

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 46580  
Dario Canales d/b/a DC Auto Collision  
RN106145949  
Docket No. 2013-0672-AIR-E

**Order Type:**

Default Order

**Media:**

AIR

**Small Business:**

Yes

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

6825 Alameda Avenue, El Paso, El Paso County

**Type of Operation:**

auto body 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:** October 25, 2013

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$5,250

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

**Total Due to General Revenue:** \$5,250

**Compliance History Classifications:**

Person/CN – High  
Site/RN – High

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2011

**Investigation Information**

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

**Date(s) of Investigation:** March 13, 2013

**Date(s) of NOV(s):** October 4, 2012

**Date(s) of NOE(s):** March 28, 2013

**Violation Information**

1. Failed to obtain authorization for an auto body shop prior to conducting surface coating operations [TEX. HEALTH & SAFETY CODE § 382.085(b) and 382.0518(a) and 30 TEX. ADMIN. CODE § 116.110(a)].
2. Failed to use an enclosed cleaner to clean equipment [TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.422(1)(A)].
3. Failed to store all waste solvents in closed containers [TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.422(1)(C)].
4. Failed to properly maintain records [TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.426(1)(A) and (B)(i)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

1. Installed a new enclosed cleaner for cleaning equipment;
2. Removed two 50-gallon drums full of solvent and currently maintains good housekeeping practices by keeping all paint and waste solvent containers closed when not in use;
3. Began maintaining all MSDS records on-site; and
4. Provided all purchased receipts for the years 2011 through 2013 and is maintaining those with all records at the Plant.

**Technical Requirements:**

1. Within 15 days, submit a Form PI-7 to register the Plant for a Permit by Rule; and
2. Within 60 days, submit written certification demonstrating either that authorization to operate the Plant has been obtained, or that operations have ceased until such time that proper authorization has been obtained.

**Litigation Information**

**Date Petition(s) Filed:** August 7, 2013; August 9, 2013

**Date Green Card(s) Signed:** Unclaimed; August 14, 2013

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

**Contact Information**

**TCEQ Attorneys:** Phillip M. Goodwin, P.G., Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Vic McWherter, Public Interest Counsel, (512) 239-6363

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

**TCEQ Regional Contact:** Kent Waggoner, El Paso Regional Office, (915) 834-4949

**Respondent:** Dario Canales, 6825 Alameda Avenue, El Paso, Texas 79905

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



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	1-Apr-2013	<b>Screening</b>	3-Apr-2013	<b>EPA Due</b>	
	<b>PCW</b>	1-Jul-2013				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Dario Canales dba DC Auto Collision		
<b>Reg. Ent. Ref. No.</b>	RN106145949		
<b>Facility/Site Region</b>	6-El Paso	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	46580	<b>No. of Violations</b>	4
<b>Docket No.</b>	2013-0672-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Heather Podlipny
		<b>EC's Team</b>	Enforcement Team 4
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$5,000
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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.

<b>Compliance History</b>	-5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	-\$250
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Notes: Enhancement for one NOV with same/similar violations. Reduction due to high performer status.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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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>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$62  
 Approx. Cost of Compliance: \$1,550  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$4,750
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	10.5%	<b>Adjustment</b>	\$500
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: An enhancement is recommended to offset the high performer status reduction.

<b>Final Penalty Amount</b>	\$5,250
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$5,250
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$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.

<b>PAYABLE PENALTY</b>	\$5,250
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**Screening Date** 3-Apr-2013

**Docket No.** 2013-0672-AIR-E

**PCW**

**Respondent** Dario Canales dba DC Auto Collision

*Policy Revision 3 (September 2011)*

**Case ID No.** 46580

*PCW Revision August 3, 2011*

**Reg. Ent. Reference No.** RN106145949

**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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)**

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

**Adjustment Percentage (Subtotal 3)**

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

**Adjustment Percentage (Subtotal 7)**

**>> Compliance History Summary**

**Compliance History Notes**

Enhancement for one NOV with same/similar violations. Reduction due to high performer status.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)**

**>> Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%**

Screening Date 3-Apr-2013

Docket No. 2013-0672-AIR-E

PCW

Respondent Dario Canales dba DC Auto Collision

Policy Revision 3 (September 2011)

Case ID No. 46580

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106145949

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 §§ 382.085(b) and 382.0518(a)

Violation Description Failed to obtain authorization for an auto body shop prior to conducting surface coating operations.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 21 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,250

One quarterly event is recommended from the investigation date of March 13, 2013 to the screening date of April 3, 2013.

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 \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$25

Violation Final Penalty Total \$1,313

This violation Final Assessed Penalty (adjusted for limits) \$1,313

# Economic Benefit Worksheet

**Respondent** Dario Canales dba DC Auto Collision  
**Case ID No.** 46580  
**Reg. Ent. Reference No.** RN106145949  
**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	23-Aug-2012	3-Oct-2013	1.11	\$25	n/a	\$25
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 surface coating 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** \$25

Screening Date 3-Apr-2013

Docket No. 2013-0672-AIR-E

PCW

Respondent Dario Canales dba DC Auto Collision

Policy Revision 3 (September 2011)

Case ID No. 46580

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106145949

Media [Statute] Air

Enf. Coordinator Heather Podlipny

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 115.422(1)(A) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to use an enclosed cleaner to clean equipment. Specifically, the Respondent had been using open containers to clean equipment used in the auto body shop.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

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 \$1,250

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 \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$23

Violation Final Penalty Total \$1,313

This violation Final Assessed Penalty (adjusted for limits) \$1,313

# Economic Benefit Worksheet

**Respondent** Dario Canales dba DC Auto Collision  
**Case ID No.** 46580  
**Reg. Ent. Reference No.** RN106145949  
**Media** Air  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment	\$600	23-Aug-2012	13-Mar-2013	0.55	\$1	\$22	\$23
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Actual cost to purchase an enclosed equipment cleaner. The Date Required is the date the violation was documented 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

\$600

**TOTAL**

\$23

Screening Date 3-Apr-2013

Docket No. 2013-0672-AIR-E

PCW

Respondent Dario Canales dba DC Auto Collision

Policy Revision 3 (September 2011)

Case ID No. 46580

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106145949

Media [Statute] Air

Enf. Coordinator Heather Podlipny

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 115.422(1)(C) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to store all waste solvents in closed containers.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

1 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,250

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 \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$7

Violation Final Penalty Total \$1,313

This violation Final Assessed Penalty (adjusted for limits) \$1,313

# Economic Benefit Worksheet

**Respondent** Dario Canales dba DC Auto Collision  
**Case ID No.** 46580  
**Reg. Ent. Reference No.** RN106145949  
**Media** Air  
**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
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	\$250	23-Aug-2012	13-Mar-2013	0.55	\$7	n/a	\$7
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 waste drums and to properly store all paint and waste solvents. The Date Required is the date the violation was documented 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 \$250

**TOTAL** \$7

Screening Date 3-Apr-2013

Docket No. 2013-0672-AIR-E

PCW

Respondent Dario Canales dba DC Auto Collision

Policy Revision 3 (September 2011)

Case ID No. 46580

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106145949

Media [Statute] Air

Enf. Coordinator Heather Podlipny

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 115.426(1)(A) and 115.426(1)(B)(i) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to properly maintain records. Specifically, the Respondent failed to maintain Material Safety Data Sheets ("MSDS") and purchase receipts for coating materials and solvents used in the auto body shop.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

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 \$1,250

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 \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$7

Violation Final Penalty Total \$1,313

This violation Final Assessed Penalty (adjusted for limits) \$1,313

# Economic Benefit Worksheet

**Respondent** Dario Canales dba DC Auto Collision  
**Case ID No.** 46580  
**Reg. Ent. Reference No.** RN106145949  
**Media** Air  
**Violation No.** 4

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	\$250	23-Aug-2012	13-Mar-2013	0.55	\$7	n/a	\$7
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 maintain MSDS records and purchase receipts on site for all coating materials and solvents used. The Date Required is the date the violation was documented 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 \$250

**TOTAL** \$7

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



# Compliance History Report

**PUBLISHED** Compliance History Report for CN604132886, RN106145949, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

**Customer, Respondent, or Owner/Operator:** CN604132886, Dario Canales

**Classification:** HIGH

**Rating:** 0.00

**Regulated Entity:** RN106145949, DC AUTO COLLISION

**Classification:** HIGH

**Rating:** 0.00

**Complexity Points:** 1

**Repeat Violator:** NO

**CH Group:** 14 - Other

**Location:** 6825 ALAMEDA AVENUE, EL PASO, TX 79905-4933, EL PASO COUNTY

**TCEQ Region:** REGION 06 - EL PASO

**ID Number(s):**

**Compliance History Period:** September 01, 2007 to August 31, 2012

**Rating Year:** 2012

**Rating Date:** 09/01/2012

**Date Compliance History Report Prepared:** April 08, 2013

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** April 03, 2008 to April 03, 2013

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** Heather Podlipny

**Phone:** (512) 239-2603

## Site and Owner/Operator History:

- 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 for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

## Components (Multimedia) for the Site Are Listed in Sections A - J

### **A. Final Orders, court judgments, and consent decrees:**

N/A

### **B. Criminal convictions:**

N/A

### **C. Chronic excessive emissions events:**

N/A

### **D. The approval dates of investigations (CCEDS Inv. Track. No.):**

Item 1 June 13, 2011 (933145)

### **E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

#### **1 Date: 10/04/2012 (1029158)**

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 authorization from TCEQ, prior to operating the Surface Coating business in accordance with TAC 30 §116.110(a).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter E 115.422(1)

5C THSC Chapter 382 382.085(b)

Description: Failure to clean equipment in an enclosed cleaner in accordance with TAC 30 115.422(1)(A).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter E 115.422(1)(C)

5C THSC Chapter 382 382.085(b)

Description: Failure to keep all waste solvents in closed containers in accordance with of 30 TAC §115.422(1)(C).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter E 115.426(1)(A)

5C THSC Chapter 382 382.085(b)

Description: Failure to maintain Material Safety Data Sheets (MSDS) documentation for coating materials and solvents used in the facility in accordance with 30 TAC §115.426(1)(A).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter E 115.426(1)(B)(i)

5C THSC Chapter 382 382.085(b)

Description: Failure to maintain purchase receipts for coatings and solvents used in the facility in accordance with 30 TAC §115.426(1)(B)(i).

**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  
DARIO CANALES D/B/A  
DC AUTO COLLISION;  
RN106145949**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

### **DOCKET NO. 2013-0672-AIR-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition, filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE CH. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Dario Canales d/b/a DC Auto Collision ("Respondent").

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

#### **FINDINGS OF FACT**

1. Respondent owns and operates an auto body shop located at 6825 Alameda Avenue in El Paso, El Paso 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 March 13, 2013, a City of El Paso Environmental Services Department investigator documented that Respondent:
  - a. Failed to obtain authorization for an auto body shop prior to conducting surface coating operations;
  - b. Failed to use an enclosed cleaner to clean equipment. Specifically, Respondent had been using open containers to clean equipment used in the auto body shop;
  - c. Failed to store all waste solvents in closed containers; and
  - d. Failed to properly maintain records. Specifically, Respondent failed to maintain Material Safety Data Sheets ("MSDS") and purchase receipts for coating materials and solvents used in the auto body shop.
3. Respondent received notice of the violations on or about April 2, 2013.
4. The Executive Director recognizes that, by March 13, 2013, Respondent implemented the following corrective measures at the Plant:
  - a. Installed a new enclosed cleaner for cleaning equipment;
  - b. Removed two 50-gallon drums full of solvent and currently maintains good housekeeping practices by keeping all paint and waste solvent containers closed when not in use;
  - c. Began maintaining all MSDS records on-site; and
  - d. Provided all purchased receipts for the years 2011 through 2013 and is maintaining those with all records at the Plant.

5. 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 Dario Canales d/b/a DC Auto Collision" (the "EDPRP") in the TCEQ Chief Clerk's office on August 7, 2013.
6. The EDPRP was mailed to Respondent's last known address on August 7, 2013, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."
7. The Executive Director filed the "Executive Director's First Amended 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 Dario Canales d/b/a DC Auto Collision" (the "EDFARP") in the TCEQ Chief Clerk's office on August 9, 2013.
8. By letter dated August 9, 2013, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDFARP. According to usps.com "Track and Confirm" delivery confirmation records, Respondent signed the certified mail "green card" on August 14, 2013.
9. More than 20 days have elapsed since Respondent received notice of the EDPRP and EDFARP. Respondent failed to file an answer and failed to request a hearing.

#### **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.a., Respondent failed to obtain authorization for an auto body shop prior to conducting surface coating operations, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 382.0518(a) and 30 TEX. ADMIN. CODE § 116.110(a).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to use an enclosed cleaner to clean equipment, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.422(1)(A).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to store all waste solvents in closed containers, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.422(1)(C).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to properly maintain records, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.426(1)(A) and (B)(i).
6. As evidenced by Findings of Fact Nos. 7 and 8, the Executive Director timely served Respondent with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
7. As evidenced by Finding of Fact No. 9, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.

8. 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.
9. An administrative penalty in the amount of five thousand two hundred fifty dollars (\$5,250.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. 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 five thousand two hundred fifty dollars (\$5,250.00) 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: Dario Canales d/b/a DC Auto Collision; Docket No. 2013-0672-AIR-E" to:  

Financial Administration Division, Revenues Section  
Texas Commission on Environmental Quality  
Attention: Cashier's Office, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088
3. Respondent shall undertake the following technical requirements:
  - a. Within 15 days after the effective date of this Order, Respondent shall submit a Form PI-7 to register the Plant for a Permit by Rule in accordance with 30 TEX. ADMIN. CODE ch. 106 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 TCEQ, to all requests for information concerning the registration within 30 days after the date of such request, 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 demonstrating either that authorization to operate the Plant has been obtained, or that operations have ceased until such time that proper authorization has been obtained. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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 supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team  
Texas Commission on Environmental Quality  
Enforcement Division, MC 149A  
P.O. Box 13087  
Austin, Texas 78711-3087

and:

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

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the 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. GOV'T CODE § 2001.144.

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF PHILLIP M. GOODWIN**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

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"My name is Phillip M. Goodwin. 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 Dario Canales d/b/a DC Auto Collision" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on August 7, 2013.

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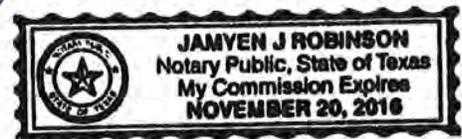
More than 20 days have elapsed since Respondent received notice of the EDPRP and EDFARP. Respondent failed to file an answer and failed to request a hearing."

Phillip M. Goodwin, P.G., Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 3<sup>rd</sup> day of October, A.D. 2013.

Notary Signature



Notary without Bond