  
PAINT & BODY SHOP  
RN105796247

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2010-0573-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 Jose E. Alvarez dba Klassic Paint & Body Shop ("the Respondent") 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 the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates an auto body refinishing shop at 2917 Market Street in Laredo, Webb County, Texas (the "Shop").
2. The Shop consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 31, 2010.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of One Thousand Five Hundred Seventy-Five Dollars (\$1,575) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid Three Hundred Fifteen Dollars (\$315) of the administrative penalty and Three Hundred Fifteen Dollars (\$315) 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 Nine Hundred Forty-Five Dollars (\$945) of the administrative penalty shall be payable in three monthly payments of Three Hundred Fifteen Dollars (\$315) 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.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

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

1. Failed to maintain a stack height of at least 1.2 times the height of the tallest building within 200 feet, in violation of 30 TEX. ADMIN. CODE § 106.436(11)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on March 10, 2010. Specifically, the height of the paint booth exhaust stack is lower than the roof of the two-story apartment building located adjacent to the Shop.

2. Failed to keep the paint booth exhaust stack free of a rain cap, in violation of 30 TEX. ADMIN. CODE § 106.436(13) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on March 10, 2010.
3. Failed to maintain and provide upon request, Material Safety Data Sheets ("MSDS"), particulate removal efficiency of booth filters, and monthly coating and solvent usage/purchase records, in violation of 30 TEX. ADMIN. CODE § 106.436(16) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on March 10, 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 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Jose E. Alvarez dba Klassic Paint & Body Shop, Docket No. 2010-0573-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 the Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order:
    - i. Raise the height of the paint booth exhaust stack so that it is 1.2 times higher than the top of the roof of the two-story apartment building on the adjacent property to the Shop;
    - ii. Remove the rain cap from the paint booth exhaust stack and keep the exhaust stack free of goose necks or other stack heads that would restrict or obstruct vertical discharge of air contaminants; and
    - iii. Begin maintaining MSDS for all coatings and solvents used, records of the particulate removal efficiency of the booth filters, and monthly coating and solvent usage/purchase records at the Shop.
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including

photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.a.iii. 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:

Air Section, Manager  
Laredo Regional Office  
Texas Commission on Environmental Quality  
707 East Calton Road, Suite 304  
Laredo, Texas 78041-3887

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 Shop operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this

Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Jose E. Alvarez dba Klassic Paint & Body Shop

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Signature]  
For the Executive Director

11/8/2010  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

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

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

[Signature]  
Signature

11-3-2010  
Date

JOSE E. ALVAREZ  
Name (Printed or typed)  
Authorized Representative of  
Jose E. Alvarez dba Klassic Paint & 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.