



State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

July 25, 2022

Mary Smith
General Counsel
Texas Commission on Environmental Quality
12100 Park 35 Circle, Bldg. F, Room 4225
Austin Texas 78753

Via e-File Texas

Re: SOAH Docket No. 582-22-0131; Texas Commission on Environmental Quality Docket No. 2019-1607-AIR-E; The Executive Director of the Texas Commission on Environmental Quality v. Jeval Ventures, Inc. d/b/a Maaco Collision Repair & Auto Painting

Dear Ms. Smith:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality (Commission or TCEQ) on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Attached is the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the TCEQ no later than Monday, August 5, 2022. Any replies to exceptions or briefs must be filed in the same manner no later than Wednesday, August 24, 2022.

This matter has been designated **TCEQ Docket No. 2019-1607-AIR-E; SOAH Docket No. 582-22-0131**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www14.tceq.texas.gov/epic/eFiling/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

A handwritten signature in black ink that reads "Katerina DeAngelo". The signature is written in a cursive style and is positioned above a horizontal line.

Katerina DeAngelo
Presiding Administrative Law Judge

KD/lc
Attachments

Cc: Mailing List

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

IN RE: 2019-1607-AIR-E

**EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
PETITIONER**

v.

**JEVAL VENTURES, INC. D/B/A MAACO COLLISION REPAIR
& AUTO PAINTING,
RESPONDENT**

PROPOSAL FOR DECISION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) alleges that Jeval Ventures, Inc. d/b/a Maaco Collision Repair & Auto Painting (Respondent) violated the Texas Health and Safety Code (Code) and TCEQ's regulations pertaining to Respondent's autobody refinishing shop and recommends the Commission enter an order assessing an

administrative penalty of \$13,875¹ for these violations.² The parties stipulated that, if violations are found to have occurred, the administrative penalty was calculated correctly.³ A dispute remains as to whether the violations occurred and Respondent's ability to pay the administrative penalty. The Administrative Law Judge (ALJ) finds that the ED proved the alleged violations by a preponderance of the evidence and recommends an assessment of an administrative penalty of \$13,875.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

There are no contested issues of notice or jurisdiction. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law.

On October 28, 2021, the ALJ held a preliminary hearing and admitted Exhibits ED-A through ED-D for the limited purpose of establishing notice and jurisdiction. The hearing on the merits was held by videoconference on May 26, 2022, before ALJ Katerina DeAngelo. Respondent was represented by its owner, Mr. Jolly Mgboji. The ED was represented by attorney Elizabeth Lieberknecht, and the Commission's Office of Public Interest Counsel (OPIC) was represented by attorney Sheldon Wayne. The record closed on June 10, 2022, to allow for the parties to file written closing arguments.

¹ This amount represents an adjusted amount of the initial administrative penalty of \$15,687.

² The ED is no longer seeking corrective action in this matter.

³ Exhibits ED-9 and ED-10 contain penalty calculation worksheets for the alleged violations.

II. BACKGROUND FACTS AND ALLEGED VIOLATIONS

At the time of the alleged violations, Respondent owned and operated an autobody refinishing shop located at 507 Dulles Avenue in Stafford, Fort Bend County, Texas (Site).⁴ Surface coating operations at the Site are authorized by Permit by Rule (PBR) Registration No. 147498 (Site's PBR).⁵ During Site visits conducted on August 30, 2019, and September 11, 2019,⁶ an investigator cited the following violations at the Site:

1. Failure to maintain good housekeeping practices, in violation of Code section 382.085(b), 30 Texas Administrative Code (the Commission's rules) section 106.436(3), and the Site's PBR. 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;
2. Failure to keep all wash solvents in a closed reservoir, in violation of section 382.085(b) of the Code, section 106.436(9)(B) of the Commission's rules, and the Site's PBR. On August 30, 2019, the investigator observed multiple drums of Axalta 105 Lacquer Thinner with the lids removed;
3. Failure to keep all waste solvents in closed containers, in violation of section 382.085(b) of the Code, section 106.436(9)(C) of the Commission's rules, and the Site's PBR. On August 30, 2019, the

⁴ Exhibit ED-3 at Bates 021-026 contains PRB Applicability Checklist and Process Description submitted with Respondent's PRB application describing the operations at the Site.

⁵ Ex. ED-2.

⁶ Exhibit ED-1 contains a copy of the investigation report, including Site information, investigation narrative, alleged violations, and photographs taken during the investigation, exit interview form, and a Notice of Enforcement, dated November 1, 2019.

investigator observed two open plastic containers containing waste solvents sitting on top of open waste drums;

4. Failure to maintain records containing sufficient information to demonstrate compliance with permit conditions, in violation of section 382.085(b) of the Code, sections 106.8(c)(2)(B) and 106.436(16)(B) and (E) of the Commission's rules, and the Site's PBR. The following records were not provided upon a request on August 30, 2019: spray area fan capacity and velocity; particulate control efficiency of filters or filter systems of paint booth; spray booth, spray area, and preparation area stack height; volatile organic compound (VOC) content of coating and solvents;⁷ monthly coating and solvent purchases; and the registration or identification numbers for each waste generator; and
5. Failure to maintain a copy of the Site's PBR, in violation of section 382.085(b) of the Code, section 106.8(c)(1) of the Commission's rules, and the Site's PBR. On August 30, 2019, Respondent did not provide a copy of the Site's PBR upon request.

During a Site visit conducted on September 11, 2020,⁸ a TCEQ investigator documented that Respondent failed to store all liquid waste in enclosed containers, in violation of section 382.085(b) of the Code, section 106.436(3) of the Commission's rules, and the Site's PBR. 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 The specific RBR conditions for autobody refinishing facilities for spray area fan capacity and velocity; spray booth, spray area, and preparation area stack height; and VOC content can be found in the Commission's rules. 30 Tex. Admin. Code §§ 106.436(5), (7), (11), (14).

⁸ Exhibit ED-4 contains a copy of the investigation report, including Site information, investigation narrative, alleged violations, photographs taken during the investigation, exit interview form, and a Notice of Enforcement, dated April 28, 2021.

III. APPLICABLE LAW

TCEQ has enforcement authority over alleged violations involving the state's air quality program, set out in the Code.⁹ Under section 382.085(b), no person may cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of this chapter or of any Commission rule or order. A PBR is one of many permitting mechanisms available to facilities to authorize air emissions.¹⁰ Permitted autobody refinishing facilities shall satisfy all conditions in their PBR.¹¹ Such facilities are required to ensure good housekeeping by keeping property clean and, prior to disposal, storing all liquid waste in covered containers.¹² All wash solvents must be kept in an enclosed reservoir that is covered at all times, except when being refilled with fresh solvents, and all waste solvents and other cleaning materials must be kept in closed containers.¹³ Records of monthly coating and solvent purchases and the registration or identification numbers for each waste generator shall be maintained at the shop site and be made immediately available upon request of TCEQ personnel.¹⁴

Owners or operators of all facilities authorized to operate under a PBR must retain records as follows: maintain a copy of its PBR and records containing sufficient information to demonstrate compliance with PBR conditions; keep all

⁹ Tex. Water Code §§ 5.013, 7.002.

¹⁰ 30 Tex. Admin. Code § 106.1.

¹¹ 30 Tex. Admin. Code § 116.110(a)(4).

¹² 30 Tex. Admin. Code § 106.436(3).

¹³ 30 Tex. Admin. Code § 106.436(9)(B), (C).

¹⁴ 30 Tex. Admin. Code § 106.436(16)(B), (E).

required records at the facility site; and make the records available in a reviewable format at the request of TCEQ personnel.¹⁵

The Commission is authorized to assess an administrative penalty against a person who violates a Code provision or a Commission rule.¹⁶ TCEQ must consider certain factors when setting an administrative penalty.¹⁷ The ED has the burden of proving the violations and proposed penalty by a preponderance of the evidence.¹⁸ Parties are allowed to establish that a lesser penalty is justified because of their financial circumstances.¹⁹ However, the burden of production and burden of proof rest solely on the party asserting the claim.²⁰ If the party fails to provide all financial records that are potentially relevant to its claim of financial inability to pay, the party's claim is waived.²¹

IV. EVIDENCE

The ED offered 12 exhibits, which were admitted into evidence,²² and presented the testimony of two expert witnesses, Warda Omar and Donna Chaffin.

¹⁵ 30 Tex. Admin. Code § 106.8(c)(1), (2)(B), (3), (4).

¹⁶ Tex. Water Code § 7.051(a)(1).

¹⁷ Tex. Water Code § 7.053.

¹⁸ 30 Tex. Admin. Code § 80.17(b).

¹⁹ 30 Tex. Admin. Code § 70.8.

²⁰ 30 Tex. Admin. Code § 70.8(a) (“If any respondent . . . asserts an inability to pay the penalty recommended . . . that party shall have the burden of establishing that a lesser penalty is justified under that party’s financial circumstances.”); 30 Tex. Admin. Code § 70.8(b) (“A party asserting a claim under this section must produce all financial records that would be potentially relevant to that issue . . .”).

²¹ 30 Tex. Admin. Code § 70.8(b).

²² Exs. ED-1 - ED-5; ED-7 - ED-13.

Mr. Mgboji testified on behalf of Respondent and offered two exhibits, which were admitted into evidence.²³ OPIC offered no testimony or exhibits.

A. TCEQ EVIDENCE AND TESTIMONY

Ms. Omar is an air section program coordinator at the Commission. She has been employed with the Commission for approximately eight years. She oversees the work plan commitments, assigns investigations, and reviews and approves investigation reports. Ms. Omar has reviewed approximately 600 investigations in her supervisory role. Ms. Omar testified about TCEQ investigation processes and PRB, in general and as applied to Respondent, and the findings of the investigations.

Ms. Omar opined that, based on the observations made during the August 30, 2019, September 11, 2019, and September 11, 2020, visits to the Site, Respondent violated the cited TCEQ rules and the Site's PBR. Ms. Omar testified of the environmental and health consequences of failing to maintain good housekeeping practices and keep waste and solvents in closed containers—the material used at the Site contains VOCs, which are air pollutants that cause human health and environmental impacts. Improper handling of such material may result in uncontrolled and unauthorized emissions. Ms. Omar testified regarding the importance of recordkeeping requirements and explained that compliance with many of the substantive provisions of the Site's PBR cannot be determined without these records. She stated that the Site must maintain a copy of its PBR because it

²³ Resp. Exs. 1, 2. Additional documents were submitted with Respondent's closing argument, but are not part of the evidentiary record. Therefore, the ALJ has not considered them in the preparation of this PFD.

serves as a guide for the employees to ensure that they are operating in compliance with the permit.

At the conclusion of the investigation, TCEQ issued two Notices of Enforcement citing outstanding alleged violations and requesting submittal of a written description of corrective action taken and documentation demonstrating compliance.²⁴ Then, Respondent's case was referred to the TCEQ's Enforcement Division for further review. Ms. Omar stated that the photographs of the Site from November 2019 submitted by Respondent²⁵ appear to show that the waste was removed from the back of the property. She confirmed that the waste removal was considered by the Enforcement Division in calculation of the proposed penalty.²⁶

Ms. Chaffin is a certified public accountant and has been employed by the Commission as a financial analyst for 17 years. She testified about TCEQ's financial review process, both in general and as applied to Respondent. When TCEQ assesses an administrative penalty against a regulated entity, the entity may request a financial review to determine its ability to pay the penalty. The ED requested that Respondent submit 14 items in order to review its inability-to-pay claim.²⁷ Ms. Chaffin explained that the list of requested items is the standard minimum financial documentation applicable to corporations and was necessary to understand Respondent's income, assets, liabilities, expenses. Ms. Chaffin added

²⁴ Exs. ED-1 at Bates 027-031; ED-4 at Bates 038-040. Ms. Omar testified that Respondent did not submit a written description of corrective action taken or documentation demonstrating compliance prior to November 1, 2019.

²⁵ Respondent's Exhibit 1 contains 11 photographs of the Site depicting the outside premises of the Site waste-free.

²⁶ Ex. ED-10 at Bates 003, 005, 007.

²⁷ Ex. ED-12 at Bates 072.

that, even after this standard set of financial information is provided, there is often additional information requested based on an initial review and analysis.

Ms. Chaffin opined that she could not conduct a financial review of Respondent's inability-to-pay claim because Respondent did not provide the basic financial information requested by the ED.²⁸ Respondent provided TCEQ with some, but not all, of the requested records.²⁹ Respondent submitted its IRS Forms 8821 and 4506; unsigned tax returns for 2018, 2019, and 2020;³⁰ lease agreements; and a year-end balance sheet, profit and loss statement, and depreciation schedule for 2021. TCEQ did not received the following: Respondent's financial statements for 2018, 2019, 2020, or 2022; quarterly reports filed with the Texas Workforce Commission; note agreements and schedule of indebtedness for outstanding loans; bank statements and information about deposit accounts; a list of company vehicles; and corporation's ownership structure, remuneration of its shareholders, and corporate affiliates.³¹ Ms. Chaffin opined that by failing to provide all financial records that are potentially relevant to Respondent's claim of financial inability to pay, Respondent waived its claim.

²⁸ The ED requested that Respondent produce all relevant documentation for the inability-to-pay claim in a written discovery request, dated December 13, 2021, then in an email to Respondent, dated April 5, 2022, identifying deficient items. Exs. ED-12 at Bates 072; ED-13.

²⁹ Resp. Ex. 2 contains documentation submitted by Respondent for its inability-to-pay claim.

³⁰ Ms. Chaffin opined that, if tax returns are not signed, she cannot verify that the submitted tax returns were the ones that were actually filed.

³¹ Ms. Chaffin testified that, if some of the 14 requested items were not applicable or possible or to submit to TCEQ, Respondent should have provided a written response identifying the items and including an explanation. Ms. Chaffin opined that submitted documentation did not convey that Respondent's business was no longer operating, and that more information would have been required to establish Respondent's assets and liabilities.

B. RESPONDENT'S EVIDENCE AND TESTIMONY

Respondent started its business in 2017 as a franchise of Maaco Corporation.³² Respondent does not dispute the observations made by the TCEQ investigators during the Site visits,³³ however, Respondent claims that the alleged violations have been resolved as evidenced in the photographs of the Site from November 2019 submitted to TCEQ.³⁴ Respondent believes that it did everything that TCEQ asked and that the Site came into compliance.

Mr. Mgboji testified that, as of October 2021, Respondent is no longer operating the Site. Due to the COVID-19 pandemic and legal disputes with Maaco Corporation over the franchise contract and fees, Respondent does not possess the financial ability to pay the penalties as proposed by the ED. Mr. Mgboji stated that he provided TCEQ with all financial documentation he had in his possession. He was not able to provide the remaining documents because he could not hire a certified public accountant due to financial hardship.

³² Mr. Mgboji testified that Maaco Corporation set everything up for the operation, including the Site's PBR, and that Maaco Corporation kept some of the business records.

³³ Mr. Mgboji testified that an electronic copy of the Site's PBR was maintained at the Site on August 30, 2019, but admitted that he did not provide it to the investigator.

³⁴ Mr. Mgboji testified that he submitted the photographs to Ms. Regina Roda, who investigated the Site in November 2019 in a separate investigation with a different scope from the two investigations in this matter. The ALJ finds that Ms. Roda's investigation findings are irrelevant to the issues in this case.

V. ALJ'S ANALYSIS

A. ALLEGED VIOLATIONS

1. **Failure to maintain good housekeeping practices by failing to clean spills as soon as possible, keep property clean, and store all liquid waste in covered containers**

The evidence is undisputed that on August 30, 2019, and September 11, 2019, there were used liners, painter's tape, cigarettes, cleaning solvent waste, drums with overflowing waste, dried out liquid stains on the ground, and other municipal waste located throughout the Site. Ms. Omar credibly testified, and there is no evidence to the contrary, that Respondent did not submit documentation of corrective action for this violation to TCEQ prior to November 1, 2019, when Respondent's case was referred to the Enforcement Division. It is also undisputed that on September 11, 2020, an open trash container with a silver liquid waste, along with masking tape, which emitted a strong paint odor, was found at the Site.

Although the ALJ recognizes that Respondent removed documented waste and spills from the outside premises of the Site after the fact, it was Respondent's responsibility to maintain the Site in compliance at all times and to submit evidence of corrective action for all deficiencies as soon as possible after the investigation. Accordingly, the ALJ finds that the Site was in violation of the PBR's housekeeping requirements on August 30, 2019, September 11, 2019, and September 11, 2020.

2. Failure to keep all wash solvents in a closed reservoir

The evidence is undisputed that on August 30, 2019, the Site contained multiple drums of Axalta 105 Lacquer Thinner with the lids removed. Ms. Omar testified that Axalta 105 Lacquer Thinner is a type of wash solvent used at autobody refinishing shops. Therefore, the ALJ finds that the ED met its burden to show that Respondent failed to keep all wash solvents in a closed reservoir at the Site on August 30, 2019. Respondent's testimony and photographs of the Site from November 2019 do not show that this violation was ever corrected.

3. Failure to keep all waste solvents in closed containers

The evidence is undisputed that on August 30, 2019, there were two open plastic containers containing waste solvents sitting on top of open waste drums. Therefore, the ALJ finds that the ED met its burden to show that Respondent failed to keep all waste solvents in closed containers at the Site on August 30, 2019. Respondent's testimony and photographs of the Site from November 2019 do not show that this violation was ever corrected.

4. Failure to maintain records containing sufficient information to demonstrate compliance with permit conditions

The evidence is undisputed that on August 30, 2019, the investigator requested, and Respondent was unable to produce, the following records to demonstrate compliance with the Site's PBR: spray area fan capacity and velocity; particulate control efficiency of filters or filter systems in the paint booth; spray booth, spray area, and preparation area stack height; VOC content of coating and solvents; monthly coating and solvent purchases; and the registration or

identification numbers for each waste generator. Respondent was responsible for maintaining these records at the Site and for making them immediately available upon request of TCEQ personnel. Therefore, the ALJ finds that the ED met his burden to show that Respondent failed to maintain records demonstrating compliance with the Site's PBR on August 30, 2019.

5. Failure to maintain and provide a copy of the Site's PBR

The evidence is undisputed that on August 30, 2019, Respondent did not provide a copy of the Site's PBR to the investigator. Respondent was responsible for maintaining a copy of the Site's PBR at the Site and make it available upon request of TCEQ personnel. Therefore, the ALJ finds that the ED met its burden to show that Respondent failed to provide a copy of the Site's PBR to the investigator on August 30, 2019.

B. PROPOSED PENALTY

The parties stipulated that if violations are found to have occurred, the proposed penalty was calculated consistent with TCEQ's penalty policy.³⁵

The penalty calculation for the housekeeping practices violation on August 30, 2019, and September 11, 2019, is as follows: \$25,000 (statutorily authorized base penalty) with a 5% matrix adjustment/reduction (\$23,750) results in a \$2,500 violation base penalty for 2 violation events. A 10% Good Faith Efforts to Comply reduction (\$250) results in a violation final penalty total of \$2,250.³⁶

³⁵ Exhibit ED-11 contains the TCEQ's Financial Review Policy for Administrative Penalty Inability to Pay Claims.

³⁶ Ex. ED-10 at Bates 003.

The penalty calculation for the housekeeping practices violation on September 11, 2020, is as follows: \$25,000 (statutorily authorized base penalty) with a 5% matrix adjustment/reduction (\$23,750) results in a \$1,250 violation base penalty. Respondent did not meet the good faith criteria for this violation, so there was no reduction.³⁷

The penalty calculation for the wash solvent and waste solvent violations is as follows: \$25,000 (statutorily authorized base penalty) with a 5% matrix adjustment/reduction (\$23,750) results in a \$2,500 violation base penalty for two violation events. A 10% Good Faith Efforts to Comply reduction (\$125) results in a violation final penalty total of \$2,250.³⁸

The penalty calculation for the recordkeeping violation is as follows: \$25,000 (statutorily authorized base penalty) with a 5% matrix adjustment/reduction (\$23,750) results in a \$6,250 violation base penalty for five violation events. Respondent did not meet the good faith criteria for this violation, so there was no reduction.³⁹

The penalty calculation for not maintaining the Site's PBR onsite is as follows: \$25,000 (statutorily authorized base penalty) with a 5% matrix

³⁷ ED-9 at Bates 003.

³⁸ ED-10 at Bates 005; 007.

³⁹ ED-10 at Bates 009.

adjustment/reduction (\$23,750) results in a \$1,250 violation base penalty. Respondent did not meet the good faith criteria for this violation, so there was no reduction.⁴⁰

The six violation base penalties, when added together, total \$13,250. The ED included a 5% enhancement of the total base penalties for the alleged violations documented during the August 30, 2019, and September 11, 2019, Site visits, based on Respondent's compliance history.⁴¹ Thus, the final proposed penalty is \$13,875.

C. WAIVER OF CLAIM OF FINANCIAL INABILITY TO PAY

Section 70.8 of the Commission's rules allows parties to establish that a lesser penalty is justified because of their financial circumstances. However, the burden of production and burden of proof rest solely on the party asserting the claim. If the party fails to provide all financial records that are potentially relevant to its claim of financial inability to pay, the party's claim is waived.⁴²

Mr. Mgboji testified that Respondent is unable to pay the penalties as proposed because the Site is no longer in operation and because of the litigation with Maaco Corporation, its franchisor. He also stated that he provided TCEQ with all financial documentation he had in his possession, except for the documents that would require him to hire a certified public accountant. The majority of Respondent's submitted documentation consists of unsigned tax filings and

⁴⁰ ED-10 at Bates 011.

⁴¹ Ex. ED-10 at Bates 001.

⁴² 30 Tex. Admin. Code § 70.8(b).

information relating to its franchise contract and the franchisor's attempts to enforce the contract.

Ms. Chaffin testified that all assets, liabilities, income, and expenses are assessed as part of reviewing a financial inability-to-pay claim, and that all the items requested from Respondent, unless demonstrated to be inapplicable, are necessary to conduct that review. She opined that Respondent's submitted documentation is insufficient to provide a complete picture of its financial position such that a determination of ability to pay can be made. She also added that all submitted records indicated that the Site was still in operation, and more records would be required to show that the business was no longer operating. Respondent did not provide bank statements or accounts and loans information, nor did it complete disclosure forms and financial data request forms that would certify what resources Respondent has available. In addition, Respondent did not provide any information about its loans and the corporation's ownership structure and affiliates.

The ALJ concludes that Respondent did not meet the burden of proof to show it would qualify for a reduction in the administrative penalty due to a financial inability to pay. Respondent failed to produce all financial records potentially relevant to the issue; therefore, Respondent waived its financial inability-to-pay claim.

VI. SUMMARY

The ALJ recommends that the Commission adopt the attached proposed order, assessing Respondent a total of \$13,875 in penalties for the violations proven in this case.

SIGNED:

A handwritten signature in black ink that reads "Katerina DeAngelo". The signature is written in a cursive style and is positioned above a horizontal line.

Katerina DeAngelo
Presiding Administrative Law Judge

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) Preliminary Report and Petition (EDPRP) 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 EDPRP 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 are 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 a closed reservoir, 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 fan capacity and velocity; particulate control efficiency of filters or filter systems of paint booth; spray booth, spray area, and preparation area stack height; volatile organic compound content of coating and solvents; 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 enclosed 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 Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective April 1, 2014.
10. Pursuant to the Commission's Penalty Policy, the Site is a minor source.

11. 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 in order to mitigate the penalty amount;
 - b. is appropriately analyzed under the Environmental, Property, and Human Health Matrix;
 - c. created the potential for a release of contaminants into the environment that could cause minor harm;
 - d. reduced the \$25,000 based penalty base penalty by 5%, as a result of the potential/minor characterization of the violation;
 - e. is a violation that continued for 2 days that is appropriately classified as a single event;
 - f. reduced the penalty by 10%, as a result of good faith efforts to comply; and
 - g. accordingly has a base penalty of \$2,250.

12. Under the Penalty Policy, the violation for failing to maintain good housekeeping practices on September 11, 2020:
 - a. is appropriately treated as one violation in order to mitigate the penalty amount;
 - b. are appropriately analyzed under the Environmental, Property, and Human Health Matrix;
 - c. created the potential for a release of contaminants into the environment that could cause minor harm;
 - d. reduced the \$25,000 based penalty base penalty by 5%, as a result of the potential/minor characterization of the violation;

- e. is a violation that continued for 1 day that is appropriately classified as a single event;
 - f. Respondent did not meet the good faith criteria for this violation, so there was no reduction; and
 - g. accordingly has a base penalty of \$1,250.
13. Under the Penalty Policy, the violation for failing to keep all wash solvents in an enclosed reservoir:
- a. is appropriately treated as one violation in order to mitigate the penalty amount;
 - b. is appropriately analyzed under the Environmental, Property, and Human Health Matrix;
 - c. created the potential for a release of contaminants into the environment that could cause minor harm;
 - d. reduced the \$25,000 based penalty base penalty by 5%, as a result of the potential/minor characterization of the violation;
 - e. is a violation that continued for 1 day that is appropriately classified as a single event;
 - f. reduced the penalty by 10%, as a result of good faith efforts to comply; and
 - g. accordingly has a base penalty of \$1,125.
14. Under the Penalty Policy, the violation for failing to keep all waste solvents in closed containers:
- a. is appropriately treated as one violation in order to mitigate the penalty amount;

- b. is appropriately analyzed under the Environmental, Property, and Human Health Matrix;
 - c. created the potential for a release of contaminants into the environment that could cause minor harm;
 - d. reduced the \$25,000 based penalty base penalty by 5%, as a result of the potential/minor characterization of the violation;
 - e. is a violation that continued for 1 day that is appropriately classified as a single event;
 - f. reduced the penalty by 10%, as a result of good faith efforts to comply; and
 - g. accordingly has a base penalty of \$1,125.
15. Under the Penalty Policy, the violation for failing to maintain records:
- a. is appropriately treated as one violation in order to mitigate the penalty amount;
 - b. are appropriately analyzed under the Environmental, Property, and Human Health Matrix;
 - c. reduced the \$25,000 based penalty base penalty by 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 base penalty of \$6,250.

16. Under the Penalty Policy, the violation for failing to maintain a copy of PBR:
 - a. is appropriately treated as one violation in order to mitigate the penalty amount;
 - b. are appropriately analyzed under the Environmental, Property, and Human Health Matrix;
 - c. reduced the \$25,000 based penalty base penalty by 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 base penalty of \$1,250.
17. 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.
18. The ED proposed a total administrative penalty of \$13,875, which is reasonable and justified.
19. Respondent did not produce all financial records that would be potentially relevant to the issue of Respondent's ability to pay the penalty.
20. On January 21, 2021, the ED filed an 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.
21. Respondent filed an answer to the EDPRP and requested a hearing.

22. 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.
23. On September 28, 2021, the ALJ issued Order No. 1 providing notice of the preliminary hearing.
24. On October 28, 2021, a preliminary hearing was held by ALJ Katerina DeAngelo and jurisdictional exhibits were admitted into evidence.
25. On November 3, 2021, the ALJ entered an order memorializing the preliminary hearing and adopting an agreed procedural schedule.
26. 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.
27. On May 10, 2022, the ED filed its First Amended EDPRP adding an allegation that Respondent committed one violation referenced in **Finding of Fact No. 6** and mailed a copy to OPIC and Respondent.
28. Together, the First Amended EDPRP 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.
29. 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

**Jon Niermann, Chairman
For the Commission**