

Executive Summary – Enforcement Matter – Case No. 40324
Ismael Arreola d/b/a Arreola Paint & Body Shop
RN101552701
Docket No. 2010-1440-AIR-E

Order Type:

Agreed Order

Findings Order Justification:

N/A

Media:

AIR

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

1303 East Saner Avenue, Dallas, Dallas County

Type of Operation:

auto body refinishing and paint shop

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: September 2, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$6,300

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$210

Total Due to General Revenue: \$6,090

Payment Plan: 35 payments of \$174 each

SEP Conditional Offset: N/A

Compliance History Classifications:

Person/CN – Not yet rated
Site/RN – Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

**Executive Summary – Enforcement Matter – Case No. 40324
Ismael Arreola d/b/a Arreola Paint & Body Shop
RN101552701
Docket No. 2010-1440-AIR-E**

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: July 29, 2010
Date(s) of NOV(s): May 21, 2009
Date(s) of NOE(s): August 19, 2010

Violation Information

Failed to obtain authorization prior to operating [TEX. HEALTH AND SAFETY CODE § 382.0518(a) and 382.085(b) and 30 TEX. ADMIN. CODE § 116.110(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent obtained Permit by Rule No. 96252 on June 6, 2011.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: February 16, 2011
Date Answer(s) Filed: February 28, 2011
SOAH Referral Date: April 5, 2011
Hearing Date(s):
Preliminary hearing: May 12, 2011
Evidentiary hearing: September 8, 2011 (scheduled)
Settlement Date: August 2, 2011

Contact Information

TCEQ Attorneys: Anna M. Treadwell, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Todd Huddleson, Air Enforcement Section, (512) 239- 2541

TCEQ Regional Contact: Alyssa Taylor, Dallas/Fort Worth Regional Office, (817) 588-5828

Respondent: Ismael Arreola, 1303 East Saner Avenue, Dallas, Texas 75216

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	23-Aug-2010	Screening	30-Aug-2010	EPA Due	
	PCW	16-Dec-2010				

RESPONDENT/FACILITY INFORMATION			
Respondent	Ismael Arreola dba Arreola Paint & Body Shop		
Reg. Ent. Ref. No.	RN101552701		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	40324	No. of Violations	1
Docket No.	2010-1440-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Todd Huddleson
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit	Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$6,000
---	-------------------	---------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$300
---------------------------	------------------	--------------------------------	-------

Notes	Enhancement for one NOV for same/similar violation.
--------------	---

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	\$240	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$2,500	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$6,300
-----------------------------	-----------------------	---------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
--------------	--

Final Penalty Amount	\$6,300
-----------------------------	---------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$6,300
-----------------------------------	-------------------------------	---------

DEFERRAL	0.0%	Reduction	Adjustment	\$0
-----------------	------	-----------	-------------------	-----

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

Notes	Deferral not offered for non-expedited settlement.
--------------	--

PAYABLE PENALTY	\$6,300
------------------------	---------

Screening Date 30-Aug-2010

Docket No. 2010-1440-AIR-E

PCW

Respondent Ismael Arreola dba Arreola Paint & Body Shop

Policy Revision 2 (September 2002)

Case ID No. 40324

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101552701

Media [Statute] Air

Enf. Coordinator Todd Huddleson

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 <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV for same/similar violation.

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

Screening Date 30-Aug-2010	Docket No. 2010-1440-AIR-E	PCW	
Respondent Ismael Arreola dba Arreola Paint & Body Shop	<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 40324	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No. RN101552701			
Media [Statute] Air			
Enf. Coordinator Todd Huddleson			
Violation Number	1		
Rule Cite(s)	30 Tex. Admin. Code § 116.110(a) and Tex. Health & Safety Code §§ 382.085(b) and 382.0518(a)		
Violation Description	Failed to obtain authorization prior to operating the auto body refinishing and paint shop. Specifically, it was documented that the Respondent was operating an auto body refinishing and paint shop without obtaining authorization.		
Base Penalty		\$10,000	
>> Environmental, Property and Human Health Matrix			
OR	Release	Harm	
		Major Moderate Minor	
	Actual	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>
			Percent <input type="text" value="0%"/>
>> Programmatic Matrix			
	Falsification	Major	Moderate
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>
			Percent <input type="text" value="10%"/>
Matrix Notes	100% of the rule was not met.		
Adjustment		<input type="text" value="\$9,000"/>	
		<input type="text" value="\$1,000"/>	
Violation Events			
	Number of Violation Events	<input type="text" value="6"/>	Number of violation days
		<input type="text" value="467"/>	
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$6,000"/>
	weekly	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input checked="" type="text" value="x"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
Six quarterly events are recommended based upon the date operations were documented, May 20, 2009, to the August 30, 2010 screening date.			
Good Faith Efforts to Comply		<input type="text" value="0.0%"/> Reduction	<input type="text" value="\$0"/>
	Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text"/>	
N/A	<input checked="" type="text" value="x"/>	(mark with x)	
Notes	The Respondent does not meet the good faith criteria for this violation.		
Violation Subtotal		<input type="text" value="\$6,000"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	<input type="text" value="\$240"/>	Violation Final Penalty Total	<input type="text" value="\$6,300"/>
This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$6,300"/>	

Economic Benefit Worksheet

Respondent Ismael Arreola dba Arreola Paint & Body Shop
Case ID No. 40324
Reg. Ent. Reference No. RN101552701
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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$2,500	20-May-2009	20-Apr-2011	1.92	\$240	n/a	\$240
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain proper authorization to operate the auto body and paint shop. The date required is the date operations were documented. The final date is the date that corrective actions should be completed.

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

\$2,500

TOTAL

\$240

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603715301 Ismael Arreola	Classification:	Rating:
Regulated Entity:	RN101552701 Arreola Paint & Body Shop	Classification: AVERAGE	Site Rating: 1.50
<hr/>			
ID Number(s):			
<hr/>			
Location:	1303 E SANER AVE, DALLAS, TX, 75216		
<hr/>			
TCEQ Region:	REGION 04 - DFW METROPLEX		
<hr/>			
Date Compliance History Prepared:	August 30, 2010		
<hr/>			
Agency Decision Requiring Compliance History:	Enforcement		
<hr/>			
Compliance Period:	August 30, 2005 to August 30, 2010		
<hr/>			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Todd Huddleson	Phone:	239 - 2541
<hr/>			

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

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

1	05/20/2009	(744845)
2	08/19/2010	(847882)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	05/21/2009	(744845)
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 116, SubChapter B 116.110(a) 5C THSC Chapter 382 382.0518(a) 5C THSC Chapter 382 382.085(b)	
Description:	§116.110(a) Failure to either: Obtain a permit under §116.111 of this title (relating to General Application); or satisfy the conditions for facilities permitted by rule under Chapter 106 of this title (relating to Permits by Rule)	
- 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

THIS PAGE INTENTIONALLY LEFT BLANK

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
ISMAEL ARREOLA D/B/A ARREOLA
PAINT & BODY SHOP;
RN101552701**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2010-1440-AIR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Ismael Arreola d/b/a Arreola Paint & Body Shop ("Respondent") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Dennis Alvold, appear before the Commission and together stipulate that:

1. Respondent owns and operates an auto body refinishing and paint shop located at 1303 East Saner Avenue, Dallas, Dallas County, Texas (the "Plant"). The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 382 and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of six thousand three hundred dollars (\$6,300.00) is assessed by the Commission in settlement of the Allegations in Section II. Respondent paid two hundred ten dollars (\$210.00) of the administrative penalty. The remaining amount of six thousand ninety dollars (\$6,090.00) of the administrative penalty shall be payable in 35 monthly payments of one hundred seventy-four dollars (\$174.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining

installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

6. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
7. The Executive Director of the TCEQ and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.
8. The Executive Director recognizes that Respondent obtained Permit by Rule No. 96252 for operation of the Plant on June 6, 2011.
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 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

1. During an investigation conducted on July 29, 2010, a City of Dallas Air Pollution Control Program investigator documented that Respondent failed to obtain authorization prior to operating the Plant, in violation of TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b) and 30 TEX. ADMIN. CODE § 116.110(a).
2. Respondent received notice of the violation on or about August 24, 2010.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Ismael Arreola d/b/a Arreola Paint & Body Shop, Docket No. 2010-1440-AIR-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

2. All relief not expressly granted in this Agreed Order is denied.
3. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against 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 separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings

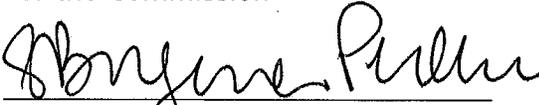
assigned to them under TEX. BUS. ORG. CODE § 1.002.

8. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

10/12/2011

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Ismael Arreola d/b/a Arreola Paint & Body Shop, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

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

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



Signature - Ismael Arreola

August 2, 2011

Date