

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 47799  
Eric Martinez d/b/a Xtreme Customs  
RN106657463  
Docket No. 2013-1905-AIR-E

Page 1 of 2

**Order Type:**

Default Order

**Media:**

Air

**Small Business:**

Yes

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

4524 Dyer Street, El Paso, El Paso 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:** August 1, 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. 47799  
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**Investigation Information**

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** April 4, 2013; August 14, 2013  
**Date(s) of NOV(s):** April 25, 2013  
**Date(s) of NOE(s):** September 12, 2013

**Violation Information**

Failed to obtain authorization prior to constructing and operating an auto body refinishing 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. Within 30 days, either submit an administratively complete permit application or submit Form PI-7 requesting authorization to operate under a Permit By Rule.
2. If a Form PI-7 is submitted, within 75 days submit written certification either that the Plant can satisfy the conditions of and operate under a Permit by Rule, or that operations have ceased until such time that appropriate authorization is obtained.
3. If a complete permit application is submitted, within 180 days submit written certification either that authorization to operate the Plant has been obtained or that operation has ceased until such time that appropriate authorization is obtained.

**Litigation Information**

**Date Petition(s) Filed:** March 19, 2014  
**Date Green Card(s) Signed:** March 21, 2014  
**Date Answer(s) Filed:** N/A

**Contact Information**

**TCEQ Attorneys:** Elizabeth Lieberknecht, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Garrett Arthur, Public Interest Counsel, (512) 239-6363

**TCEQ Enforcement Coordinator:** Katie Hargrove, Enforcement Division, (512) 239-2569

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

**Respondent Contact:** Eric Martinez, 4524 Dyer Street, El Paso, Texas 79930

**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>	16-Sep-2013	<b>Screening</b>	30-Sep-2013	<b>EPA Due</b>	
	<b>PCW</b>	29-Jan-2014				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Eric Martinez dba Xtreme Customs		
<b>Reg. Ent. Ref. No.</b>	RN106657463		
<b>Facility/Site Region</b>	6-El Paso	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	47799	<b>No. of Violations</b>	1
<b>Docket No.</b>	2013-1905-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>	Katie Hargrove
		<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>	\$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.

<b>Compliance History</b>	5.0%	Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$62
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<b>Notes</b>	Enhancement for one NOV with a same or similar violation.
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<b>Culpability</b>	No	0.0%	Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<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	\$329
Approx. Cost of Compliance	\$5,000

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$1,312
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
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<b>Final Penalty Amount</b>	\$1,312
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$1,312
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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 indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$1,312
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Screening Date 30-Sep-2013

Docket No. 2013-1905-AIR-E

PCW

Respondent Eric Martinez dba Xtreme Customs

Policy Revision 3 (September 2011)

Case ID No. 47799

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106657463

Media [Statute] Air

Enf. Coordinator Katie Hargrove

## Compliance History Worksheet

## &gt;&gt; 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%
Please Enter Yes or No			
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%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance History Notes

Enhancement for one NOV with a same or similar violation.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, &amp; 7) 5%

## &gt;&gt; Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 5%

<b>Screening Date</b>	30-Sep-2013	<b>Docket No.</b>	2013-1905-AIR-E	<b>PCW</b>
<b>Respondent</b>	Eric Martinez dba Xtreme Customs	<i>Policy Revision 3 (September 2011)</i>		
<b>Case ID No.</b>	47799	<i>PCW Revision August 3, 2011</i>		
<b>Reg. Ent. Reference No.</b>	RN106657463			
<b>Media [Statute]</b>	Air			
<b>Enf. Coordinator</b>	Katie Hargrove			
<b>Violation Number</b>	1			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 116.110(a) and Tex. Health & Safety Code §§ 382.0518(a) and 382.085(b)			
<b>Violation Description</b>	Failed to obtain authorization prior to constructing and operating an auto body refinishing shop.			
<b>Base Penalty</b>				\$25,000

  

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

<b>OR</b>	<b>Harm</b>				
	<b>Release</b>	Major	Moderate	Minor	
	Actual				
	Potential				
					<b>Percent</b> 0.0%

  

**>> Programmatic Matrix**

<b>Matrix Notes</b>	<b>Falsification</b>				
	Major	Moderate	Minor		
					<b>Percent</b> 5.0%
100% of the rule requirement was not met.					
<b>Adjustment</b>					\$23,750

  

\$1,250

**Violation Events**

Number of Violation Events	1	42	Number of violation days
<i>mark only one with an x</i>	daily		
	weekly		
	monthly		
	quarterly	x	
	semiannual		
	annual		
	single event		
One quarterly event is recommended from the August 14, 2013 investigation date to the September 30, 2013 screening date.			
<b>Violation Base Penalty</b>			\$1,250

  

**Good Faith Efforts to Comply**

	0.0%	<b>Reduction</b>	
	Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary			
Ordinary			
N/A	x	(mark with x)	
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.		
<b>Violation Subtotal</b>			\$1,250

  

**Economic Benefit (EB) for this violation**

<b>Estimated EB Amount</b>	<b>Statutory Limit Test</b>
\$329	<b>Violation Final Penalty Total</b>
	\$1,313
<b>This violation Final Assessed Penalty (adjusted for limits)</b>	
\$1,313	

# Economic Benefit Worksheet

**Respondent** Eric Martinez dba Xtreme Customs  
**Case ID No.** 47799  
**Reg. Ent. Reference No.** RN106657463  
**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	4-Apr-2013	28-Jul-2014	1.32	\$329	n/a	\$329
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain authorization for an auto body refinishing shop. 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

\$329

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

**PENDING** Compliance History Report for CN604293506, RN106657463, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

**Customer, Respondent, or Owner/Operator:** CN604293506, Eric Martinez

**Classification:** SATISFACTORY

**Rating:** 20.00

**Regulated Entity:** RN106657463, Xtreme Customs

**Classification:** SATISFACTORY

**Rating:** 20.00

**Complexity Points:** 1

**Repeat Violator:** NO

**CH Group:** 14 - Other

**Location:** 4524 DYER STREET, EL PASO, TX 79930-6737, EL PASO COUNTY

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

**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:** September 23, 2013

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** September 23, 2008 to September 23, 2013

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

**Name:** Katie Hargrove

**Phone:** (512) 239-2569

## Site and Owner/Operator History:

- 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 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: 04/25/2013 (1085837)**

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 115, SubChapter E 115.421(a)(8)(B)(ix) 5C THSC Chapter 382 382.085(b)		
Description:	Failure to comply with the wipe down solution emission limit in accordance with 30 TAC 115. 421 (a)(8)(B)(ix).		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 115, SubChapter E 115.422(1)(A) 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 106, SubChapter S 106.436(1) 5C THSC Chapter 382 382.085(b)		
Description:	Failure to register with the Texas Commission on Environmental Quality using Form PI-7 in accordance with 30 TAC, ch. 106 Permits By Rule, Subchapter S, Auto Body Refinishing Facility, Rule 106.436 (1). The facility does not satisfy the criteria to claim De Minimis status.		

**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  
ERIC MARTINEZ DBA  
XTREME CUSTOMS;  
RN106657463**

§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

### **DOCKET NO. 2013-1905-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 Eric Martinez d/b/a Xtreme Customs ("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 4524 Dyer Street 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 investigations conducted on April 4, 2013, and August 14, 2013, a City of El Paso Environmental Investigator documented that Respondent failed to obtain authorization prior to constructing and operating an auto body refinishing shop.
3. Respondent received notice of the violation on or about September 17, 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 Eric Martinez d/b/a Xtreme Customs" (the "EDPRP") in the TCEQ Chief Clerk's office on March 19, 2014.
5. By letter dated March 19, 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 March 21, 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 constructing and operating an auto body refinishing 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 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 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: Eric Martinez d/b/a Xtreme Customs; Docket No. 2013-1905-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 either submit an administratively complete permit application, in accordance with 30 TEX. ADMIN. CODE ch. 116, Subchapter B, or submit Form PI-7 requesting authorization to operate under 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 the TCEQ, to all requests for information concerning the permit application or registrations within 30 days after the date of such requests, or by any other deadline specified in writing by the TCEQ.
- c. If a Form PI-7 is submitted, then within 75 days after the effective date of this Order, Respondent shall submit written certification, in accordance with Ordering Provision 3.e. below, that the Plant can satisfy the conditions of and operate under a Permit by Rule, or that operations have ceased until such time that appropriate authorization is obtained.
- d. If a complete permit application is submitted, then within 180 days after the effective date of this Order, Respondent shall submit written certification, in accordance with Ordering Provision 3.e. below, that either authorization to operate the Plant has been obtained or that operation has ceased until such time that appropriate authorization is obtained.
- e. The certifications required by these Ordering Provisions 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 certifications 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 ELIZABETH LIEBERKNECHT**

**STATE OF TEXAS**

§

**COUNTY OF TRAVIS**

§

§

"My name is Elizabeth Lieberknecht. 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 Eric Martinez d/b/a Xtreme Customs" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on March 19, 2014.

The EDPRP was mailed to Respondent's last known address on March 19, 2014, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on March 21, 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."



Elizabeth Lieberknecht, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Elizabeth Lieberknecht, 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 9<sup>th</sup> day of July, A.D. 2014.



Notary without Bond



Notary Signature