

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 49050  
Miguel Lozada d/b/a DV8 Auto Sport  
RN107238172  
Docket No. 2014-1069-AIR-E

**Order Type:**

Default Order

**Media:**

AIR

**Small Business:**

Yes

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

7335 Alameda Avenue Rear, El Paso, El Paso County

**Type of Operation:**

auto repair 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:** March 13, 2015

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$3,937

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

**Total Due to General Revenue:** \$3,937

**Compliance History Classifications:**

Person/CN – N/A  
Site/RN – Unclassified

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** April 2014

**Investigation Information**

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

**Date(s) of Investigation:** April 29, 2014; July 15, 2014

**Date(s) of NOV(s):** May 21, 2014

**Date(s) of NOE(s):** July 18, 2014

**Violation Information**

1. Failed to obtain authorization to construct and operate a source of air emissions [TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b) and 30 TEX. ADMIN. CODE § 116.110(a)].
2. Failed to properly maintain records [TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.426(1)(A)].
3. Failed to comply with the volatile organic compounds (“VOC”) emissions limit for wipe-down solutions (using a wipe-down solution that exceeds 1.4 pounds per gallon (“lb./gal”) of VOC emissions) [TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.421(a)(8)(B)(ix)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

None

**Technical Requirements:**

1. Immediately begin maintaining Material Safety Data Sheets records on site for all coating materials.
2. Within 30 days:
  - a. Obtain and begin using a wipe-down solution with an emission limit of 1.4 lb./gal or less of VOC; and
  - b. Submit either an administratively complete permit application or a Form PI-7 requesting authorization to operate under a Permit By Rule.
3. Within 45 days, submit written certification to demonstrate compliance with Technical Requirements Nos. 1 and 2.
4. If a Form PI-7 is submitted, then within 75 days submit written certification that either the Plant can satisfy the conditions of and operate under a Permit by Rule, or that operation has ceased until such time that appropriate authorization is obtained.
5. If a permit application is submitted, then within 180 days submit written certification that either 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:** December 22, 2014

**Date Green Card(s) Signed:** December 30, 2014

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

**Contact Information**

**TCEQ Attorneys:** Colleen Lenahan, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Rudy Calderon, Public Interest Counsel, (512) 239-6363

**TCEQ Enforcement Coordinator:** Farhaud Abbaszadeh, Enforcement Division, (512) 239-0779

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

**Respondent Contact:** Miguel Lozada, 8324 Mount Baldy Drive, El Paso, Texas 79904

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



# Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

<b>DATES</b>	<b>Assigned</b>	21-Jul-2014		
	<b>PCW</b>	13-Nov-2014	<b>Screening</b>	28-Jul-2014
			<b>EPA Due</b>	

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Miguel Lozada dba DV8 Auto Sport
<b>Reg. Ent. Ref. No.</b>	RN107238172
<b>Facility/Site Region</b>	6-El Paso
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	49050	<b>No. of Violations</b>	3
<b>Docket No.</b>	2014-1069-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>	Farhaudd Abbaszadeh
		<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>	\$3,750
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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>	\$187
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Notes: Enhancement for one NOV with the same violations.

<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: \$110  
 Estimated Cost of Compliance: \$3,200  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$3,937
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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.

Notes:

<b>Final Penalty Amount</b>	\$3,937
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$3,937
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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.)

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	\$3,937
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**Screening Date** 28-Jul-2014

**Docket No.** 2014-1069-AIR-E

**PCW**

**Respondent** Miguel Lozada dba DV8 Auto Sport

Policy Revision 4 (April 2014)

**Case ID No.** 49050

PCW Revision March 26, 2014

**Reg. Ent. Reference No.** RN107238172

**Media [Statute]** Air

**Enf. Coordinator** Farhaud Abbaszadeh

### 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 judgments 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)** 5%

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

No

**Adjustment Percentage (Subtotal 3)** 0%

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

N/A

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement for one NOV with the same violations.

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

>> **Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** 5%

**Screening Date** 28-Jul-2014 **Docket No.** 2014-1069-AIR-E **PCW**  
**Respondent** Miguel Lozada dba DV8 Auto Sport *Policy Revision 4 (April 2014)*  
**Case ID No.** 49050 *PCW Revision March 26, 2014*  
**Reg. Ent. Reference No.** RN107238172  
**Media [Statute]** Air  
**Enf. Coordinator** Farhaud Abbaszadeh

**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 to construct and operate a source of air emissions. Specifically, the Respondent failed to obtain authorization to operate an auto body shop.

**Base Penalty** \$25,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> **Programmatic Matrix**

Matrix Notes	Falsification				Percent
	Major	Moderate	Minor		
	x				5.0%
100% of the rule requirement was not met.					

**Adjustment** \$23,750

\$1,250

**Violation Events**

Number of Violation Events 1 13 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

**Violation Base Penalty** \$1,250

One quarterly event is recommended based on the July 15, 2014 investigation date to the July 28, 2014 screening date.

**Good Faith Efforts to Comply** 0.0% Reduction \$0

	Before NOE/NOV	NOE/NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

**Notes** The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal** \$1,250

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$88 **Violation Final Penalty Total** \$1,313

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

# Economic Benefit Worksheet

**Respondent** Miguel Lozada dba DV8 Auto Sport  
**Case ID No.** 49050  
**Reg. Ent. Reference No.** RN107238172  
**Media** Air  
**Violation No.** 1

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				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	\$2,450	29-Apr-2014	15-Jan-2015	0.72	\$88	n/a	\$88
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**      Estimated cost to obtain authorization. The Date Required is the date of the initial investigation. 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      \$2,450

**TOTAL**      \$88

Screening Date 28-Jul-2014

Docket No. 2014-1069-AIR-E

PCW

Respondent Miguel Lozada dba DV8 Auto Sport

Policy Revision 4 (April 2014)

Case ID No. 49050

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN107238172

Media [Statute] Air

Enf. Coordinator Farhaud Abbaszadeh

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 115.426(1)(A) 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") for coating materials and solvents used at the auto body shop.

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 13 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 NOE/NOV	NOE/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 \$9

Violation Final Penalty Total \$1,313

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

# Economic Benefit Worksheet

**Respondent** Miguel Lozada dba DV8 Auto Sport  
**Case ID No.** 49050  
**Reg. Ent. Reference No.** RN107238172  
**Media** Air  
**Violation No.** 2

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	29-Apr-2014	28-Jan-2015	0.75	\$9	n/a	\$9
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 on site for all coating materials and solvents used. The Date Required is the date of the initial investigation. 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 \$250

**TOTAL** \$9

Screening Date 28-Jul-2014

Docket No. 2014-1069-AIR-E

PCW

Respondent Miguel Lozada dba DV8 Auto Sport

Policy Revision 4 (April 2014)

Case ID No. 49050

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN107238172

Media [Statute] Air

Enf. Coordinator Farhaud Abbaszadeh

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 115.421(a)(8)(B)(ix) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to comply with the volatile organic compounds ("VOC") emissions limit for wipe-down solutions. Specifically, the Respondent was using a wipe-down solution that exceeds 1.4 pounds per gallon ("lb/gal") of VOC emissions.

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 that 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

13 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 based on the July 15, 2014 investigation date to the July 28, 2014 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/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 \$13

Violation Final Penalty Total \$1,313

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

# Economic Benefit Worksheet

**Respondent** Miguel Lozada dba DV8 Auto Sport  
**Case ID No.** 49050  
**Reg. Ent. Reference No.** RN107238172  
**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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	15-Jul-2014	28-Jan-2015	0.54	\$13	n/a	\$13

**Notes for DELAYED costs** Estimated cost to obtain and use a wipe-down solution with an emission limit of 1.4 lb/gal or less of VOC. The Date Required is the investigation date. The Final Date is 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 \$500

**TOTAL** \$13

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 CN604564625, RN107238172, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

**Customer, Respondent, or Owner/Operator:** CN604564625, Miguel Lozada

**Classification:** NOT APPLICABLE

**Rating:** N/A

**Regulated Entity:** RN107238172, DV8 AUTO SPORT

**Classification:** UNCLASSIFIED

**Rating:** -----

**Complexity Points:** 1

**Repeat Violator:** NO

**CH Group:** 14 - Other

**Location:** 7335 ALAMEDA AVENUE REAR EL PASO, TEXAS 79915-3624, 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:** July 29, 2014

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** July 29, 2009 to July 29, 2014

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

**Name:** Farhaud Abbaszadeh

**Phone:** (512) 239-0779

## 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: 05/21/2014 (1165987)**

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 prior authorization for operation of a regulated auto body shop.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter E 115.426(1)(A)  
30 TAC Chapter 115, SubChapter E 115.426(1)(B)(i)  
5C THSC Chapter 382 382.085(b)

Description: Failure to maintain Material Safety Data Sheets (MSDS) documentations for coatings 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 115.421(a)(8)(B)(ix)  
5C THSC Chapter 382 382.058(b)

Description: Failure to comply with wipe-down volatile organic compound (VOC) emissions in accordance with 30 TAC 115.421(a)(8)(B)(ix).

### **F. Environmental audits:**

N/A

### **G. Type of environmental management systems (EMSs):**

N/A

### **H. Voluntary on-site compliance assessment dates:**

N/A

### **I. Participation in a voluntary pollution reduction program:**

N/A

### **J. Early compliance:**

N/A

### **Sites Outside of Texas:**

N/A

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
MIGUEL LOZADA DBA  
DV8 AUTO SPORT;  
RN107238172**

§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2014-1069-AIR-E**

On \_\_\_\_\_, 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 Miguel Lozada d/b/a DV8 Auto Sport ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns and operates an auto repair shop located at 7335 Alameda Avenue Rear 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 29, 2014 and July 15, 2014, an investigator documented that Respondent:
  - a. Failed to obtain authorization to construct and operate a source of air emissions. Specifically, Respondent failed to obtain authorization to operate the Plant;
  - b. Failed to properly maintain records. Specifically, Respondent failed to maintain Material Safety Data Sheets ("MSDS") for coating materials and solvents used at the Plant; and
  - c. Failed to comply with the volatile organic compounds ("VOC") emissions limit for wipe-down solutions. Specifically, Respondent was using a wipe-down solution that exceeds 1.4 pounds per gallon ("lb./gal") of VOC emissions.
3. 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 Miguel Lozada d/b/a DV8 Auto Sport" (the "EDPRP") in the TCEQ Chief Clerk's office on December 22, 2014.
4. By letter dated December 22, 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 USPS.com "Track & Confirm" delivery confirmation records, Respondent received notice of the EDPRP on December 30, 2014.
5. 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.a., Respondent failed to obtain authorization to construct and operate a source of air emissions, in violation of TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b) and 30 TEX. ADMIN. CODE § 116.110(a).
3. As evidenced by Finding of Fact No. 2.b., 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).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to comply with the VOC emissions limit for wipe-down solutions, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.421(a)(8)(B)(ix).
5. As evidenced by Findings of Fact Nos. 3 and 4, 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).
6. As evidenced by Finding of Fact No. 5, 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.
7. 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.
8. An administrative penalty in the amount of three thousand nine hundred thirty-seven dollars (\$3,937.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. 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

1. NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:  
Respondent is assessed an administrative penalty in the amount of three thousand nine hundred thirty-seven dollars (\$3,937.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the requirements set forth in this Order resolve only 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 violations which are not raised here.
2. The 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 TCEQ and shall be sent with the notation "Re: Miguel Lozada d/b/a DV8 Auto Sport; Docket No. 2014-1069-AIR-E" to:

Financial Administration Division, Revenue Operations 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. Immediately upon the effective date of this Order, begin maintaining MSDS records on site for all coating materials, in accordance with 30 TEX. ADMIN. CODE § 115.426(1)(A).
  - b. Within 30 days after the effective date of this Order:
    - i. Obtain and begin using a wipe-down solution with an emission limit of 1.4 lb./gal or less of VOC, in accordance with 30 TEX. ADMIN. CODE § 115.421(a)(8)(B)(ix); and
    - ii. 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

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. Within 45 days after the effective date of this Order, submit written certification in accordance with Ordering Provision No. 3.f. to demonstrate compliance with Ordering Provisions Nos. 3.a. and 3.b.
- d. If a Form PI-7 is submitted, then within 75 days after the effective date of this Order, submit written certification in accordance with Ordering Provision No. 3.f. that either the Plant can satisfy the conditions of and operate under a Permit by Rule, or that operation has ceased until such time that appropriate authorization is obtained.
- e. If a permit application is submitted, then within 180 days after the effective date of this Order, submit written certification, in accordance with Ordering Provision No. 3.f. that either authorization to operate the Plant has been obtained or that operation has ceased until such time that appropriate authorization is obtained.
- f. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, 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.

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.”

The written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

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

and:

Air Section Manager  
El Paso Regional Office  
Texas Commission on Environmental Quality  
401 E. Franklin Ave, Suite 560  
El Paso TX 79901-1212

All relief not expressly granted in this Order is denied.

4. The provisions of this Order shall apply to and be binding upon Respondent.
5. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. 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. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. 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.
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.
- 10.

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.

The Chief Clerk shall provide a copy of this fully executed 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 COLLEEN LENAHAN**

**STATE OF TEXAS**

§

**COUNTY OF TRAVIS**

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"My name is Colleen Lenahan. 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 Miguel Lozada d/b/a DV8 Auto Sport" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on December 22, 2014.

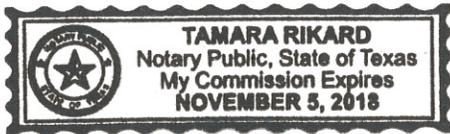
The EDPRP was mailed to Respondent's last known address on December 22, 2014, via certified mail, return receipt requested, postage prepaid. According to USPS.com "Track & Confirm" delivery confirmation records, Respondent received notice of the EDPRP on December 30, 2014.

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."

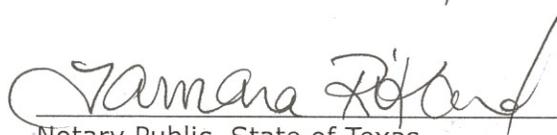
  
\_\_\_\_\_  
Colleen Lenahan, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Colleen Lenahan, 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.

Subscribed and sworn to before me on this 17<sup>th</sup> day of February, A.D. 2015.



Notary without Bond

  
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Notary Public, State of Texas