

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 41289
Jason Castoria d/b/a American Auto Care
RN105967806
Docket No. 2011-0380-AIR-E

Order Type:

Default Order (SOAH preliminary hearing)

Findings Order Justification:

N/A

Media:

AIR

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

304 South Bryan Avenue, Bryan, Brazos County

Type of Operation:

paint and auto body shop

Other Significant Matters:

Additional Pending Enforcement Actions:	2011-0490-MLM-E
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: September 28, 2012

Comments Received: None

Penalty Information

Total Penalty Assessed: \$3,210

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$3,210

Compliance History Classifications:

Person/CN – Average
Site/RN – Average

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: June 22, 2010; February 2, 2011
Date(s) of NOV(s): August 5, 2010
Date(s) of NOE(s): March 3, 2011

Violation Information

Failed to obtain a permit or meet the conditions of a permit by rule prior to operating an auto body shop [TEX. HEALTH & 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:
None

Technical Requirements:

1. Immediately, submit an administratively complete permit application for the Plant.
2. Respond completely and adequately to all requests for information concerning the permit application within 30 days after the date of such requests.
3. Within 60 days, submit written certification demonstrating compliance.

Litigation Information

Date Petition(s) Filed: July 29, 2011
Date Green Card(s) Signed: August 1, 2011
Date Answer(s) Filed: August 23, 2011
SOAH Referral Date: April 23, 2012
Hearing Date(s):
Preliminary hearing: May 31, 2012 (defaulted)
Evidentiary hearing: N/A

Contact Information

TCEQ Attorneys: Anna M. Treadwell, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Blas Coy, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Heather Podlipny, Enforcement Division, (512) 239-2603

TCEQ Regional Contact: Gary Goldman, Waco Regional Office, (254) 751-0335

Respondent: Jason Castoria, 304 South Bryan Avenue, Bryan, Texas 77803

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	7-Mar-2011	Screening	8-Mar-2011	EPA Due	
	PCW	13-Jun-2011				

RESPONDENT/FACILITY INFORMATION						
Respondent	Jason Castoria dba American Auto Care					
Reg. Ent. Ref. No.	RN105967806					
Facility/Site Region	9-Waco	Major/Minor Source	Minor			

CASE INFORMATION						
Enf./Case ID No.	41289	No. of Violations	1			
Docket No.	2011-0380-AIR-E	Order Type	1660			
Media Program(s)	Air	Government/Non-Profit	No			
Multi-Media		Enf. Coordinator	Heather Podlipny			
		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	\$3,000
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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	7.0% Enhancement	Subtotals 2, 3, & 7	\$210
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Notes Enhancement for one NOV with same/similar violations and for one NOV with dissimilar violations.

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

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	\$33
Approx. Cost of Compliance	\$450

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,210
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	\$3,210
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,210
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$3,210
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Screening Date 8-Mar-2011

Docket No. 2011-0380-AIR-E

PCW

Respondent Jason Castoria dba American Auto Care

Policy Revision 2 (September 2002)

Case ID No. 41289

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105967806

Media [Statute] Air

Enf. Coordinator Heather Podlipny

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	1	2%
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 violations and for one NOV with dissimilar violations.

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

Screening Date 8-Mar-2011

Docket No. 2011-0380-AIR-E

PCW

Respondent Jason Castoria dba American Auto Care

Policy Revision 2 (September 2002)

Case ID No. 41289

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105967806

Media [Statute] Air

Enf. Coordinator Heather Podlipny

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 a permit or to meet the conditions of a permit by rule prior to operating an auto body shop.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential				0%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3 260 Number of violation days

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

Violation Base Penalty \$3,000

Three quarterly events are recommended from the date operations were documented on June 22, 2010 to the screening date on March 8, 2011.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/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 \$3,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$33

Violation Final Penalty Total \$3,210

This violation Final Assessed Penalty (adjusted for limits) \$3,210

Economic Benefit Worksheet

Respondent Jason Castoria dba American Auto Care
Case ID No. 41289
Reg. Ent. Reference No. RN105967806
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	\$450	22-Jun-2010	8-Dec-2011	1.46	\$33	n/a	\$33
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain an air authorization to operate the auto body shop. The Date Required is the date operations were documented and the Final Date is the estimated 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

\$450

TOTAL

\$33

Compliance History

Customer/Respondent/Owner-Operator: CN603707712 CASTORIA, JASON Classification: AVERAGE Rating: 16.00
Regulated Entity: RN105967806 AMERICAN AUTO CARE Classification: AVERAGE Site Rating: 16.00
ID Number(s): AIR QUALITY NON PERMITTED ID NUMBER R09105967806
Location: 304 S BRYAN AVE, BRYAN, TX, 77803
TCEQ Region: REGION 09 - WACO
Date Compliance History Prepared: March 18, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: March 08, 2006 to March 08, 2011
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
Name: Heather Podlipny Phone: 239 - 2603

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: 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 09/10/2010 (860042)
 - 2 10/06/2010 (865814)
 - 3 11/18/2010 (877986)
 - 4 01/11/2011 (886574)
 - 5 03/03/2011 (894568)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 08/05/2010 (843233)

Self Report? NO Classification: Major
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: Failure to obtain proper permit or authorization as required.

Date: 08/27/2010 (843722)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter A 335.9(a)(1)(A)
30 TAC Chapter 335, SubChapter A 335.9(a)(1)(B)

Description: Failure to keep records of all hazardous and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing, or disposal in a retrievable format.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter C 335.62

Description: Failure to make hazardous waste determinations for each solid waste generated.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(3)

Description: Failure to label waste containers clearly, with the words, "Hazardous Waste".

Self Report? NO Classification: Minor
Citation: 40 CFR Chapter 265, SubChapter I, PT 265, SubPT I 265.173(a)

Description: Failure to keep hazardous waste containers closed, except when adding or removing waste.

Self Report? NO Classification: Moderate
Citation: 40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(c)(1)

Description: Failure to store used oil in containers labeled clearly with the words "Used Oil".

- 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
JASON CASTORIA D/B/A
AMERICAN AUTO CARE;
RN105967806**

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§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

TCEQ DOCKET NO. 2011-0380-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 and TEX. HEALTH & SAFETY CODE ch. 382, 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 Jason Castoria d/b/a American Auto Care ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates a paint and body shop located at 304 South Bryan Avenue, in Bryan, Brazos County, Texas (the "Plant"). The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. During an investigation conducted on June 22, 2010, and a record review conducted on February 2, 2011, a TCEQ Waco Regional Office investigator documented that Respondent failed to obtain a permit or meet the conditions of a permit by rule prior to operating an auto body shop.
3. Respondent received notice of the violation on or about March 8, 2011.
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 Jason Castoria d/b/a American Auto Care" (the "EDPRP") in the TCEQ Chief Clerk's office on July 29, 2011.
5. On August 23, 2011, Respondent filed an answer requesting a hearing. The matter was referred to the State Office of Administrative Hearings ("SOAH") on April 23, 2012.
6. On May 2, 2012, the TCEQ Chief Clerk mailed notice of the May 31, 2012, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.

7. On May 31, 2012, the Administrative Law Judge ("ALJ") convened the preliminary hearing, but Respondent failed to appear. The ALJ entered a finding that Respondent was served with proper notice of the hearing, and the Executive Director requested that the matter be remanded to the Executive Director so that a Default Order may be entered and the case may be dismissed from the SOAH Docket.
8. The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, Dismissing and Remanding, issued on May 31, 2012, so that TCEQ may dispose of this case on a default basis.

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 a permit or meet the conditions of a permit by rule prior to operating an auto body shop, in violation of TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b) and 30 TEX. ADMIN. CODE § 116.110(a).
3. As evidenced by Finding of Fact No. 5, Respondent filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(b) and 30 TEX. ADMIN. CODE § 70.109.
4. As evidenced by Finding of Fact No. 6, Respondent was provided proper notice of the preliminary hearing in accordance with TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.103(a) and (c)(3), 155.401 and 155.501, and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.23, 39.25, 39.405, 39.413, 39.423, 39.425 and 80.6.
5. As evidenced by Findings of Fact Nos. 7 and 8, Respondent failed to appear for the preliminary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4), TEX. WATER CODE § 7.057, and 1 TEX. ADMIN. CODE § 155.501(d), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 70.106(b).
6. 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.
7. An administrative penalty in the amount of three thousand two hundred ten dollars (\$3,210.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. 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 three thousand two hundred ten dollars (\$3,210.00) 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: Jason Castoria d/b/a American Auto Care; Docket No. 2011-0380-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 corrective measures:
 - a. Immediately upon the effective date of this Order, Respondent shall submit an administratively complete permit application for the Plant, 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 78711-3087
 - b. 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; and
 - c. Within 60 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision No. 3.a. 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 fine and imprisonment for knowing violations."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Gary Goldman, Air Section Manager
Texas Commission on Environmental Quality
Waco Regional Office
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

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 Plant 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. GOVT 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 ANNA M. TREADWELL

STATE OF TEXAS

§

COUNTY OF TRAVIS

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§

"My name is Anna M. Treadwell. 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 Jason Castoria d/b/a American Auto Care" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on July 29, 2011.

On August 23, 2011, Respondent requested a hearing. The matter was referred to the State Office of Administrative Hearings ("SOAH") on April 23, 2012. On May 2, 2012, the TCEQ Chief Clerk mailed notice of the May 31, 2012 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.

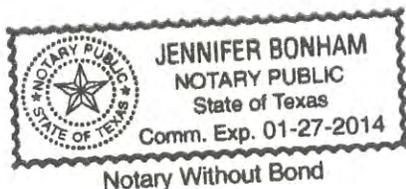
Respondent failed to appear at the hearing on May 31, 2012. At that hearing, I requested and received a finding that Respondent was served with proper notice of the hearing pursuant to 1 TEX. ADMIN. CODE § 155.501(d). I also requested that the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(d), which gives an ALJ the authority to remand the case back to the agency "to allow the agency to dispose of the case on a default basis under TEX. GOV'T CODE § 2001.056 and the referring agency's rules."

The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, Dismissing and Remanding, issued on May 31, 2012, so that TCEQ may dispose of this case on a default basis."

Anna M. Treadwell, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 17th day of August, A.D. 2012.



Notary Signature