

**Executive Summary – Enforcement Matter – Case No. 40089
High Tech Auto Restyling Inc.
RN104713060
Docket No. 2010-1210-AIR-E**

Order Type:
Default Order

Findings Order Justification:
N/A

Media:
AIR

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
9910 Dyer Street, El Paso, El Paso 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: February 18, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed:	\$2,100
Amount Deferred for Expedited Settlement:	N/A
Amount Deferred for Financial Inability to Pay:	N/A
Total Paid to General Revenue:	\$0
Total Due to General Revenue:	\$2,100
SEP Conditional Offset:	N/A

Compliance History Classifications:
Person/CN – High
Site/RN – High

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: June 30, 2010
Date(s) of NOV(s): March 5, 2010
Date(s) of NOE(s): July 15, 2010

Violation Information

Failed to obtain authorization prior to conducting surface coating operations [30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
N/A

Technical Requirements:

1. Within 30 days:
 - a. Either certify that the Facility can satisfy the conditions for a Permit By Rule, or
 - b. Submit an administratively complete permit application.
2. If a permit application is submitted, Respondent shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing.
3. Within 180 days, submit written certification either that authorization to operate the Facility has been obtained or that operation has ceased until such time that appropriate authorization is obtained.

Litigation Information

Date Petition(s) Filed: December 15, 2010
Date(s) Green Card(s) Signed: Unclaimed
Date(s) Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A

Contact Information

TCEQ Attorneys: Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Allison Fischer, Air Enforcement Section, (512) 239-2574

TCEQ Regional Contact: Kent Waggoner, El Paso Regional Office, MC R-6, (915) 834-4957

Respondent: Eric Sanchez, Director, High Tech Auto Restyling Inc., 4935 Aiken, El Paso, Texas 79926

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	19-Jul-2010	Screening	27-Jul-2010	EPA Due	
	PCW	8-Nov-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	HIGH TECH AUTO RESTYLING INC.
Reg. Ent. Ref. No.	RN104713060
Facility/Site Region	6-El Paso
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	40089	No. of Violations	1
Docket No.	2010-1210-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Allison Fischer
		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	\$2,000
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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	-\$100
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Notes	Enhancement for one NOV with same/similar violation. Reduction for high performer status.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$133	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$2,500	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,900
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OTHER FACTORS AS JUSTICE MAY REQUIRE	10.5%	Adjustment	\$200
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Enhancement to offset High Performer reduction due to default.
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Final Penalty Amount	\$2,100
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,100
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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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.
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PAYABLE PENALTY	\$2,100
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Screening Date 27-Jul-2010

Docket No. 2010-1210-AIR-E

PCW

Respondent HIGH TECH AUTO RESTYLING INC.

Policy Revision 2 (September 2002)

Case ID No. 40089

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104713060

Media [Statute] Air

Enf. Coordinator Allison Fischer

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	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 with same/similar violation. Reduction for high performer status.

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

Screening Date 27-Jul-2010

Docket No. 2010-1210-AIR-E

PCW

Respondent HIGH TECH AUTO RESTYLING INC.

Policy Revision 2 (September 2002)

Case ID No. 40089

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104713060

Media [Statute] Air

Enf. Coordinator Allison Fischer

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 116.110(a) and Tex. Health & Safety Code §§ 382.0518(a) and 382.085(b)

Violation Description Failed to obtain authorization prior to conducting surface coating operations, as documented during an investigation on June 30, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 173 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,000

Two quarterly events are recommended based on the violation start date, February 4, 2010, to the screening date, July 27, 2010.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark w th x)

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

Violation Subtotal \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$133

Violation Final Penalty Total \$2,100

This violation Final Assessed Penalty (adjusted for limits) \$2,100

Economic Benefit Worksheet

Respondent HIGH TECH AUTO RESTYLING INC.
Case ID No. 40089
Req. Ent. Reference No. RN104713060
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
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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	4-Feb-2010	28-Feb-2011	1.07	\$133	n/a	\$133
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 the violation was first 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

\$133

Compliance History Report

Customer/Respondent/Owner-Operator: CN602885923 High Tech Auto Restyling Inc. Classification: HIGH Rating: 0.00
Regulated Entity: RN104713060 HI TECH AUTO RESTYLING Classification: HIGH Site Rating: 0.00
ID Number(s):
Location: 9910 DYER ST, EL PASO, TX, 79924
TCEQ Region: REGION 06 - EL PASO
Date Compliance History Prepared: July 20, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: July 20, 2005 to July 20, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
Name: Allison Fischer Phone: (512) 239 – 2574

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
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 | 08/22/2005 | (405101) |
| 2 | 03/05/2010 | (792038) |
| 3 | 07/15/2010 | (829344) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 03/05/2010 (792038)**
- | | | |
|--------------|--|--------------------------|
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter E 115.426(1)(B) | |
| Description: | Failure to maintain adequate purchasing receipts as required under 30 TAC 115.426(1)(B) | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter E 115.422(1)(C) | |
| Description: | Failure to keep all waste solvents in closed containers in accordance with 30 TAC Chapter 115.422 (1)(C) | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 116, SubChapter B 116.110(a)
5C THSC Chapter 382 382.085(b) | |
| Description: | Failure to obtain authorization from TCEQ prior to operating a surface coating business in accordance with 30 TAC Chapter 116.110 (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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
HIGH TECH AUTO RESTYLING
INC.;
RN104713060**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-1210-AIR-E

At its _____ agenda meeting, 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 ch. 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 High Tech Auto Restyling Inc. ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates an auto body refinishing and paint shop at 9910 Dyer Street in El Paso, El Paso County, Texas (the "Facility"). The Facility consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. During an investigation conducted on June 30, 2010, a City of El Paso Environmental Services Department investigator (TCEQ Contractor) documented that Respondent failed to obtain authorization prior to conducting surface coating operations at the Facility.
3. Respondent received notice of the violation on or about July 20, 2010.
4. 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 High Tech Auto Restyling Inc." (the "EDPRP") in the TCEQ Chief Clerk's office on December 15, 2010.
5. By letter dated December 15, 2010, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.

6. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 382 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to obtain authorization prior to conducting surface coating operations, in violation of 30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b).
3. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer 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 Respondent and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of two thousand one hundred dollars (\$2,100.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. 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. Respondent is assessed an administrative penalty in the amount of two thousand one hundred dollars (\$2,100.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent'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.

2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: High Tech Auto Restyling Inc.; Docket No. 2010-1210-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

3. Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Respondent shall:
 - i. Either certify, as described in Ordering Provision No. 3.c., below, that the Facility can satisfy the conditions for a Permit By Rule under 30 TEX. ADMIN. CODE ch. 106; or
 - ii. Submit an administratively complete permit application in accordance with 30 TEX. ADMIN. CODE § 116.110(a) to:

Air Permits Division, MC 162
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3088

- b. If a permit application is submitted pursuant to Ordering Provision No. 3.a.ii., Respondent shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing.
 - c. Within 180 days after the effective date of this Order, Respondent shall submit written certification either that authorization to operate the Facility has been obtained or that operation has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance, and 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:

Kent Waggoner, Air Section, Manager
El Paso Regional Office
Texas Commission on Environmental Quality
401 East Franklin Avenue, Suite 560
El Paso, Texas 79901-1206

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. If Respondent 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, Respondent's failure to comply is not a violation of this 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.
7. 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 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.
8. 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 Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. 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.
10. 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.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF GARY K. SHIU

STATE OF TEXAS

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§
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COUNTY OF HARRIS

"My name is Gary K. Shiu. 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, 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 HIGH TECH AUTO RESTYLING INC.," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on December 15, 2010.

The EDPRP was mailed to Respondent's last known address on December 15, 2010 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

Gary K. Shiu, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this ____ day of _____, A.D. 2011.

Notary Signature