

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 48056
Ismael Gamboa d/b/a Chico's Expert Collision
RN105743348
Docket No. 2013-2214-AIR-E

Order Type:

Default Order

Media:

Air

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

5415 Highway 59 North, Lufkin, Angelina County

Type of Operation:

auto body refinishing 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: July 18, 2014

Comments Received: None

Penalty Information

Total Penalty Assessed: \$1,312

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$1,312

Compliance History Classifications:

Person/CN – Satisfactory
Site/RN – Satisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 48056
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RN105743348
Docket No. 2013-2214-AIR-E

Investigation Information

Complaint Date(s): April 9, 2013
Complaint Information: Alleged that Respondent was painting vehicles at the Facility without a paint booth and that paint and paint fumes were emitting into the air and onto complainant's property.
Date(s) of Investigation: April 16, 2013; November 20, 2013
Date(s) of NOV(s): May 8, 2013
Date(s) of NOE(s): December 6, 2013

Violation Information

Failed to obtain authorization prior to operation of a facility that emits air contaminants [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. Within 30 days, submit an administratively complete permit application.
2. Within 365 days, submit written certification that either authorization to operate the source of air emissions has been obtained or that operation has ceased until such time that appropriate authorization is obtained.

Litigation Information

Date Petition(s) Filed: April 8, 2014
Date Green Card(s) Signed: April 10, 2014
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Jess Robinson, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363
TCEQ Enforcement Coordinator: David Carney, Enforcement Division, (512) 239-2583
TCEQ Regional Contact: Sarah Kirksey, Beaumont Regional Office, (409) 898-3838
Respondent Contact: Ismael Gamboa, 5415 Highway 59 North, Lufkin, Texas 75901
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	9-Dec-2013		
	PCW	19-Mar-2014	Screening	16-Dec-2013
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	Ismael Gamboa dba Chico's Expert Collision
Reg. Ent. Ref. No.	RN105743348
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	48056	No. of Violations	1
Docket No.	2013-2214-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	David Carney
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,250
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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	5.0% Enhancement Subtotals 2, 3, & 7
	\$62

Notes	Enhancement for one NOV with a same/similar violation.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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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	\$355	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$5,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,312
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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	
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Final Penalty Amount	\$1,312
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,312
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$1,312
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Screening Date 16-Dec-2013

Docket No. 2013-2214-AIR-E

PCW

Respondent Ismael Gamboa dba Chico's Expert Collision

Policy Revision 3 (September 2011)

Case ID No. 48056

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105743348

Media [Statute] Air

Enf. Coordinator David Carney

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 a same/similar violation.

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

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100%

Screening Date 16-Dec-2013 **Docket No.** 2013-2214-AIR-E **PCW**
Respondent Ismael Gamboa dba Chico's Expert Collision *Policy Revision 3 (September 2011)*
Case ID No. 48056 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN105743348
Media [Statute] Air
Enf. Coordinator David Carney

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 authorization prior to operation of a facility that emits air contaminants. Specifically, the Respondent was conducting auto body refinishing operations prior to obtaining the proper authorization.

Base Penalty \$25,000

>> **Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
		x			5.0%

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 26 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,250

One monthly event is recommended from the November 20, 2013 record review to the December 16, 2013 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 \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$355

Violation Final Penalty Total \$1,313

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

Economic Benefit Worksheet

Respondent Ismael Gamboa dba Chico's Expert Collision
Case ID No. 48056
Reg. Ent. Reference No. RN105743348
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	16-Apr-2013	16-Sep-2014	1.42	\$355	n/a	\$355
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to obtain the proper authorization for the auto body refinishing operations. The Date Required is the initial investigation date 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 \$5,000

TOTAL \$355



Compliance History Report

PUBLISHED Compliance History Report for CN604298307, RN105743348, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator:	CN604298307, Gamboa, Ismael	Classification: SATISFACTORY	Rating: 4.00
Regulated Entity:	RN105743348, Chico's Expert Collision	Classification: SATISFACTORY	Rating: 4.00
Complexity Points:	0	Repeat Violator:	NO
CH Group:	14 - Other		
Location:	5415 HWY 59 NORTH, LUFKIN, TEXAS 75901-8531, ANGELINA COUNTY		
TCEQ Region:	REGION 10 - BEAUMONT		
ID Number(s):			

Compliance History Period:	September 01, 2008 to August 31, 2013	Rating Year:	2013	Rating Date:	09/01/2013
Date Compliance History Report Prepared:	December 20, 2013				
Agency Decision Requiring Compliance History:	Enforcement				
Component Period Selected:	December 20, 2008 to December 20, 2013				

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

Name: David Carney

Phone: (512) 239-2583

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.):

N/A

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: 05/08/2013 (1085653)

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 authorization for an Auto Body Finishing Facility prior to operation.

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
ISMAEL GAMBOA DBA
CHICO'S EXPERT COLLISION;
RN105743348**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2013-2214-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, 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 Ismael Gamboa d/b/a Chico's Expert 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 refinishing shop located at 5415 Highway 59 North in Lufkin, Angelina 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 April 16, 2013, and a record review conducted on November 20, 2013, a TCEQ Beaumont Regional Office investigator documented that Respondent failed to obtain authorization prior to operation of a facility that emits air contaminants. Specifically, Respondent was conducting auto body refinishing operations at the Plant prior to obtaining proper authorization.
3. Respondent received notice of the violation on or about December 11, 2013.
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 Ismael Gamboa dba Chico's Expert Collision" (the "EDPRP") in the TCEQ Chief Clerk's office on April 8, 2014.
5. By letter dated April 8, 2014, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on April 10, 2014, as evidenced by the signature on the card.
6. More than 20 days have elapsed since Respondent received notice of the EDPRP. 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 TCEQ.
2. As evidenced by Finding of Fact No. 2, Respondent failed to obtain authorization prior to operation of a facility that emits air contaminants, 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 Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
4. As evidenced by Finding of Fact No. 6, 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.
5. 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 TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of one thousand three hundred twelve dollars (\$1,312.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. 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 one thousand three hundred twelve dollars (\$1,312.00) 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: Ismael Gamboa d/b/a Chico's Expert Collision; Docket No. 2013-2214-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 30 days after the effective date of this Order, Respondent shall submit an administratively complete permit application, 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 by the TCEQ.
- c. Within 365 days after the effective date of this Order, Respondent shall submit written certification that either authorization to operate the sources of air emissions has been obtained or that operation has ceased until such time that appropriate authorization is 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:

Sarah Kirksey, Air Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1830

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 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

For the Commission

AFFIDAVIT OF JESS ROBINSON

STATE OF TEXAS

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§
§

COUNTY OF TRAVIS

"My name is Jess Robinson. 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 Ismael Gamboa dba Chico's Expert Collision" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on April 8, 2014.

The EDPRP was mailed to Respondent's last known address on April 8, 2014, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on April 10, 2014, as evidenced by the signature on the card.

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

Jess Robinson

Jess Robinson, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jess Robinson, 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 26th day of June, A.D. 2014.



Notary without Bond

Cheryl Arredondo

Notary Signature