

Lindberg Collision Incorporated

RN105927156

Docket No. 2011-1561-AIR-E

Order Type:

Agreed Order

Findings Order Justification:

N/A

Media:

AIR

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

8920 John W. Carpenter Freeway, Dallas, Dallas County

Type of Operation:

auto body refinishing and paint shop

Other Significant Matters:

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

Texas Register Publication Date:	September 28, 2012
---	--------------------

Comments Received:	None
---------------------------	------

Penalty Information

Total Penalty Assessed:	\$11,550
--------------------------------	----------

Financial Inability to Pay Deferral:	\$1,775
---	---------

Total Paid to General Revenue:	\$325
---------------------------------------	-------

Total Due to General Revenue:	\$9,450
--------------------------------------	---------

Payment Plan: 35 payments of \$270 each	
---	--

SEP Conditional Offset:	N/A
--------------------------------	-----

Compliance History Classifications:

Person/CN – Average	
Site/RN – Average	

Major Source:	No
----------------------	----

Statutory Limit Adjustment:	None
------------------------------------	------

Applicable Penalty Policy:	September 2002
-----------------------------------	----------------

Lindberg Collision Incorporated

RN105927156

Docket No. 2011-1561-AIR-E

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: August 1, 2011
Date(s) of NOV(s): May 14, 2010
Date(s) of NOE(s): August 17, 2011

Violation Information

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

Corrective Actions/Technical Requirements**Corrective Action(s) Completed:**

Respondent obtained authorization to operate the Plant on February 23, 2012.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: January 5, 2012
Date Answer(s) Filed: January 11, 2012
SOAH Referral Date: February 13, 2012
Hearing Date(s):
Preliminary hearing: March 29, 2012 (waived)
Evidentiary hearing: September 27, 2012 (scheduled)
Settlement Date: August 1, 2012

Contact Information

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

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: James Nolan, Enforcement Division, (512) 239-6634

TCEQ Regional Contact: Alyssa Taylor, Dallas/Fort Worth Regional Office, (817) 588-5800

Respondent: Tracy Lindberg, President, Lindberg Collision Incorporated, 8920 John W. Carpenter Freeway, Dallas, Texas 75247

Respondent's Attorney: William Allred, Cooper and Scully, 900 Jackson Street, Suite 100, Dallas, Texas 75202



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	22-Aug-2011	Screening	31-Aug-2011	EPA Due	
	PCW	13-Dec-2011				

RESPONDENT/FACILITY INFORMATION						
Respondent	Lindberg Collision Incorporated					
Reg. Ent. Ref. No.	RN105927156					
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor			

CASE INFORMATION						
Enf./Case ID No.	42422	No. of Violations	1			
Docket No.	2011-1561-AIR-E	Order Type	1660			
Media Program(s)	Air	Government/Non-Profit	No			
Multi-Media		Enf. Coordinator	James Nolan			
		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	\$11,000
---	-------------------	----------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$550
---------------------------	------------------	--------------------------------	-------

Notes: Enhancement for one NOV for same/similar violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
--------------------	----	------------------	-------------------	-----

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
--	-------------------	-----

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

Total EB Amounts	\$840
Approx. Cost of Compliance	\$5,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,550
-----------------------------	-----------------------	----------

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$11,550

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,550
-----------------------------------	-------------------------------	----------

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

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	\$11,550
------------------------	----------

Screening Date 31-Aug-2011

Docket No. 2011-1561-AIR-E

PCW

Respondent Lindberg Collision Incorporated

Policy Revision 2 (September 2002)

Case ID No. 42422

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105927156

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 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</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) 5%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes Enhancement for one NOV for same/similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 31-Aug-2011

Docket No. 2011-1561-AIR-E

PCW

Respondent Lindberg Collision Incorporated

Policy Revision 2 (September 2002)

Case ID No. 42422

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105927156

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 authorization prior to operating the autobody refinishing and paint shop. Specifically, it was documented that the Respondent was operating an autobody refinishing and paint shop without obtaining authorization.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 11 972 Number of violation days

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

Violation Base Penalty \$11,000

Eleven quarterly events are recommended based upon the date operations were documented to have commenced, January 1, 2009, to the August 31, 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 \$11,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$840

Violation Final Penalty Total \$11,550

This violation Final Assessed Penalty (adjusted for limits) \$11,550

Economic Benefit Worksheet

Respondent Lindberg Collision Incorporated
Case ID No. 42422
Reg. Ent. Reference No. RN105927156
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	\$5,000	1-Jan-2009	12-May-2012	3.36	\$840	n/a	\$840
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain proper authorization to operate the autobody refinishing and paint shop. The Date Required is the date operations were documented. The Final Date is the date that corrective actions are projected to 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

\$5,000

TOTAL

\$840

Compliance History

Customer/Respondent/Owner-Operator:	CN603670233 Lindberg Collision Incorporated	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN105927156 LINDBERG COLLISION CENTER	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):			
Location:	8920 JOHN W CARPENTER FWY, DALLAS, TX, 75247		
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	August 30, 2011		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	August 30, 2006 to August 30, 2011		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Todd Huddleson	Phone:	(512) 239 - 2541

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 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	05/13/2010	(802510)
2	08/16/2011	(944950)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	05/14/2010	(802510)		
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 116, SubChapter B 116.110(a) 5C THSC Chapter 382 382.0518(a) 5C THSC Chapter 382 382.085(b)			
Description:	Failure to obtain a permit under '116.111 of this title (relating to General Application);(2) satisfy the conditions of a standard permit, satisfy the conditions for a flexible permit under the requirements in Subchapter G of this chapter (relating to Flexible Permits);(4) satisfy the conditions for facilities permitted by rule under Chapter 106 of this title (relating to Permits by Rule); or(5) satisfy the criteria for a de minimis facility.			
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A
- Sites Outside of Texas
N/A

THIS PAGE INTENTIONALLY LEFT BLANK

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
LINDBERG COLLISION
INCORPORATED;
RN105927156**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2011-1561-AIR-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Lindberg Collision Incorporated ("Respondent") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by William Allred of the law firm Cooper & Scully, together stipulate that:

1. Respondent owns and operates an auto body refinishing and paint shop located at 8920 John W. Carpenter Freeway in Dallas, Dallas County, Texas (the "Plant"). The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 382 and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of eleven thousand five hundred fifty dollars (\$11,550.00) is assessed by the Commission in settlement of the violations alleged in Section II. The Financial Assurance Section of the Commission's Financial Administration Division reviewed the financial documentation submitted by Respondent and determined that Respondent is unable to pay part of the administrative penalty. Therefore, one thousand seven hundred seventy-five dollars (\$1,775.00) of the administrative penalty is deferred contingent upon Respondent's timely and satisfactory compliance with all the terms of this Agreed Order, and shall be waived only upon full compliance with all the terms and conditions contained in this Agreed Order. If Respondent fails to timely and satisfactorily comply with any requirement contained in this Agreed Order, including any payment schedule, the Executive Director may require Respondent to pay all or part of the deferred administrative penalty.

Respondent paid three hundred twenty-five dollars (\$325.00) of the undeferred administrative penalty. The remaining amount of nine thousand four hundred fifty dollars (\$9,450.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of two hundred seventy dollars (\$270.00) each. The first 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 until paid in full. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Agreed Order and the Executive Director may demand payment of the deferred penalty amount.

6. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
7. The Executive Director and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
8. The Executive Director recognizes that Respondent obtained authorization to operate the Plant on February 23, 2012.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions contained in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

1. During an investigation conducted on August 1, 2011, a City of Dallas Air Quality Compliance Program investigator documented that Respondent failed to obtain authorization prior to operating the Plant, in violation of TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(a) and 30 TEX. ADMIN. CODE § 116.110(a).
2. Respondent received notice of the violation on or about August 22, 2011.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Lindberg Collision Incorporated, Docket No. 2011-1561-AIR-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
2. All relief not expressly granted in this Agreed Order is denied.
3. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic

transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

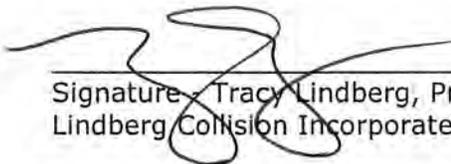
October 12, 2012
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Lindberg Collision Incorporated, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

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

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



Signature: Tracy Lindberg, President
Lindberg Collision Incorporated

8/1/12
Date