

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 61574
Zenon Soto dba Soto's Paint & Body Shop
RN111259388
Docket No. 2021-1495-AIR-E

Order Type:
Default Order

Media:
AIR

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
1206 Clinton Avenue, Fort Worth, Tarrant County (the "Site")

Type of Operation:
auto body repair and refinishing facility

Other Significant Matters:
Additional Pending Enforcement Actions: None
Past-Due Penalties: None
Past-Due Fees: None
Other: None
Interested Third Parties: None

Texas Register Publication Date: October 20, 2023

Comments Received: None

Penalty Information

Total Penalty Assessed: \$5,000

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$5,000

Compliance History Classifications:
Person/CN - High
Site/RN - High

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: January 28, 2021

Investigation Information

Complaint Date(s): March 25, 2021
Complaint Information: Facility was painting cars, and paint fumes were emanating from the painting activities, creating a nuisance.

Date(s) of Investigation: November 12, 2021; April 8, 2021

Date(s) of NOV(s): May 17, 2021

Date(s) of NOE(s): November 17, 2021

Zenon Soto dba Soto's Paint & Body Shop

RN111259388

Docket No. 2021-1495-AIR-E

Violation Information

Failed to comply with recordkeeping requirements [TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.426(1)(A) and (B)].

Corrective Actions/Technical Requirements**Corrective Action(s) Completed:**

None

Technical Requirements:

1. Within 30 days:
 - a. Begin maintaining the material data sheet that documents the volatile organic compound content, composition, solids content, solvent density, and other relevant information regarding each coating and solvent; and
 - b. Begin maintaining the records of the quantity and type of each coating and solvent consumed.
2. Within 45 days submit written certification to demonstrate compliance with Technical Requirement Nos. 1.a. and 1.b.

Litigation Information**Date Petition(s) Filed:** July 12, 2023**Date(s) of Service:** July 14, 2023**Date Answer(s) Filed:** N/A**Contact Information****TCEQ Attorneys:** Taylor Pack Ellis, Litigation Division, (512) 239-3400
Sheldon Wayne, Public Interest Counsel, (512) 239-6363**TCEQ Litigation Agenda Coordinator:** Katherine McKenzie, Litigation Division, (512) 239-2575**TCEQ Enforcement Coordinator:** Desmond Martin, Enforcement Division, (512) 239-2814**TCEQ Regional Contact:** Kimberli Fowler, Dallas/Fort Worth Regional Office, (817) 588-5800**Respondent Contact:** Zenon Soto, Owner, Zenon, 2103 NW 23rd Street, Fort Worth, Texas 76164**Respondent's Attorney:** N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	15-Nov-2021	Screening	17-Nov-2021	EPA Due	
	PCW	7-Mar-2023				

RESPONDENT/FACILITY INFORMATION	
Respondent	Zenon Soto dba Soto's Paint & Body Shop
Reg. Ent. Ref. No.	RN111259388
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	61574	No. of Violations	1
Docket No.	2021-1495-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Desmond Martin
		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$5,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1		
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>		

Compliance History	-10.0% Adjustment	Subtotals 2, 3, & 7	-\$500
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Notes: Reduction for High Performer compliance classification.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$180
Estimated Cost of Compliance: \$1,500
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	11.1% Adjustment	\$500
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to offset the reduction for High Performer Classification.

Final Penalty Amount	\$5,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,000
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DEFERRAL	0.0% Reduction Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$5,000
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Screening Date 17-Nov-2021

Docket No. 2021-1495-AIR-E

PCW

Respondent Zenon Soto dba Soto's Paint & Body Shop

Policy Revision 5 (January 28, 2021)

Case ID No. 61574

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN111259388

Media Air

Enf. Coordinator Desmond Martin

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for High Performer compliance classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -10%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -10%

Screening Date 17-Nov-2021 **Docket No.** 2021-1495-AIR-E **PCW**
Respondent Zenon Soto dba Soto's Paint & Body Shop *Policy Revision 5 (January 28, 2021)*
Case ID No. 61574 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN111259388
Media Air
Enf. Coordinator Desmond Martin

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 115.426(1)(A) and (B) and Tex. Health & Safety Code § 382.085(b)

Violation Description
 Failed to comply with the recordkeeping requirements. Specifically, the Respondent did not maintain material data sheets regarding each coating and solvent and records of the quantity of each type of coating and solvent used at the Site to demonstrate compliance with the applicable control limits.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10.0%

Matrix Notes
 100% of the rule requirements were not met.

Adjustment \$22,500

\$2,500

Violation Events

Number of Violation Events 2 5 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$5,000

Two single events are recommended (one event for each missing set of records).

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

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

Violation Subtotal \$5,000

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

Estimated EB Amount \$180 **Violation Final Penalty Total** \$5,000

This violation Final Assessed Penalty (adjusted for limits) \$5,000

Economic Benefit Worksheet

Respondent Zenon Soto dba Soto's Paint & Body Shop
Case ID No. 61574
Reg. Ent. Reference No. RN111259388
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$1,500	8-Apr-2021	1-Sep-2023	2.40	\$180	n/a	\$180
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to begin maintaining the material data sheet that documents the volatile organic compound content, composition, solids content, solvent density, and other relevant information regarding each coating and solvent available for use at the Site to determine continuous compliance with the applicable control limits and the records of the quantity and type of each coating and solvent consumed during the specified averaging period if any of the coatings, as delivered to the coating application system, exceed the applicable control limits. The Date Required is the initial investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$180

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

Compliance History Report for CN605888601, RN111259388, Rating Year 2022 which includes Compliance History (CH) components from September 1, 2017, through August 31, 2022.

Customer, Respondent, or Owner/Operator: CN605888601, Zenon Soto **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN111259388, SOTO'S PAINT & BODY **Classification:** HIGH **Rating:** 0.00

Complexity Points: 1 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 1206 CLINTON AVENUE, FORT WORTH, TARRANT COUNTY, TEXAS

TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s):
AIR QUALITY NON PERMITTED ID NUMBER
R04111259388

Compliance History Period: September 01, 2017 to August 31, 2022 **Rating Year:** 2022 **Rating Date:** 09/01/2022

Date Compliance History Report Prepared: December 20, 2022

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: December 20, 2017 to December 20, 2022

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Kate Dacy **Phone:** (512) 239-4593

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

Component Appendices

Appendix A

All NOVs Issued During Component Period 12/20/2017 and 12/20/2022

1	Date: 05/17/2021 (1722013)		
	Self Report? NO	Classification:	Moderate
	Citation:		
			30 TAC Chapter 115, SubChapter E 115.426(1)(A) 5C THSC Chapter 382 382.085(b)
	Description:		Failure to maintain safety data sheets (SDSs) on all paint and solvents used during the previous 24-month period, or currently used.
	Self Report? NO	Classification:	Moderate
	Citation:		
			30 TAC Chapter 115, SubChapter E 115.426(1)(B) 5C THSC Chapter 382 382.085(b)
	Description:		Failure to maintain records of coating and solvent usage that is sufficient to determine compliance with applicable emissions limits, including monthly coating and solvent purchase records.

* NOVs applicable for the Compliance History rating period 9/1/2017 to 8/31/2022

Appendix B

All Investigations Conducted During Component Period December 20, 2017 and December 20, 2022

Item 1 November 12, 2021** (1773313)

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2017 and 08/31/2022.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
ZENON SOTO
DBA SOTO'S PAINT & BODY SHOP;
RN111259388**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2021-1495-AIR-E

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Zenon Soto dba Soto's Paint & Body Shop ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates an auto body repair and refinishing shop located at 1206 Clinton Avenue in Fort Worth, Tarrant County, Texas (the "Site"). The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. During an investigation conducted on November 12, 2021, an investigator documented that Respondent failed to comply with recordkeeping requirements. Specifically, Respondent did not maintain material data sheets regarding each coating and solvent and records of the quantity of each type of coating and solvent used at the Site to demonstrate compliance with the applicable control limits.
3. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Zenon Soto dba Soto's Paint & Body Shop" (the "EDPRP") in the TCEQ Chief Clerk's office on July 12, 2023.
4. By letter dated July 12, 2023, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on July 14, 2023, as evidenced by the signature on the card.
5. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 382 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, Respondent failed to comply with recordkeeping requirements, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.426(1)(A) and (B).

3. As evidenced by Findings of Fact Nos. 3 and 4, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
4. As evidenced by Finding of Fact No. 5, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of five thousand dollars (\$5,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty in the amount of five thousand dollars (\$5,000.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here.
2. The penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to TCEQ and shall be sent with the notation "Re: Zenon Soto dba Soto's Paint & Body Shop; Docket No. 2021-1495-AIR-E" to:

Financial Administration Division
Revenue Operations Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
3. Respondent shall undertake the following technical requirements:
 - a. Within 30 days of the effective date of this Order:
 - i. Begin maintaining the material data sheet that documents the volatile organic compound content, composition, solids content, solvent density, and other relevant information regarding each coating and solvent available for use at the Site to determine continuous compliance with the applicable control limits; and
 - ii. Begin maintaining the records of the quantity and type of each coating and solvent consumed during the specified averaging period if any of the coatings, as delivered to the coating application system, exceed the applicable control limits.

- b. Within 45 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provision Nos. 3.a.i and 3.a.ii. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, and shall include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

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

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

and:

Air Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Enforcement Division at the address listed above.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas (“OAG”) for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
8. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this fully executed Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



UNSWORN DECLARATION OF TAYLOR PACK ELLIS

“On behalf of the Executive Director of the Texas Commission on Environmental Quality, the ‘Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Zenon Soto dba Soto’s Paint & Body Shop’ (the “EDPRP”) was filed in the TCEQ Chief Clerk’s office on July 12, 2023.

The EDPRP was mailed to Respondent’s last known address on July 12, 2023, via certified mail, return receipt requested, postage prepaid. According to the return receipt ‘green card,’ Respondent received notice of the EDPRP on July 14, 2023, as evidenced by the signature on the card.

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

"My name is Taylor Pack Ellis, and I am an employee of the following governmental agency: Texas Commission on Environmental Quality. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct.”

Executed in Travis County,
State of Texas,
on the 21st day of September, 2023

TP Ellis

Declarant