

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2009-0006-AIR-E    **TCEQ ID:** RN105555767    **CASE NO.:** 36956

**RESPONDENT NAME:** Brumley Manufacturing, LLC

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Brumley Manufacturing, 22840 Mack Washington Lane, Hempstead, Waller County</p> <p><b>TYPE OF OPERATION:</b> Welding fabrication plant</p> <p><b>SMALL BUSINESS:</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on April 13, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Bryan Elliott, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-6162; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. James Puryear, Owner, Brumley Manufacturing, LLC, P.O. Box 883, Hempstead, Texas 77445  Ms. Beth Brumley, President, Brumley Manufacturing, LLC, P.O. Box 883, Hempstead, Texas 77445  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> November 14, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> December 5, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>AIR</b></p> <p>Failure to obtain authorization for air emissions. Specifically, the Respondent engaged in surface coating and abrasive blasting operations without first obtaining the appropriate authorization [30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH &amp; SAFETY CODE §§ 382.0518(a) and 382.085(b)].</p>	<p><b>Total Assessed:</b> \$2,100</p> <p><b>Total Deferred:</b> \$420  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$1,680</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, submit administratively complete permit applications or Form PI-7s requesting authorization to operate under Permits By Rule for abrasive blasting operations and surface coating operations;</p> <p>b. If permit applications are submitted, respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit applications within 30 days after the date of such requests, or by any other deadline specified in writing; and</p> <p>c. Within 90 days after the effective date of this Agreed Order, submit written certification that either authorization to construct and operate a source of air emissions has been obtained or that construction/operation has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance.</p>

Additional ID No(s): TXR05X866



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	8-Dec-2008	Screening	10-Dec-2008	EPA Due	
	PCW	17-Dec-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Brumley Manufacturing, LLC		
Reg. Ent. Ref. No.	RN105555767		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	36956	No. of Violations	1
Docket No.	2009-0006-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Bryan Elliott
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$2,000
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$100
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Notes: The penalty was enhanced due to one NOV for the same violation.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$60  
 Approx. Cost of Compliance \$1,800  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$2,100
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$2,100
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$2,100
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$420
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$1,680
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**Screening Date** 10-Dec-2008

**Docket No.** 2009-0006-AIR-E

**PCW**

**Respondent** Brumley Manufacturing, LLC

Policy Revision 2 (September 2002)

**Case ID No.** 36956

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN105555767

**Media [Statute]** Air

**Enf. Coordinator** Bryan Elliott

**Compliance History Worksheet**

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgements or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 5%

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

No

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

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

Average Performer

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

>> **Compliance History Summary**

**Compliance History Notes**

The penalty was enhanced due to one NOV for the same violation.

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

<p><b>Screening Date</b> 10-Dec-2008  <b>Respondent</b> Brumley Manufacturing, LLC  <b>Case ID No.</b> 36956  <b>Reg. Ent. Reference No.</b> RN105555767  <b>Media [Statute]</b> Air  <b>Enf. Coordinator</b> Bryan Elliott  <b>Violation Number</b> 1  <b>Rule Cite(s)</b> 30 Tex. Admin. Code § 116.110(a) and Tex. Health &amp; Safety Code §§ 382.0518(a) and 382.085(b)  <b>Violation Description</b> Failed to obtain authorization for air emissions, as documented during an investigation conducted on November 14, 2008. Specifically, the Respondent engaged in surface coating and abrasive blasting operations without first obtaining appropriate authorization.</p>	<p><b>Docket No.</b> 2009-0006-AIR-E  <b>PCW</b>  <i>Policy Revision 2 (September 2002)</i>  <i>PCW Revision October 30, 2008</i></p>																			
<b>Base Penalty</b> \$10,000																				
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																				
<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <td colspan="3" style="text-align: center;"><b>Harm</b></td> <td></td> </tr> <tr> <td style="text-align: center;"><b>Release</b></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td style="text-align: center;">Actual</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td rowspan="2" style="text-align: center;"><b>Percent</b> <input type="text" value="0%"/></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> </table>			<b>Harm</b>				<b>Release</b>	Major	Moderate	Minor		Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<b>Harm</b>																			
<b>Release</b>	Major	Moderate	Minor																	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>																
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<b>&gt;&gt; Programmatic Matrix</b>																				
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Falsification	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>																
<b>Matrix Notes</b>	100% of the rule requirement was not met.																			
<b>Adjustment</b> \$9,000																				
<b>\$1,000</b>																				
<b>Violation Events</b>																				
Number of Violation Events <input type="text" value="2"/>	<input type="text" value="26"/> Number of violation days																			
<p><i>mark only one with an x</i></p> <table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>weekly</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td style="text-align: center;"><input checked="" type="text" value="x"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input type="text"/></td></tr> </table>	daily	<input type="text"/>	weekly	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input checked="" type="text" value="x"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>	<b>Violation Base Penalty</b> \$2,000					
daily	<input type="text"/>																			
weekly	<input type="text"/>																			
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semiannual	<input type="text"/>																			
annual	<input type="text"/>																			
single event	<input type="text"/>																			
<p>One quarterly event for each operation is recommended from the November 14, 2008 investigation date to the December 10, 2008 screening date.</p>																				
<b>Good Faith Efforts to Comply</b>																				
<b>0.0% Reduction</b>	<b>\$0</b>																			
<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <td style="text-align: center;">Before NOV</td> <td style="text-align: center;">NOV to EDPRP/Settlement Offer</td> </tr> <tr> <td style="text-align: center;">Extraordinary</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Ordinary</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">N/A</td> <td style="text-align: center;"><input checked="" type="text" value="x"/></td> <td style="text-align: center;">(mark with x)</td> </tr> </table>			Before NOV	NOV to EDPRP/Settlement Offer	Extraordinary	<input type="text"/>	<input type="text"/>	Ordinary	<input type="text"/>	<input type="text"/>	N/A	<input checked="" type="text" value="x"/>	(mark with x)							
	Before NOV	NOV to EDPRP/Settlement Offer																		
Extraordinary	<input type="text"/>	<input type="text"/>																		
Ordinary	<input type="text"/>	<input type="text"/>																		
N/A	<input checked="" type="text" value="x"/>	(mark with x)																		
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.																			
<b>Violation Subtotal</b> \$2,000																				
<b>Economic Benefit (EB) for this violation</b>																				
<b>Statutory Limit Test</b>																				
<b>Estimated EB Amount</b> \$60	<b>Violation Final Penalty Total</b> \$2,100																			
<b>This violation Final Assessed Penalty (adjusted for limits)</b> \$2,100																				

## Economic Benefit Worksheet

**Respondent** Brumley Manufacturing, LLC  
**Case ID No.** 36956  
**Reg. Ent. Reference No.** RN105555767  
**Media** Air  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

**Delayed Costs**

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$1,800	14-Nov-2008	15-Jul-2009	0.67	\$60	n/a	\$60
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to obtain two Permits by Rule. Date Required is the investigation date and Final Date is the prospective date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance \$1,800

TOTAL \$60

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603376708 Brumley Manufacturing, LLC Classification: AVERAGE Rating: 3.00  
Regulated Entity: RN105555767 BRUMLEY MANUFACTURING Classification: AVERAGE Site Rating: 3.00  
ID Number(s): STORMWATER PERMIT TXR05X866  
Location: 22840 MACK WASHINGTON LANE, HEMPSTEAD, TX, 77445  
TCEQ Region: REGION 12 - HOUSTON  
Date Compliance History Prepared: December 10, 2008  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: December 10, 2003 to December 10, 2008  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Bryan Elliott Phone: 239 - 6162

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

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

1 12/05/2008 (708419)

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

Date: 07/16/2008 (669113)

Self NO Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)

5C THSC Chapter 382 382.085(b)

Description: Failure to operate with proper authorization.

- F. Environmental audits.

N/A

- G. Type of environmental management systems (EMSs).

N/A

- H. Voluntary on-site compliance assessment dates.

N/A

- I. Participation in a voluntary pollution reduction program.

N/A

- J. Early compliance.

N/A

Sites Outside of Texas

N/A



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
BRUMLEY MANUFACTURING, LLC  
RN105555767

§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2009-0006-AIR-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Brumley Manufacturing, LLC ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a welding fabrication plant at 22840 Mack Washington Lane in Hempstead, Waller County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about December 10, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Thousand One Hundred Dollars (\$2,100) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Six Hundred Eighty Dollars (\$1,680) of the



administrative penalty and Four Hundred Twenty Dollars (\$420) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have failed to obtain authorization for air emissions, in violation of 30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), as documented during an investigation conducted on November 14, 2008. Specifically, the Respondent engaged in surface coating and abrasive blasting operations without first obtaining the appropriate authorization.

## III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

## IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Brumley Manufacturing, LLC, Docket No. 2009-0006-AIR-E" 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

2. It is further ordered that the Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order, submit administratively complete permit applications or Form PI-7s requesting authorization to operate under Permits By Rule for abrasive blasting operations and surface coating operations, in accordance with 30 TEX. ADMIN. CODE §116.110(a) to:

Air Permits Division, MC 162  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- b. If permit applications are submitted then respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit applications within 30 days after the date of such requests, or by any other deadline specified in writing; and

- c. Within 90 days after the effective date of this Agreed Order, submit written certification that either authorization to construct and operate a source of air emissions has been obtained or that construction/operation has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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 certification shall be submitted to:

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



with a copy to:

Air Section, Manager  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

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6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

John Sullivan  
\_\_\_\_\_  
For the Executive Director

3/12/2009  
~~2-5-09~~ go  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Beth Brunley  
\_\_\_\_\_  
Signature

2-5-09  
\_\_\_\_\_  
Date

BETH BRUNLEY  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Brumley Manufacturing, LLC

PRESIDENT  
\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

