

Executive Summary – Enforcement Matter – Case No. 41130
Andrew Pena dba A-One Aircraft Paint
RN105121891
Docket No. 2011-0215-IHW-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

IHW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

A-One Aircraft Paint, 126 Airport Drive, Midlothian, Ellis County

Type of Operation:

Aircraft painting 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: November 11, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$18,340

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$14,502

Total Paid to General Revenue: \$128

Total Due to General Revenue: \$3,710

Payment Plan: 35 payments of \$106 each

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Poor

Site/RN - Poor

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41130
Andrew Pena dba A-One Aircraft Paint
RN105121891
Docket No. 2011-0215-IHW-E

Investigation Information

Complaint Date(s): October 28, 2010

Complaint Information: The complainant alleges that the Respondent was mismanaging paint waste.

Date(s) of Investigation: November 18, 2010

Date(s) of NOE(s): January 28, 2011

Violation Information

1. Failed to store paint and paint-related waste in a tank system equipped with secondary containment. Specifically, the Respondent stored paint and paint-related waste in a subsurface tank which did not have secondary containment [30 TEX. ADMIN. CODE § 335.262(c)(2)(D) and 40 CODE OF FEDERAL REGULATIONS ("CFR") § 265.197(a) and (b)].
2. Failed to clearly label universal waste containers with the words "Universal Waste-Paint and Paint-Related Wastes". Specifically, a polypropylene tote containing spent paint stripper wash water waste and a polypropylene drum containing spent paint thinner were not labeled [30 TEX. ADMIN. CODE § 335.262(c)(2)(F) and 40 CFR § 273.14].
3. Failed to conduct proper hazardous waste determinations and waste classifications and maintain the information for at least three years. Specifically, the Respondent did not conduct hazardous waste determinations for the masking paper and foil taping which were observed in a dumpster at the Facility [30 TEX. ADMIN. CODE §§ 335.62, 335.504 and 335.262(d) and 40 CFR § 262.11].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that the Respondent began properly labeling all containers at the Facility on November 19, 2010.

Technical Requirements:

The Order will require the Respondent to:

a. Within 30 days:

- i. Cease storing waste in the subsurface tank, remove all waste from the tank, dispose of the waste at an authorized facility, and perform a tank closure on the sump; and
- ii. Conduct hazardous waste determinations and waste classifications on all waste streams at the Facility.

b. Within 45 days, submit written certification demonstrating compliance.

**Executive Summary – Enforcement Matter – Case No. 41130
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Docket No. 2011-0215-IHW-E**

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: Mike Pace, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5933; Debra Barber, Enforcement Division, MC 219, (512) 239-0412
TCEQ SEP Coordinator: N/A
Respondent: Andrew Pena, Owner, A-One Aircraft Paint, 126 Airport Drive, Waxahachie, Texas 76065
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES

Assigned	31-Jan-2011			
PCW	7-Feb-2011	Screening	7-Feb-2011	EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	Andrew Pena dba A-One Aircraft Paint		
Reg. Ent. Ref. No.	RN105121891		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	41130	No. of Violations	3
Docket No.	2011-0215-IHW-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Mike Pace
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$12,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **57.0%** Enhancement **Subtotals 2, 3, & 7** **\$6,840**

Notes: Enhancement for one order containing a denial of liability, one NOV with dissimilar violations, repeat violator and poor performer classification.

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** **\$500**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts: \$496
 Approx. Cost of Compliance: \$9,300
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$18,340**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$18,340**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$18,340**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$3,668**

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

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY **\$14,672**

Screening Date 7-Feb-2011

Docket No. 2011-0215-IHW-E

PCW

Respondent Andrew Pena dba A-One Aircraft Paint

Policy Revision 2 (September 2002)

Case ID No. 41130

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105121891

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Mike Pace

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	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	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) 22%

>> **Repeat Violator (Subtotal 3)**

Yes

Adjustment Percentage (Subtotal 3) 25%

>> **Compliance History Person Classification (Subtotal 7)**

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one order containing a denial of liability, one NOV with dissimilar violations, repeat violator and poor performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 57%

Screening Date 7-Feb-2011

Docket No. 2011-0215-IHW-E

PCW

Respondent Andrew Pena dba A-One Aircraft Paint

Policy Revision 2 (September 2002)

Case ID No. 41130

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105121891

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Mike Pace

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 335.262(c)(2)(D) and 40 Code of Federal Regulations ("CFR") § 265.197(a) and (b)

Violation Description Failed to store paint and paint-related waste in a tank system equipped with secondary containment. Specifically, the Respondent stored paint and paint-related waste in a subsurface tank which did not have secondary containment.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 3 Number of violation days 81

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

Violation Base Penalty \$7,500

Three monthly events are recommended from the November 18, 2010 investigation to the February 7, 2011 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$310

Violation Final Penalty Total \$11,775

This violation Final Assessed Penalty (adjusted for limits) \$11,775

Economic Benefit Worksheet

Respondent Andrew Pena dba A-One Aircraft Paint
Case ID No. 41130
Reg. Ent. Reference No. RN105121891
Media Industrial and Hazardous Waste
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	\$5,000	18-Nov-2010	7-Oct-2011	0.88	\$15	\$295	\$310
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

Estimated cost to remove all waste from the subsurface tank, dispose of the waste at an authorized facility, and perform a tank closure on the sump. The date required is the investigation date and the final date is the expected 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 \$5,000

TOTAL \$310

Screening Date 7-Feb-2011

Docket No. 2011-0215-IHW-E

PCW

Respondent Andrew Pena dba A-One Aircraft Paint

Policy Revision 2 (September 2002)

Case ID No. 41130

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105121891

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Mike Pace

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 335.262(c)(2)(F) and 40 CFR § 273.14

Violation Description Failed to clearly label universal waste containers with the words "Universal Waste-Paint and Paint-Related Wastes". Specifically, a polypropylene tote containing spent paint stripper wash water waste and a polypropylene drum containing spent paint thinner were not labeled.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (10%).

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 Number of violation days 2

Table for marking frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event (marked with X).

Violation Base Penalty \$2,000

Two single events are recommended (one event for each unlabeled container).

Good Faith Efforts to Comply

25.0% Reduction

\$500

Table for Good Faith Efforts: Extraordinary, Ordinary (marked with X), N/A.

Notes The Respondent came into compliance on November 19, 2010, prior to the Notice of Enforcement dated January 28, 2011.

Violation Subtotal \$1,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$2,640

This violation Final Assessed Penalty (adjusted for limits) \$2,640

Economic Benefit Worksheet

Respondent Andrew Pena dba A-One Aircraft Paint
Case ID No. 41130
Reg. Ent. Reference No. RN105121891
Media Industrial and Hazardous Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$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				0.00	\$0	n/a	\$0
Other (as needed)	\$100	18-Nov-2010	19-Nov-2010	0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly label two universal waste containers. The date required is the investigation date and the final date is the 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

\$100

TOTAL

\$0

Screening Date 7-Feb-2011

Docket No. 2011-0215-IHW-E

PCW

Respondent Andrew Pena dba A-One Aircraft Paint

Policy Revision 2 (September 2002)

Case ID No. 41130

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105121891

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Mike Pace

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 335.62, 335.504 and 335.262(d) and 40 CFR § 262.11

Violation Description

Failed to conduct proper hazardous waste determinations and waste classifications and maintain the information for at least three years. Specifically, the Respondent did not conduct hazardous waste determinations for the masking paper and foil taping which were observed in a dumpster at the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$186

Violation Final Penalty Total \$3,925

This violation Final Assessed Penalty (adjusted for limits) \$3,925

Economic Benefit Worksheet

Respondent Andrew Pena dba A-One Aircraft Paint
Case ID No. 41130
Reg. Ent. Reference No. RN105121891
Media Industrial and Hazardous Waste
Violation No. 3

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	\$4,200	18-Nov-2010	7-Oct-2011	0.88	\$186	n/a	\$186
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

Estimated cost to conduct hazardous waste determinations on one waste stream. The date required is the investigation date and the final date is the expected 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

\$4,200

TOTAL

\$186

Compliance History

Customer/Respondent/Owner-Operator: CN603157504 Pena, Andrew Classification: POOR Rating: 147.50
Regulated Entity: RN105121891 A-One Aircraft Paint Classification: POOR Site Rating: 147.50
ID Number(s): INDUSTRIAL AND HAZARDOUS WASTE EPA ID TXR000076695
Location: 126 AIRPORT DR, MIDLOTHIAN, TX, 76065
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: February 07, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: February 07, 2006 to February 07, 2011
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Mike Pace Phone: (817)588-5933

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: 9/1/2010 Repeat Violator: YES

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
Effective Date: 08/23/2007 ADMINORDER 2007-0398-IHW-E
Classification: Major
Citation: 30 TAC Chapter 335, SubChapter A 335.2(b)
Description: Failed to prevent the transportation and processing of industrial hazardous waste to an unauthorized facility.
- 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 03/10/2008 (599369)
2 03/24/2008 (617317)
3 08/28/2008 (700993)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 11/16/2007(599369)
Self Report? NO Classification: Major
Citation: 30 TAC Chapter 335, SubChapter A 335.2(b)
Description: Failed to prevent the transportation and processing of industrial hazardous waste to an unauthorized facility.
Self Report? NO Classification: Major
Citation: 2A TWC Chapter 7, SubChapter A 7.101
OPs 2.a.-b. ORDER
Description: Failed to comply with Ordering Provisions of Commission Order Docket No. 2007-0398-IHW-E.
- 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
ANDREW PENNA DBA A-ONE
AIRCRAFT PAINT
RN105121891**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2011-0215-IHW-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 Andrew Pena dba A-One Aircraft Paint ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 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 aircraft painting facility at 126 Airport Drive in Midlothian, Ellis County, Texas (the "Facility").
2. The Facility involves or involved the management of industrial hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
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 February 2, 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 Eighteen Thousand Three Hundred Forty Dollars (\$18,340) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Financial Assurance Section of the Commission's Financial Administration

Division reviewed financial documentation submitted by the Respondent and determined that the Respondent is unable to pay part of the administrative penalty. Therefore, Fourteen Thousand Five Hundred Two Dollars (\$14,502) of the penalty 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, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The Respondent has paid One Hundred Twenty-Eight Dollars (\$128) of the undeferred administrative penalty. The remaining amount of Three Thousand Seven Hundred Ten Dollars (\$3,710) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Six Dollars (\$106) 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. 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 recognizes that the Respondent began properly labeling all containers at the Facility on November 19, 2010.
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 Facility, the Respondent is alleged to have:

1. Failed to store paint and paint-related waste in a tank system equipped with secondary containment, in violation of 30 TEX. ADMIN. CODE § 335.262(c)(2)(D) and 40 CODE OF FEDERAL

REGULATIONS ("CFR") § 265.197(a) and (b), as documented during an investigation conducted on November 18, 2010. Specifically, the Respondent stored paint and paint-related waste in a subsurface tank which did not have secondary containment.

2. Failed to clearly label universal waste containers with the words "Universal Waste-Paint and Paint-Related Wastes", in violation of 30 TEX. ADMIN. CODE § 335.262(c)(2)(F) and 40 CFR § 273.14, as documented during an investigation conducted on November 18, 2010. Specifically, a polypropylene tote containing spent paint stripper wash water waste and a polypropylene drum containing spent paint thinner were not labeled.
3. Failed to conduct proper hazardous waste determinations and waste classifications and maintain the information for at least three years, in violation of 30 TEX. ADMIN. CODE §§ 335.62, 335.504 and 335.262(d) and 40 CFR § 262.11, as documented during an investigation conducted on November 18, 2010. Specifically, the Respondent did not conduct hazardous waste determinations for the masking paper and foil taping which were observed in a dumpster at the Facility.

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: Andrew Pena dba A-One Aircraft Paint, Docket No. 2011-0215-IHW-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. Cease storing waste in the subsurface tank, remove all waste from the tank, dispose of the waste at an authorized facility, and perform a tank closure on the sump, in accordance with 30 TEX. ADMIN. CODE § 335.262(c)(2)(D) and 40 CFR § 265.197(a) and (b); and

- ii. Conduct hazardous waste determinations and waste classifications on all waste streams at the Facility, in accordance with 30 TEX. ADMIN. CODE §§ 335.62, 335.504 and 335.262(d) and 40 CFR § 262.11.
- 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. and 2.a.ii. 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:

Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

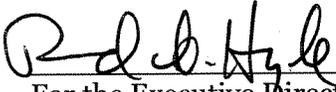
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any 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 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. 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

12/13/11

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

10-4-11

Date

Andrew Pena

Name (Printed or typed)
Authorized Representative of
Andrew Pena dba A-One Aircraft Paint

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.