

SOAH DOCKET NO. 582-22-0131  
TCEQ DOCKET NO. 2019-1607-AIR-E

EXECUTIVE DIRECTOR OF THE TEXAS	§	BEFORE THE
COMMISSION ON ENVIRONMENTAL	§	
QUALITY,	§	
Petitioner	§	STATE OFFICE OF
v.	§	
JEVAL VENTURES, INC.,	§	ADMINISTRATIVE HEARINGS
Respondent	§	

**EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE  
ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE KATERINA DEANGELO ("ALJ"):

The Executive Director ("ED") of the Texas Commission on Environmental Quality ("TCEQ"), by and through a representative of the Litigation Division, respectfully files these exceptions to the ALJ's Proposed Order in this matter pursuant to Title 30 of the Texas Administrative Code § 80.257. The Executive Director agrees with the substance of the Proposed Order, these recommended modifications are intended to clarify the provisions of the Order and correct typographical errors.<sup>1</sup>

1. In the introductory paragraph, the ED respectfully recommends changing "Preliminary Report and Petition (EDPRP)" to "First Amended Report and Petition (EDFARP)".
2. At the end of the introductory paragraph, the ED respectfully recommends changing "EDPRP" to "EDFARP".
3. In Finding of Fact No. 2, the ED respectfully recommends changing "are" to "were" because Respondent no longer owns or operates the refinishing shop.
4. In Finding of Fact No. 3(b), the ED respectfully recommends changing "a closed reservoir" to "an enclosed reservoir that is covered at all times, except when being refilled with fresh solvents" to reflect the language in the rule and EDFARP.
5. In Finding of Fact No. 3(d), the ED respectfully recommends adding "as specified in 30 Texas Administrative Code § 115.421" after "volatile organic compound content of coating and solvents" to reflect the language in the rule and EDFARP and revising the terminology of the specified records to reflect the language plead in the EDFARP.
6. In Finding of Fact No. 6, the ED respectfully recommends changing "enclosed" to "covered" to reflect the language in the rule and EDFARP.
7. The ED respectfully recommends adding a Finding of Fact between what is currently Finding of Fact Nos. 8 and 9 to say, "The parties stipulated that, if violations are found to have occurred, the administrative penalty was calculated correctly."

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<sup>1</sup> Copies of the Proposed Order with the recommended modifications are attached. Attachment A is the redline version and Attachment B is a copy of the Proposed Order incorporating all of the Executive Director's recommended changes. Attachment C is the redline version and Attachment D is a copy of the Proposed Order incorporating the Executive Director's recommended changes if the ALJ chooses the alternative mentioned in Exception 8.

8. The ED respectfully recommends removing Findings of Fact 11-17 since the PFD acknowledges the ED and Respondent JEVAL VENTURES, INC. stipulated that, if violations are found to have occurred, the administrative penalty was calculated correctly. In the alternative, the ED recommends the following:
  - a. In Finding of Fact Nos. 11(a), 12(a), 13(a), 14(a), 15(a) and 16(a), the ED respectfully recommends deleting "in order to mitigate the penalty" since that is not in the Commission's Penalty Policy or testimony.
  - b. In Finding of Fact No. 11(c), 12(c), 13(c), and 14(c), the ED respectfully recommends removing this subparagraph since that is not in the Commission's Penalty Policy or testimony.
  - c. In Finding of Fact No. 11(d), 12(d), 13(d), and 14(d), the ED respectfully recommends deleting "based penalty" before base penalty for clarity, and recommends changing the word "by" to "to" because the penalty was reduced to 5% of \$25,000 and changing "potential" to "actual" because that is reflective of ED-10.
  - d. In Finding of Fact No. 11(e), the ED respectfully recommends changing "a single event" to "two single events" because that is reflective of ED-10.
  - e. In Finding of Fact No. 11(g), the ED respectfully recommends changing "base penalty of \$2,250" to "violation final penalty total of \$2,375" because this better reflects the language on the penalty calculation worksheet, as seen in ED-10, and when added all together with the other violation amounts a person can get the final total.
  - f. In Finding of Fact Nos. 12(b), the ED respectfully recommends changing "are" to "is".
  - g. In Finding of Fact No. 12(g), the ED respectfully recommends changing "base penalty" to "violation final penalty total".
  - h. In Finding of Fact No. 13(g), the ED respectfully recommends changing "base penalty of \$1,125" to "violation final penalty total of \$1,188" because this better reflects the language on the penalty calculation worksheet, as seen in ED-10, and when added all together with the other violation amounts a person can get the final total.
  - i. In Finding of Fact No. 14(g), the ED respectfully recommends changing "base penalty of \$1,125" to "violation final penalty total of \$1,188" because this reflects the language on the penalty calculation worksheet, as seen in ED-10, and when added all together with the other violation amounts a person can get the final total.
  - j. In Finding of Fact Nos. 15(b) and 16(b), the ED respectfully recommends changing "are" to "is" and changing "Environmental, Property, and Human Health" to "Programmatic Matrix" as reflected in ED-10.
  - k. In Finding of Fact Nos. 15(c) and 16(c), the ED respectfully recommends deleting "based penalty" before base penalty for clarity, changing the word "by" to "to" because the penalty was reduced to 5% of \$25,000 and capitalizing "Programmatic Matrix" as reflected in ED-10.
  - l. In Finding of Fact No. 15(f), the ED respectfully recommends changing "base penalty of \$6,250" to "violation final penalty total of \$6,563" because this better reflects the language on the penalty calculation worksheet, as seen in ED-10, and when added all together with the other violation amounts a person can get the final total.

- m. In Finding of Fact No. 16(f), the ED respectfully recommends changing "base penalty of \$1,250" to "violation final penalty total of \$1,313" because this better reflects the language on the penalty calculation worksheet, as seen in ED-10, and when added all together with the other violation amounts a person can get the final total.
9. In current Finding of Fact No. 20, the ED respectfully recommends adding "Executive Director's Preliminary Report and Petition" before and parenthesizing "EDPRP".
10. In current Finding of Fact Nos. 27 and 28, the ED respectfully recommends changing "First amended EDPRP" to "EDFARP".
11. The ED respectfully recommends the Findings of Fact should be re-numbered to account for the additions and/or deletions.
12. In Ordering Provision No. 1, the ED respectfully recommends adding a space 106.8(c)(1), and (c)(2)(B).

**Prayer**

The Executive Director respectfully requests the ALJ consider the exceptions noted and explanations offered herein.

Respectfully Submitted,

Texas Commission on Environmental Quality

Toby Baker  
Executive Director

Erin Chancellor, Director  
Office of Legal Services

Gitanjali Yadav, Deputy Director  
Litigation Division



By \_\_\_\_\_  
Jennifer Peltier  
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[Jennifer.Peltier@tceq.texas.gov](mailto:Jennifer.Peltier@tceq.texas.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of August, 2022, the original of the foregoing "Executive Director's Exceptions to the Administrative Law Judge's Proposed Order" was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day, true and correct copies of the foregoing document were sent to the following persons by the methods indicated:

Jolly Mgboji, President and Director  
Jeval Ventures, Inc.  
**Via Email**

The Honorable Katerina DeAngelo  
State Office of Administrative Hearings  
300 West 15th Street, Suite 502  
Austin, Texas 78711-3025  
**Via Electronic Filing**

Sheldon Wayne, Staff Attorney  
Office of the Public Interest Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 103  
Austin, Texas 78711-3087  
[sheldon.wayne@tceq.texas.gov](mailto:sheldon.wayne@tceq.texas.gov)  
**Via Email**



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Jennifer Peltier, Staff Attorney  
Litigation Division  
Office of Legal Services  
Texas Commission on Environmental Quality

## **Attachment A**

Proposed Order without Findings on the Penalty Calculation with the Executive Director's Proposed Changes Marked but not Incorporated

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER  
ASSESSING ADMINISTRATIVE PENALTIES AGAINST  
JEVAL VENTURES, INC. D/B/A MAACO COLLISION  
REPAIR & AUTO PAINTING  
TCEQ DOCKET NO. 2019-1607-AIR-E;  
SOAH DOCKET NO. 582-22-0131

On \_\_\_\_\_, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's (ED) First Amended Report and Petition (EDFARP) recommending that the Commission enter an order assessing administrative penalties against Jeval Ventures, Inc. d/b/a Maaco Collision Repair & Auto Painting (Respondent). A Proposal for Decision (PFD) was drafted by Administrative Law Judge (ALJ) Katerina DeAngelo with the State Office of Administrative Hearings (SOAH), who conducted a hearing concerning the EDFARP on May 26, 2022.

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After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Respondent owned and operated an autobody refinishing shop located at 507 Dulles Avenue in Stafford, Fort Bend County, Texas (Site) at the time of the alleged violations.
2. Surface coating operations at the Site were authorized by Permit by Rule (PBR) Registration No. 147498.

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3. On August 30, 2019, and September 11, 2019, a TCEQ investigator conducted an investigation of the Site and documented that Respondent:

a. Failed to maintain good housekeeping practices, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(3), and PBR Registration No. 147498. Specifically, on August 30, 2019, and September 11, 2019, the investigator observed used liners, painter's tape, cigarettes, cleaning solvent waste, drums with overflowing waste, dried out liquid stains on the ground, and other municipal waste that were spread throughout the back of the property.

b. Failed to keep all wash solvents in an enclosed reservoir that is covered at all times, except when being refilled with fresh solvents, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(9)(B), and PBR Registration No. 147498. Specifically, on August 30, 2019, the investigator observed multiple drums of Axalta 105 Lacquer Thinner with the lids removed.

c. Failed to keep all waste solvents in closed containers, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(9)(C), and PBR Registration No. 147498. Specifically, on August 30, 2019, the investigator observed two open plastic containers containing waste solvents sitting on top of open waste drums.

d. Failed to maintain records containing sufficient information to demonstrate compliance with permit conditions, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code sections 106.8(c)(2)(B) and 106.436(16)(B) and (E), and PBR Registration No. 147498. The following records were not provided upon a request on August 30, 2019: spray area flow capacity or face velocity; particulate control efficiency for the paint booth, spray area, and preparation area overspray filters; volatile organic compound content of coating and solvents as specified in 30 Texas Administrative Code § 115.421; monthly coating and solvent purchases; and the registration or identification numbers for each waste generator.

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- e. Failed to maintain a copy of PBR Registration No. 147498, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.8(c)(1), and PBR Registration No. 147498. On August 30, 2019, Respondent did not provide a copy of PBR Registration No. 147498 upon request.
4. On November 1, 2019, TCEQ issued a Notice of Enforcement (NOE) letter to Respondent identifying five violations documented during the August 30, 2019, and September 11, 2019, investigation. The NOE also required submission of documentation demonstrating compliance.
  5. Respondent submitted to TCEQ photographs of the Site from November 2019, showing that waste was removed from the outside premises of the Site.
  6. During an investigation conducted on September 11, 2020, a TCEQ investigator documented that Respondent failed to store all liquid waste in covered containers in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(3), and PBR Registration No. 147498. The investigator observed four open trash containers, one of which contained a silver liquid waste, along with masking tape, which emitted a strong paint odor.
  7. On April 28, 2021, TCEQ issued a NOE letter to Respondent identifying one violation documented during the September 11, 2020, investigation. The NOE also required submission of documentation demonstrating compliance.
  8. Respondent caused, suffered, allowed, or permitted the performance of an activity in violation of chapter 382 of the Texas Health and Safety Code and Commission rules.
  9. The parties stipulated that, if violations are found to have occurred, the administrative penalty was calculated correctly.
  10. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective April 1, 2014.
  11. Pursuant to the Commission's Penalty Policy, the Site is a minor source.

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12. The ED proposed a total administrative penalty of \$13,875, which is reasonable and justified.
13. Respondent did not produce all financial records that would be potentially relevant to the issue of Respondent's ability to pay the penalty.
14. On January 21, 2021, the ED filed an Executive Director's Preliminary Report and Petition (EDPRP) alleging that Respondent committed the five violations referenced in Finding of Fact No. 3 and mailed a copy to the Office of Public Interest Counsel (OPIC) and Respondent.
15. Respondent filed an answer to the EDPRP and requested a hearing.

**Deleted:** Under the Penalty Policy, the violation for failing to maintain good housekeeping practices on August 30, 2019, and September 11, 2019:

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**Deleted:** <#>is appropriately treated as one violation in order to mitigate the penalty amount;¶  
 ¶  
 is appropriately analyzed under the Environmental, Property, and Human Health Matrix;¶  
 ¶  
 created the potential for a release of contaminants into the environment that could cause minor harm;¶  
 ¶  
 reduced the \$25,000 based penalty base penalty by 5%, as a result of the potential/minor characterization of the violation;¶  
 ¶  
 is a violation that continued for 2 days that is appropriately classified as a single event;¶  
 ¶  
 reduced the penalty by 10%, as a result of good faith efforts to comply; and¶  
 ¶  
 accordingly has a base penalty of \$2,250.¶  
 ¶  
 Under the Penalty Policy, the violation for failing to maintain good housekeeping practices on September 11, 2020:¶  
 ¶  
 is appropriately treated as one violation in order to mitigate the penalty amount;¶  
 ¶  
 are appropriately analyzed under the Environmental, Property, and Human Health Matrix;¶  
 ¶  
 created the potential for a release of contaminants into the environment that could cause minor harm;¶  
 ¶  
 reduced the \$25,000 based penalty base penalty by 5%, as a result of the potential/minor characterization of the violation;¶  
 is a violation that continued for 1 day that is appropriately classified as a single event;¶  
 ¶  
 Respondent did not meet the good faith criteria for this violation, so there was no reduction; and¶  
 ¶  
 accordingly has a base penalty of \$1,250.¶  
 ¶  
 Under the Penalty Policy, the violation for failing to keep all wash solvents in an enclosed reservoir:¶  
 ¶  
 is appropriately treated as one violation in order to mitigate the penalty amount;¶  
 ¶  
 is appropriately analyzed under the Environmental, Property, and Human Health Matrix;¶  
 ¶  
 created the potential for a release of contaminants into the environment that could cause minor harm;¶

16. On August 16, 2021, the ED filed a letter asking the Commission’s Chief Clerk to refer this case to SOAH for hearing, and the Chief Clerk docketed it with SOAH on September 13, 2021, and filed the EDPRP on the same date.
17. On September 28, 2021, the ALJ issued Order No. 1 providing notice of the preliminary hearing.
18. On October 28, 2021, a preliminary hearing was held by ALJ Katerina DeAngelo and jurisdictional exhibits were admitted into evidence.
19. On November 3, 2021, the ALJ entered an order memorializing the preliminary hearing and adopting an agreed procedural schedule.
20. On February 16, 2022, the ALJ issued Order No. 3 in this case, setting the matter for hearing by Zoom videoconference on May 26, 2022.
21. On May 10, 2022, the ED filed its EDFARP adding an allegation that Respondent committed one violation referenced in Finding of Fact No. 6 and mailed a copy to OPIC and Respondent.
22. Together, the EDFARP and Order No. 3 contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
23. The hearing convened via Zoom videoconference on May 26, 2022, before ALJ Katerina DeAngelo. Respondent was represented by its owner, Jolly Mgboji. The ED was represented by attorney Elizabeth Lieberknecht, and the Commission’s Office of Public Interest Counsel was represented by attorney Sheldon Wayne. The record closed on June 10, 2022, to allow for the parties to file written closing arguments.

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## II. CONCLUSIONS OF LAW

1. Under Texas Water Code section 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Health and Safety Code within the Commission's jurisdiction or any rule, order, or permit adopted or issued thereunder.
2. Under Texas Water Code section 7.002, Respondent is subject to the Commission's enforcement authority.
3. The administrative penalty may not exceed \$25,000 per violation, per day, for the violations at issue in this case. Tex. Water Code § 7.052(c).
4. In determining the amount of an administrative penalty, Texas Water Code section 7.053 requires the Commission to consider several factors, and the Penalty Policy implements those factors.
5. SOAH has jurisdiction over matters related to the hearing in this case, including the authority to issue a PFD with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
6. The ED has the burden of proving the violations in this case by a preponderance of the evidence. 30 Tex. Admin. Code § 80.17(b).
7. As required by Texas Water Code sections 7.054 and .055 and 30 Texas Administrative Code sections 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations and penalty proposed therein.
8. As required by Texas Government Code sections 2001.051(1) and .052; Texas Water Code section 7.058; 1 Texas Administrative Code section 155.401; and 30 Texas Administrative Code sections 1.11, 39.25, 70.104, and 80.6(b)(3), Respondent was notified of the hearing regarding the alleged violations and the proposed administrative penalty.

9. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(3), and PBR Registration No. 147498.
10. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(9)(B), and PBR Registration No. 147498.
11. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(9)(C), and PBR Registration No. 147498.
12. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code sections 106.8(c)(2)(B) and 106.436(16)(B) and (E), and PBR Registration No. 147498.
13. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.8(c)(1), and PBR Registration No. 147498.
14. The penalty that the ED proposed for Respondent's violations in this case conforms to the requirements of Texas Water Code chapter 7 and the Commission's Penalty Policy.
15. Respondent should be assessed a total administrative penalty of \$13,875 for the violations proven by the ED in this case.
16. Respondent has the burden of proving that a lesser penalty is justified due to its financial circumstances. 30 Tex. Admin. Code § 70.8(a).
17. Because Respondent has not provided all potentially relevant financial records, Respondent has waived its claim of financial inability to pay. 30 Tex. Admin. Code § 70.8(b).

### III. ORDERING PROVISIONS

**NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:**

1. Within 30 days after the effective date of this Commission Order, Respondent shall pay an administrative penalty in the amount of \$13,875 for its violations of Texas Health and Safety Code section 382.085(b); 30 Texas Administrative Code sections 106.8(c)(1), (c)(2)(B), .436(3), (9)(B), (9)(C), (16)(B) and (16)(E), and PBR Registration No. 147498.
2. Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: Jeval Ventures, Inc. d/b/a Maaco Collision Repair & Auto Painting, TCEQ Docket No. 2019-1607-AIR-E" and mailed to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

3. The payment of the administrative penalty will completely resolve the violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective action or penalties for other violations that are not raised here.
4. 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.
5. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

6. The effective date of this Order is the date the Order is final. Tex. Gov't Code § 2001.144; 30 Tex. Admin. Code § 80.273.
7. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
8. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

**ISSUED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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**Jon Niermann, Chairman  
For the Commission**

## **Attachment B**

Proposed Order without Findings on the Penalty Calculation with the  
Executive Director's Proposed Changes Incorporated



**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**



**AN ORDER  
ASSESSING ADMINISTRATIVE PENALTIES AGAINST  
JEVAL VENTURES, INC. D/B/A MAACO COLLISION  
REPAIR & AUTO PAINTING  
TCEQ DOCKET NO. 2019-1607-AIR-E;  
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After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

**I. FINDINGS OF FACT**

1. Respondent owned and operated an autobody refinishing shop located at 507 Dulles Avenue in Stafford, Fort Bend County, Texas (Site) at the time of the alleged violations.
2. Surface coating operations at the Site were authorized by Permit by Rule (PBR) Registration No. 147498.

3. On August 30, 2019, and September 11, 2019, a TCEQ investigator conducted an investigation of the Site and documented that Respondent:
  - a. Failed to maintain good housekeeping practices, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(3), and PBR Registration No. 147498. Specifically, on August 30, 2019, and September 11, 2019, the investigator observed used liners, painter's tape, cigarettes, cleaning solvent waste, drums with overflowing waste, dried out liquid stains on the ground, and other municipal waste that were spread throughout the back of the property.
  - b. Failed to keep all wash solvents in an enclosed reservoir that is covered at all times, except when being refilled with fresh solvents, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(9)(B), and PBR Registration No. 147498. Specifically, on August 30, 2019, the investigator observed multiple drums of Axalta 105 Lacquer Thinner with the lids removed.
  - c. Failed to keep all waste solvents in closed containers, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(9)(C), and PBR Registration No. 147498. Specifically, on August 30, 2019, the investigator observed two open plastic containers containing waste solvents sitting on top of open waste drums.
  - d. Failed to maintain records containing sufficient information to demonstrate compliance with permit conditions, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code sections 106.8(c)(2)(B) and 106.436(16)(B) and (E), and PBR Registration No. 147498. The following records were not provided upon a request on August 30, 2019: spray area flow capacity or face velocity; particulate control efficiency for the paint booth, spray area, and preparation area overspray filters; volatile organic compound content of coating and solvents as specified in 30 Texas Administrative Code § 115.421; monthly coating and solvent purchases; and the registration or identification numbers for each waste generator.

- e. Failed to maintain a copy of PBR Registration No. 147498, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.8(c)(1), and PBR Registration No. 147498. On August 30, 2019, Respondent did not provide a copy of PBR Registration No. 147498 upon request.
4. On November 1, 2019, TCEQ issued a Notice of Enforcement (NOE) letter to Respondent identifying five violations documented during the August 30, 2019, and September 11, 2019, investigation. The NOE also required submission of documentation demonstrating compliance.
5. Respondent submitted to TCEQ photographs of the Site from November 2019, showing that waste was removed from the outside premises of the Site.
6. During an investigation conducted on September 11, 2020, a TCEQ investigator documented that Respondent failed to store all liquid waste in covered containers in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(3), and PBR Registration No. 147498. The investigator observed four open trash containers, one of which contained a silver liquid waste, along with masking tape, which emitted a strong paint odor.
7. On April 28, 2021, TCEQ issued a NOE letter to Respondent identifying one violation documented during the September 11, 2020, investigation. The NOE also required submission of documentation demonstrating compliance.
8. Respondent caused, suffered, allowed, or permitted the performance of an activity in violation of chapter 382 of the Texas Health and Safety Code and Commission rules.
9. The parties stipulated that, if violations are found to have occurred, the administrative penalty was calculated correctly.
10. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective April 1, 2014.
11. Pursuant to the Commission's Penalty Policy, the Site is a minor source.

12. The ED proposed a total administrative penalty of \$13,875, which is reasonable and justified.
13. Respondent did not produce all financial records that would be potentially relevant to the issue of Respondent's ability to pay the penalty.
14. On January 21, 2021, the ED filed an Executive Director's Preliminary Report and Petition (EDPRP) alleging that Respondent committed the five violations referenced in **Finding of Fact No. 3** and mailed a copy to the Office of Public Interest Counsel (OPIC) and Respondent.
15. Respondent filed an answer to the EDPRP and requested a hearing.
16. On August 16, 2021, the ED filed a letter asking the Commission's Chief Clerk to refer this case to SOAH for hearing, and the Chief Clerk docketed it with SOAH on September 13, 2021, and filed the EDPRP on the same date.
17. On September 28, 2021, the ALJ issued Order No. 1 providing notice of the preliminary hearing.
18. On October 28, 2021, a preliminary hearing was held by ALJ Katerina DeAngelo and jurisdictional exhibits were admitted into evidence.
19. On November 3, 2021, the ALJ entered an order memorializing the preliminary hearing and adopting an agreed procedural schedule.
20. On February 16, 2022, the ALJ issued Order No. 3 in this case, setting the matter for hearing by Zoom videoconference on May 26, 2022.
21. On May 10, 2022, the ED filed its EDFARP adding an allegation that Respondent committed one violation referenced in **Finding of Fact No. 6** and mailed a copy to OPIC and Respondent.
22. Together, the EDFARP and Order No. 3 contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed

with the state agency.

23. The hearing convened via Zoom videoconference on May 26, 2022, before ALJ Katerina DeAngelo. Respondent was represented by its owner, Jolly Mgboji. The ED was represented by attorney Elizabeth Lieberknecht, and the Commission's Office of Public Interest Counsel was represented by attorney Sheldon Wayne. The record closed on June 10, 2022, to allow for the parties to file written closing arguments.

## II. CONCLUSIONS OF LAW

1. Under Texas Water Code section 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Health and Safety Code within the Commission's jurisdiction or any rule, order, or permit adopted or issued thereunder.
2. Under Texas Water Code section 7.002, Respondent is subject to the Commission's enforcement authority.
3. The administrative penalty may not exceed \$25,000 per violation, per day, for the violations at issue in this case. Tex. Water Code § 7.052(c).
4. In determining the amount of an administrative penalty, Texas Water Code section 7.053 requires the Commission to consider several factors, and the Penalty Policy implements those factors.
5. SOAH has jurisdiction over matters related to the hearing in this case, including the authority to issue a PFD with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
6. The ED has the burden of proving the violations in this case by a preponderance of the evidence. 30 Tex. Admin. Code § 80.17(b).
7. As required by Texas Water Code sections 7.054 and .055 and 30 Texas Administrative Code sections 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations and penalty proposed therein.
8. As required by Texas Government Code sections 2001.051(1) and .052;

Texas Water Code section 7.058; 1 Texas Administrative Code section 155.401; and 30 Texas Administrative Code sections 1.11, 39.25, 70.104, and 80.6(b)(3), Respondent was notified of the hearing regarding the alleged violations and the proposed administrative penalty.

9. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(3), and PBR Registration No. 147498.
10. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(9)(B), and PBR Registration No. 147498.
11. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(9)(C), and PBR Registration No. 147498.
12. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code sections 106.8(c)(2)(B) and 106.436(16)(B) and (E), and PBR Registration No. 147498.
13. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.8(c)(1), and PBR Registration No. 147498.
14. The penalty that the ED proposed for Respondent's violations in this case conforms to the requirements of Texas Water Code chapter 7 and the Commission's Penalty Policy.
15. Respondent should be assessed a total administrative penalty of \$13,875 for the violations proven by the ED in this case.
16. Respondent has the burden of proving that a lesser penalty is justified due to its financial circumstances. 30 Tex. Admin. Code § 70.8(a).
17. Because Respondent has not provided all potentially relevant financial records, Respondent has waived its claim of financial inability to pay. 30 Tex. Admin. Code § 70.8(b).

### III. ORDERING PROVISIONS

**NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:**

1. Within 30 days after the effective date of this Commission Order, Respondent shall pay an administrative penalty in the amount of \$13,875 for its violations of Texas Health and Safety Code section 382.085(b); 30 Texas Administrative Code sections 106.8(c)(1), (c)(2)(B), .436(3), (9)(B), (9)(C), (16)(B) and (16)(E), and PBR Registration No. 147498.
2. Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: Jeval Ventures, Inc. d/b/a Maaco Collision Repair & Auto Painting, TCEQ Docket No. 2019-1607-AIR-E" and mailed to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

3. The payment of the administrative penalty will completely resolve the violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective action or penalties for other violations that are not raised here.
4. 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.
5. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

6. The effective date of this Order is the date the Order is final. Tex. Gov't Code § 2001.144; 30 Tex. Admin. Code § 80.273.
7. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
8. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

**ISSUED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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**Jon Niermann, Chairman  
For the Commission**



## **Attachment C**

Proposed Order with Findings on the Penalty Calculation with the  
Executive Director's Proposed Changes Marked but not Incorporated

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER  
ASSESSING ADMINISTRATIVE PENALTIES AGAINST  
JEVAL VENTURES, INC. D/B/A MAACO COLLISION  
REPAIR & AUTO PAINTING  
TCEQ DOCKET NO. 2019-1607-AIR-E;  
SOAH DOCKET NO. 582-22-0131

On \_\_\_\_\_, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's (ED) **First Amended** Report and Petition (**EDFARP**) recommending that the Commission enter an order assessing administrative penalties against Jeval Ventures, Inc. d/b/a Maaco Collision Repair & Auto Painting (Respondent). A Proposal for Decision (PFD) was drafted by Administrative Law Judge (ALJ) Katerina DeAngelo with the State Office of Administrative Hearings (SOAH), who conducted a hearing concerning the **EDFARP**, on May 26, 2022.

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After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Respondent owned and operated an autobody refinishing shop located at 507 Dulles Avenue in Stafford, Fort Bend County, Texas (Site) at the time of the alleged violations.
2. Surface coating operations at the Site **were** authorized by Permit by Rule (PBR) Registration No. 147498.

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3. On August 30, 2019, and September 11, 2019, a TCEQ investigator conducted an investigation of the Site and documented that Respondent:

a. Failed to maintain good housekeeping practices, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(3), and PBR Registration No. 147498. Specifically, on August 30, 2019, and September 11, 2019, the investigator observed used liners, painter's tape, cigarettes, cleaning solvent waste, drums with overflowing waste, dried out liquid stains on the ground, and other municipal waste that were spread throughout the back of the property.

b. Failed to keep all wash solvents in an enclosed reservoir that is covered at all times, except when being refilled with fresh solvents, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(9)(B), and PBR Registration No. 147498. Specifically, on August 30, 2019, the investigator observed multiple drums of Axalta 105 Lacquer Thinner with the lids removed.

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c. Failed to keep all waste solvents in closed containers, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(9)(C), and PBR Registration No. 147498. Specifically, on August 30, 2019, the investigator observed two open plastic containers containing waste solvents sitting on top of open waste drums.

d. Failed to maintain records containing sufficient information to demonstrate compliance with permit conditions, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code sections 106.8(c)(2)(B) and 106.436(16)(B) and (E), and PBR Registration No. 147498. The following records were not provided upon a request on August 30, 2019: spray area flow, capacity or face, velocity; particulate control efficiency for the paint booth, spray area, and preparation area overspray filters; volatile organic compound content of coating and solvents as specified in 30 Texas Administrative Code § 115.421; monthly coating and solvent purchases; and the registration or identification numbers for each waste generator.

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- e. Failed to maintain a copy of PBR Registration No. 147498, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.8(c)(1), and PBR Registration No. 147498. On August 30, 2019, Respondent did not provide a copy of PBR Registration No. 147498 upon request.
4. On November 1, 2019, TCEQ issued a Notice of Enforcement (NOE) letter to Respondent identifying five violations documented during the August 30, 2019, and September 11, 2019, investigation. The NOE also required submission of documentation demonstrating compliance.
  5. Respondent submitted to TCEQ photographs of the Site from November 2019, showing that waste was removed from the outside premises of the Site.
  6. During an investigation conducted on September 11, 2020, a TCEQ investigator documented that Respondent failed to store all liquid waste in covered containers in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(3), and PBR Registration No. 147498. The investigator observed four open trash containers, one of which contained a silver liquid waste, along with masking tape, which emitted a strong paint odor.
  7. On April 28, 2021, TCEQ issued a NOE letter to Respondent identifying one violation documented during the September 11, 2020, investigation. The NOE also required submission of documentation demonstrating compliance.
  8. Respondent caused, suffered, allowed, or permitted the performance of an activity in violation of chapter 382 of the Texas Health and Safety Code and Commission rules.
  9. The parties stipulated that, if violations are found to have occurred, the administrative penalty was calculated correctly.
  10. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective April 1, 2014.
  11. Pursuant to the Commission's Penalty Policy, the Site is a minor source.

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12. Under the Penalty Policy, the violation for failing to maintain good housekeeping practices on August 30, 2019, and September 11, 2019:

a. is appropriately treated as one violation;

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b. is appropriately analyzed under the Environmental, Property, and Human Health Matrix;

c. reduced the \$25,000 base penalty to 5%, as a result of the actual/minor characterization of the violation;

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d. is a violation that continued for 2 days that is appropriately classified as two single events;

e. reduced the penalty by 10%, as a result of good faith efforts to comply; and

f. accordingly has a violation final penalty total of \$2,375.

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13. Under the Penalty Policy, the violation for failing to maintain good housekeeping practices on September 11, 2020:

a. is appropriately treated as one violation;

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b. is appropriately analyzed under the Environmental, Property, and Human Health Matrix;

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c. reduced the \$25,000 base penalty to 5%, as a result of the actual/minor characterization of the violation;

**Deleted:** <#>created the potential for a release of contaminants into the environment that could cause minor harm;¶

**Deleted:** based penalty

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d. is a violation that continued for 1 day that is appropriately classified as a single event;

e. Respondent did not meet the good faith criteria for this violation, so there was no reduction; and

f. accordingly has a violation final penalty total of \$1,250.

**Deleted:** base penalty

14. Under the Penalty Policy, the violation for failing to keep all wash solvents in an enclosed reservoir:

a. is appropriately treated as one violation;

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b. is appropriately analyzed under the Environmental, Property, and Human Health Matrix;

c. reduced the \$25,000 base penalty to 5%, as a result of the actual/minor characterization of the violation;

**Deleted:** <#>created the potential for a release of contaminants into the environment that could cause minor harm;¶

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d. is a violation that continued for 1 day that is appropriately classified as a single event;

e. reduced the penalty by 10%, as a result of good faith efforts to comply; and

f. accordingly has a violation final penalty total of \$1,188,

**Deleted:** base penalty of \$1,125

15. Under the Penalty Policy, the violation for failing to keep all waste solvents in closed containers:

a. is appropriately treated as one violation;

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b. is appropriately analyzed under the Environmental, Property, and Human Health Matrix;

c. reduced the \$25,000 base penalty to 5%, as a result of the actual/minor characterization of the violation;

d. is a violation that continued for 1 day that is appropriately classified as a single event;

e. reduced the penalty by 10%, as a result of good faith efforts to comply; and

f. accordingly has a violation final penalty total of \$1,188,

**Deleted:** <#>created the potential for a release of contaminants into the environment that could cause minor harm;¶

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16. Under the Penalty Policy, the violation for failing to maintain records:

a. is appropriately treated as one violation;

b. is appropriately analyzed under the Programmatic Matrix;

c. reduced the \$25,000 base penalty to 5%, as a result of the Programmatic Matrix;

d. is a violation that continued for 69 days that is appropriately classified as 5 single events;

e. Respondent did not meet the good faith criteria for this violation, so there was no reduction; and

f. accordingly has a violation final penalty total of \$6,563,

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**Deleted:** base penalty of \$6,250

17. Under the Penalty Policy, the violation for failing to maintain a copy of PBR:

a. is appropriately treated as one violation;

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b. is appropriately analyzed under the Programmatic Matrix;

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c. reduced the \$25,000 base penalty to5%, as a result of the Programmatic Matrix;

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**Deleted:** programmatic matrix

d. is a violation that continued for 69 days that is appropriately classified as a single event;

e. Respondent did not meet the good faith criteria for this violation, so there was no reduction; and

f. accordingly has a violation final penalty total of \$1,313,

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18. In accordance with the Commission's Penalty Policy, the total base penalty of \$12,500 for violations on August 30, 2019, and September 11, 2019, is enhanced by 5% because of Respondent's compliance history.

19. The ED proposed a total administrative penalty of \$13,875, which is reasonable and justified.

20. Respondent did not produce all financial records that would be potentially relevant to the issue of Respondent's ability to pay the penalty.

21. On January 21, 2021, the ED filed an Executive Director's Preliminary Report and Petition (EDPRP) alleging that Respondent committed the five violations referenced in Finding of Fact No. 3 and mailed a copy to the Office of Public Interest Counsel (OPIC) and Respondent.

22. Respondent filed an answer to the EDPRP and requested a hearing.



23. On August 16, 2021, the ED filed a letter asking the Commission’s Chief Clerk to refer this case to SOAH for hearing, and the Chief Clerk docketed it with SOAH on September 13, 2021, and filed the EDPRP on the same date.
24. On September 28, 2021, the ALJ issued Order No. 1 providing notice of the preliminary hearing.
25. On October 28, 2021, a preliminary hearing was held by ALJ Katerina DeAngelo and jurisdictional exhibits were admitted into evidence.
26. On November 3, 2021, the ALJ entered an order memorializing the preliminary hearing and adopting an agreed procedural schedule.
27. On February 16, 2022, the ALJ issued Order No. 3 in this case, setting the matter for hearing by Zoom videoconference on May 26, 2022.
28. On May 10, 2022, the ED filed its **EDFARP**, adding an allegation that Respondent committed one violation referenced in **Finding of Fact No. 6** and mailed a copy to OPIC and Respondent.
29. Together, the **EDFARP** and Order No. 3 contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
30. The hearing convened via Zoom videoconference on May 26, 2022, before ALJ Katerina DeAngelo. Respondent was represented by its owner, Jolly Mgboji. The ED was represented by attorney Elizabeth Lieberknecht, and the Commission’s Office of Public Interest Counsel was represented by attorney Sheldon Wayne. The record closed on June 10, 2022, to allow for the parties to file written closing arguments.

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## II. CONCLUSIONS OF LAW

1. Under Texas Water Code section 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Health and Safety Code within the Commission's jurisdiction or any rule, order, or permit adopted or issued thereunder.
2. Under Texas Water Code section 7.002, Respondent is subject to the Commission's enforcement authority.
3. The administrative penalty may not exceed \$25,000 per violation, per day, for the violations at issue in this case. Tex. Water Code § 7.052(c).
4. In determining the amount of an administrative penalty, Texas Water Code section 7.053 requires the Commission to consider several factors, and the Penalty Policy implements those factors.
5. SOAH has jurisdiction over matters related to the hearing in this case, including the authority to issue a PFD with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
6. The ED has the burden of proving the violations in this case by a preponderance of the evidence. 30 Tex. Admin. Code § 80.17(b).
7. As required by Texas Water Code sections 7.054 and .055 and 30 Texas Administrative Code sections 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations and penalty proposed therein.
8. As required by Texas Government Code sections 2001.051(1) and .052; Texas Water Code section 7.058; 1 Texas Administrative Code section 155.401; and 30 Texas Administrative Code sections 1.11, 39.25, 70.104, and 80.6(b)(3), Respondent was notified of the hearing regarding the alleged violations and the proposed administrative penalty.

9. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(3), and PBR Registration No. 147498.
10. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(9)(B), and PBR Registration No. 147498.
11. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(9)(C), and PBR Registration No. 147498.
12. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code sections 106.8(c)(2)(B) and 106.436(16)(B) and (E), and PBR Registration No. 147498.
13. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.8(c)(1), and PBR Registration No. 147498.
14. The penalty that the ED proposed for Respondent's violations in this case conforms to the requirements of Texas Water Code chapter 7 and the Commission's Penalty Policy.
15. Respondent should be assessed a total administrative penalty of \$13,875 for the violations proven by the ED in this case.
16. Respondent has the burden of proving that a lesser penalty is justified due to its financial circumstances. 30 Tex. Admin. Code § 70.8(a).
17. Because Respondent has not provided all potentially relevant financial records, Respondent has waived its claim of financial inability to pay. 30 Tex. Admin. Code § 70.8(b).

### III. ORDERING PROVISIONS

**NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:**

1. Within 30 days after the effective date of this Commission Order, Respondent shall pay an administrative penalty in the amount of \$13,875 for its violations of Texas Health and Safety Code section 382.085(b); 30 Texas Administrative Code sections 106.8(c)(1), (c)(2)(B), .436(3), (9)(B), (9)(C), (16)(B) and (16)(E), and PBR Registration No. 147498.
2. Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: Jeval Ventures, Inc. d/b/a Maaco Collision Repair & Auto Painting, TCEQ Docket No. 2019-1607-AIR-E" and mailed to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

3. The payment of the administrative penalty will completely resolve the violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective action or penalties for other violations that are not raised here.
4. 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.
5. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

6. The effective date of this Order is the date the Order is final. Tex. Gov't Code § 2001.144; 30 Tex. Admin. Code § 80.273.
7. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
8. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

**ISSUED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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**Jon Niermann, Chairman  
For the Commission**

## **Attachment D**

Proposed Order with Findings on the Penalty Calculation with the  
Executive Director's Proposed Changes Incorporated

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**



**AN ORDER  
ASSESSING ADMINISTRATIVE PENALTIES AGAINST  
JEVAL VENTURES, INC. D/B/A MAACO COLLISION  
REPAIR & AUTO PAINTING  
TCEQ DOCKET NO. 2019-1607-AIR-E;  
SOAH DOCKET NO. 582-22-0131**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's (ED) First Amended Report and Petition (EDFARP) recommending that the Commission enter an order assessing administrative penalties against Jeval Ventures, Inc. d/b/a Maaco Collision Repair & Auto Painting (Respondent). A Proposal for Decision (PFD) was drafted by Administrative Law Judge (ALJ) Katerina DeAngelo with the State Office of Administrative Hearings (SOAH), who conducted a hearing concerning the EDFARP on May 26, 2022.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

**I. FINDINGS OF FACT**

1. Respondent owned and operated an autobody refinishing shop located at 507 Dulles Avenue in Stafford, Fort Bend County, Texas (Site) at the time of the alleged violations.
2. Surface coating operations at the Site were authorized by Permit by Rule (PBR) Registration No. 147498.

3. On August 30, 2019, and September 11, 2019, a TCEQ investigator conducted an investigation of the Site and documented that Respondent:
- a. Failed to maintain good housekeeping practices, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(3), and PBR Registration No. 147498. Specifically, on August 30, 2019, and September 11, 2019, the investigator observed used liners, painter's tape, cigarettes, cleaning solvent waste, drums with overflowing waste, dried out liquid stains on the ground, and other municipal waste that were spread throughout the back of the property.
  - b. Failed to keep all wash solvents in an enclosed reservoir that is covered at all times, except when being refilled with fresh solvents, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(9)(B), and PBR Registration No. 147498. Specifically, on August 30, 2019, the investigator observed multiple drums of Axalta 105 Lacquer Thinner with the lids removed.
  - c. Failed to keep all waste solvents in closed containers, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(9)(C), and PBR Registration No. 147498. Specifically, on August 30, 2019, the investigator observed two open plastic containers containing waste solvents sitting on top of open waste drums.
  - d. Failed to maintain records containing sufficient information to demonstrate compliance with permit conditions, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code sections 106.8(c)(2)(B) and 106.436(16)(B) and (E), and PBR Registration No. 147498. The following records were not provided upon a request on August 30, 2019: spray area flow capacity or face velocity; particulate control efficiency for the paint booth, spray area, and preparation area overspray filters; volatile organic compound content of coating and solvents as specified in 30 Texas Administrative Code § 115.421; monthly coating and solvent purchases; and the registration or identification numbers for each waste generator.



- e. Failed to maintain a copy of PBR Registration No. 147498, in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.8(c)(1), and PBR Registration No. 147498. On August 30, 2019, Respondent did not provide a copy of PBR Registration No. 147498 upon request.
4. On November 1, 2019, TCEQ issued a Notice of Enforcement (NOE) letter to Respondent identifying five violations documented during the August 30, 2019, and September 11, 2019, investigation. The NOE also required submission of documentation demonstrating compliance.
5. Respondent submitted to TCEQ photographs of the Site from November 2019, showing that waste was removed from the outside premises of the Site.
6. During an investigation conducted on September 11, 2020, a TCEQ investigator documented that Respondent failed to store all liquid waste in covered containers in violation of Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(3), and PBR Registration No. 147498. The investigator observed four open trash containers, one of which contained a silver liquid waste, along with masking tape, which emitted a strong paint odor.
7. On April 28, 2021, TCEQ issued a NOE letter to Respondent identifying one violation documented during the September 11, 2020, investigation. The NOE also required submission of documentation demonstrating compliance.
8. Respondent caused, suffered, allowed, or permitted the performance of an activity in violation of chapter 382 of the Texas Health and Safety Code and Commission rules.
9. The parties stipulated that, if violations are found to have occurred, the administrative penalty was calculated correctly.
10. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective April 1, 2014.
11. Pursuant to the Commission's Penalty Policy, the Site is a minor source.

12. Under the Penalty Policy, the violation for failing to maintain good housekeeping practices on August 30, 2019, and September 11, 2019:
  - a. is appropriately treated as one violation;
  - b. is appropriately analyzed under the Environmental, Property, and Human Health Matrix;
  - c. reduced the \$25,000 base penalty to 5%, as a result of the actual/minor characterization of the violation;
  - d. is a violation that continued for 2 days that is appropriately classified as two single events;
  - e. reduced the penalty by 10%, as a result of good faith efforts to comply; and
  - f. accordingly has a violation final penalty total of \$2,375.
  
13. Under the Penalty Policy, the violation for failing to maintain good housekeeping practices on September 11, 2020:
  - a. is appropriately treated as one violation;
  - b. is appropriately analyzed under the Environmental, Property, and Human Health Matrix;
  - c. reduced the \$25,000 base penalty to 5%, as a result of the actual/minor characterization of the violation;
  - d. is a violation that continued for 1 day that is appropriately classified as a single event;
  - e. Respondent did not meet the good faith criteria for this violation, so there was no reduction; and
  - f. accordingly has a violation final penalty total of \$1,250.

14. Under the Penalty Policy, the violation for failing to keep all wash solvents in an enclosed reservoir:
  - a. is appropriately treated as one violation;
  - b. is appropriately analyzed under the Environmental, Property, and Human Health Matrix;
  - c. reduced the \$25,000 base penalty to 5%, as a result of the actual/minor characterization of the violation;
  - d. is a violation that continued for 1 day that is appropriately classified as a single event;
  - e. reduced the penalty by 10%, as a result of good faith efforts to comply; and
  - f. accordingly has a violation final penalty total of \$1,188.
  
15. Under the Penalty Policy, the violation for failing to keep all waste solvents in closed containers:
  - a. is appropriately treated as one violation;
  - b. is appropriately analyzed under the Environmental, Property, and Human Health Matrix;
  - c. reduced the \$25,000 base penalty to 5%, as a result of the actual/minor characterization of the violation;
  - d. is a violation that continued for 1 day that is appropriately classified as a single event;
  - e. reduced the penalty by 10%, as a result of good faith efforts to comply; and
  - f. accordingly has a violation final penalty total of \$1,188.

16. Under the Penalty Policy, the violation for failing to maintain records:
  - a. is appropriately treated as one violation;
  - b. is appropriately analyzed under the Programmatic Matrix;
  - c. reduced the \$25,000 base penalty to 5%, as a result of the Programmatic Matrix;
  - d. is a violation that continued for 69 days that is appropriately classified as 5 single events;
  - e. Respondent did not meet the good faith criteria for this violation, so there was no reduction; and
  - f. accordingly has a violation final penalty total of \$6,563.
  
17. Under the Penalty Policy, the violation for failing to maintain a copy of PBR:
  - a. is appropriately treated as one violation;
  - b. is appropriately analyzed under the Programmatic Matrix;
  - c. reduced the \$25,000 base penalty to 5%, as a result of the Programmatic Matrix;
  - d. is a violation that continued for 69 days that is appropriately classified as a single event;
  - e. Respondent did not meet the good faith criteria for this violation, so there was no reduction; and
  - f. accordingly has a violation final penalty total of \$1,313.
  
18. In accordance with the Commission's Penalty Policy, the total base penalty of \$12,500 for violations on August 30, 2019, and September 11, 2019, is enhanced by 5% because of Respondent's compliance history.
  
19. The ED proposed a total administrative penalty of \$13,875, which is

reasonable and justified.

20. Respondent did not produce all financial records that would be potentially relevant to the issue of Respondent's ability to pay the penalty.
21. On January 21, 2021, the ED filed an Executive Director's Preliminary Report and Petition (EDPRP) alleging that Respondent committed the five violations referenced in **Finding of Fact No. 3** and mailed a copy to the Office of Public Interest Counsel (OPIC) and Respondent.
22. Respondent filed an answer to the EDPRP and requested a hearing.
23. On August 16, 2021, the ED filed a letter asking the Commission's Chief Clerk to refer this case to SOAH for hearing, and the Chief Clerk docketed it with SOAH on September 13, 2021, and filed the EDPRP on the same date.
24. On September 28, 2021, the ALJ issued Order No. 1 providing notice of the preliminary hearing.
25. On October 28, 2021, a preliminary hearing was held by ALJ Katerina DeAngelo and jurisdictional exhibits were admitted into evidence.
26. On November 3, 2021, the ALJ entered an order memorializing the preliminary hearing and adopting an agreed procedural schedule.
27. On February 16, 2022, the ALJ issued Order No. 3 in this case, setting the matter for hearing by Zoom videoconference on May 26, 2022.
28. On May 10, 2022, the ED filed its EDFARP adding an allegation that Respondent committed one violation referenced in **Finding of Fact No. 6** and mailed a copy to OPIC and Respondent.
29. Together, the EDFARP and Order No. 3 contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.

30. The hearing convened via Zoom videoconference on May 26, 2022, before ALJ Katerina DeAngelo. Respondent was represented by its owner, Jolly Mgboji. The ED was represented by attorney Elizabeth Lieberknecht, and the Commission's Office of Public Interest Counsel was represented by attorney Sheldon Wayne. The record closed on June 10, 2022, to allow for the parties to file written closing arguments.

## II. CONCLUSIONS OF LAW

1. Under Texas Water Code section 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Health and Safety Code within the Commission's jurisdiction or any rule, order, or permit adopted or issued thereunder.
2. Under Texas Water Code section 7.002, Respondent is subject to the Commission's enforcement authority.
3. The administrative penalty may not exceed \$25,000 per violation, per day, for the violations at issue in this case. Tex. Water Code § 7.052(c).
4. In determining the amount of an administrative penalty, Texas Water Code section 7.053 requires the Commission to consider several factors, and the Penalty Policy implements those factors.
5. SOAH has jurisdiction over matters related to the hearing in this case, including the authority to issue a PFD with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
6. The ED has the burden of proving the violations in this case by a preponderance of the evidence. 30 Tex. Admin. Code § 80.17(b).
7. As required by Texas Water Code sections 7.054 and .055 and 30 Texas Administrative Code sections 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations and penalty proposed therein.
8. As required by Texas Government Code sections 2001.051(1) and .052; Texas Water Code section 7.058; 1 Texas Administrative Code section 155.401; and 30 Texas Administrative Code sections 1.11, 39.25, 70.104, and 80.6(b)(3), Respondent was notified of the hearing regarding the alleged violations and the proposed administrative penalty.

9. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(3), and PBR Registration No. 147498.
10. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(9)(B), and PBR Registration No. 147498.
11. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.436(9)(C), and PBR Registration No. 147498.
12. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code sections 106.8(c)(2)(B) and 106.436(16)(B) and (E), and PBR Registration No. 147498.
13. Respondent violated Texas Health and Safety Code section 382.085(b), 30 Texas Administrative Code section 106.8(c)(1), and PBR Registration No. 147498.
14. The penalty that the ED proposed for Respondent's violations in this case conforms to the requirements of Texas Water Code chapter 7 and the Commission's Penalty Policy.
15. Respondent should be assessed a total administrative penalty of \$13,875 for the violations proven by the ED in this case.
16. Respondent has the burden of proving that a lesser penalty is justified due to its financial circumstances. 30 Tex. Admin. Code § 70.8(a).
17. Because Respondent has not provided all potentially relevant financial records, Respondent has waived its claim of financial inability to pay. 30 Tex. Admin. Code § 70.8(b).



### III. ORDERING PROVISIONS

**NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:**

1. Within 30 days after the effective date of this Commission Order, Respondent shall pay an administrative penalty in the amount of \$13,875 for its violations of Texas Health and Safety Code section 382.085(b); 30 Texas Administrative Code sections 106.8(c)(1), (c)(2)(B), .436(3), (9)(B), (9)(C), (16)(B) and (16)(E), and PBR Registration No. 147498.
2. Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: Jeval Ventures, Inc. d/b/a Maaco Collision Repair & Auto Painting, TCEQ Docket No. 2019-1607-AIR-E" and mailed to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

3. The payment of the administrative penalty will completely resolve the violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective action or penalties for other violations that are not raised here.
4. 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.
5. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

6. The effective date of this Order is the date the Order is final. Tex. Gov't Code § 2001.144; 30 Tex. Admin. Code § 80.273.
7. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
8. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

**ISSUED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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**Jon Niermann, Chairman  
For the Commission**