

**Executive Summary – Enforcement Matter – Case No. 41512**  
**Aus-Tex Body & Frame, Inc.**  
**RN106099658**  
**Docket No. 2011-0602-AIR-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

AIR

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

Aus-Tex Pflugerville, 1408 Three Points Road, Pflugerville, Travis County

**Type of Operation:**

Auto body refinishing facility

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

**Texas Register Publication Date:** June 17, 2011

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$900

**Amount Deferred for Expedited Settlement:** \$180

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$720

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - N/A

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 41512  
Aus-Tex Body & Frame, Inc.  
RN106099658  
Docket No. 2011-0602-AIR-E**

***Investigation Information***

**Complaint Date(s):** January 12, 2011

**Complaint Information:** A complaint was received alleging construction of paint booths without permits.

**Date(s) of Investigation:** February 10, 2011

**Date(s) of NOE(s):** April 11, 2011

***Violation Information***

Failed to obtain permit authorization for a source of air emissions prior to the commencement of operations of a facility which emits air contaminants. Specifically, a spray booth was constructed and operated prior to obtaining authorization [30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.085(b) and 382.0518(a)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Executive Director recognizes that on April 14, 2011, authorization to operate the Site was issued under Permit By Rule Registration No. 95285.

**Technical Requirements:**

N/A

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** James Nolan, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-6634; Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495

**TCEQ SEP Coordinator:** N/A

**Respondent:** Henry M. Jones, President, Aus-Tex Body & Frame, Inc., P.O. Box 2449, Pflugerville, Texas 78691

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	11-Apr-2011	<b>Screening</b>	19-Apr-2011	<b>EPA Due</b>	
	<b>PCW</b>	2-May-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Aus-Tex Body & Frame, Inc.		
<b>Reg. Ent. Ref. No.</b>	RN106099658		
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	41512	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-0602-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Government/Non-Prof</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	James Nolan
		<b>EC's Team</b>	Enforcement Team 4
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$1,000</b>
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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.

<b>Compliance History</b>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$0</b>
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Notes: No enhancement for compliance history.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$100</b>
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts: \$18  
 Approx. Cost of Compliance: \$2,100  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$900</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.  
 Notes:

<b>Final Penalty Amount</b>	<b>\$900</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$900</b>
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	<b>-\$180</b>
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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>	<b>\$720</b>
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Screening Date 19-Apr-2011

Docket No. 2011-0602-AIR-E

PCW

Respondent Aus-Tex Body & Frame, Inc.

Policy Revision 2 (September 2002)

Case ID No. 41512

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106099658

Media [Statute] Air

Enf. Coordinator James Nolan

### 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> )	0	0%
	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%

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)

N/A

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 enhancement for compliance history.

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

Screening Date 19-Apr-2011

Docket No. 2011-0602-AIR-E

PCW

Respondent Aus-Tex Body & Frame, Inc.

Policy Revision 2 (September 2002)

Case ID No. 41512

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106099658

Media [Statute] Air

Enf. Coordinator James Nolan

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 permit authorization for a source of air emissions prior to the commencement of operations of a facility which emits air contaminants. Specifically, a spray booth was constructed and operated prior to obtaining authorization.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

63 Number of violation days

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

Violation Base Penalty \$1,000

One quarterly event is recommended based upon the date of investigation (February 10, 2011) through the date of compliance (April 14, 2011).

Good Faith Efforts to Comply

10.0% Reduction

\$100

Before NOV NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes

The Respondent completed corrective actions on April 14, 2011, after the April 11, 2011 NOE.

Violation Subtotal \$900

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$18

Violation Final Penalty Total \$900

This violation Final Assessed Penalty (adjusted for limits) \$900

## Economic Benefit Worksheet

**Respondent** Aus-Tex Body & Frame, Inc.  
**Case ID No.** 41512  
**Req. Ent. Reference No.** RN106099658  
**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	\$2,100	10-Feb-2011	14-Apr-2011	0.17	\$18	n/a	\$18
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs for obtaining proper permit authorization for the Site. The date required is the date of investigation and the final date is the date of compliance.

### 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

\$2,100

**TOTAL**

\$18

# Compliance History

Customer/Respondent/Owner-Operator: CN600415939 Aus-Tex Body & Frame, Inc. Classification: AVERAGE Rating: 3.01

Regulated Entity: RN106099658 AUS-TEX PFLUGERVILLE Classification: Site Rating:

ID Number(s): AIR NEW SOURCE PERMITS REGISTRATION 95285

Location: 1408 THREE POINTS RD, PFLUGERVILLE, TX, 78660

TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: April 19, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 19, 2006 to April 19, 2011

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

Name: James Nolan Phone: (512) 239-6634

## 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.

## 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.)  
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  
CONCERNING  
AUS-TEX BODY & FRAME, INC.  
RN106099658**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2011-0602-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 Aus-Tex Body & Frame, Inc. ("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 facility at 1408 Three Points Road in Pflugerville, Travis County, Texas (the "Site").
2. The Site 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 April 16, 2011.
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 Nine Hundred Dollars (\$900) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Hundred Twenty Dollars (\$720) of the administrative

penalty and One Hundred Eighty Dollars (\$180) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and 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 recognizes that on April 14, 2011, authorization to operate the Site was issued under Permit By Rule Registration No. 95285.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have failed to obtain permit authorization for a source of air emissions prior to the commencement of operations of a facility which emits air contaminants, in violation of 30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.085(b) and 382.0518(a), as documented during an investigation conducted on February 10, 2011. Specifically, a spray booth was constructed and operated prior to obtaining authorization.

## 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: Aus-Tex Body & Frame, Inc., Docket No. 2011-0602-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. 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 Site operations referenced in this Agreed Order.
3. 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.
4. 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.
5. 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.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

\_\_\_\_\_  
For the Executive Director

6/17/2011  
\_\_\_\_\_  
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

MAY 17, 2010  
\_\_\_\_\_  
Date

HENRY M. JONES  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Aus-Tex Body & Frame, Inc.

PRESIDENT  
\_\_\_\_\_  
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.