

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2009-0249-AIR-E **TCEQ ID:** RN100751395 **CASE NO.:** 37178

**RESPONDENT NAME:** Essner Manufacturing, L.P.

<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

**SITE WHERE VIOLATION(S) OCCURRED:** Essner Manufacturing, 6651 Will Rogers Boulevard, Fort Worth, Tarrant County

**TYPE OF OPERATION:** Aerospace component manufacturing plant

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and the Respondent has expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on May 25, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**  
**TCEQ Attorney/SEP Coordinator:** None  
**TCEQ Enforcement Coordinator:** Ms. Suzanne Walrath, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-2134; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  
**Respondent:** Mr. Dale R. Westerfeld, President, Essner Manufacturing, L.P., 6651 Will Rogers Boulevard, Fort Worth, Texas 76140  
**Respondent's Attorney:** Not represented by counsel on this enforcement matter

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 24, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> February 9, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>AIR</b></p> <p>1) Failure to obtain air permit authorization for two spray booths [30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH &amp; SAFETY CODE §§ 382.0518(a) and 382.085(b)].</p> <p>2) Failure to store all new and used coatings and solvents in closed containers [30 TEX. ADMIN. CODE §§ 106.433(2)(C) and 115.422(5)(E) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$1,600</p> <p><b>Total Deferred:</b> \$320  <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> \$1,280</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>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:</p> <p>a) Purchased and installed plugs for the container funnels on December 8, 2008; and</p> <p>b) Obtained a Permit-By-Rule (Registration No. 74141) on January 16, 2009 for the two spray booths.</p>

Additional ID No(s): AIR - TA3561W



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	<b>Assigned</b>	17-Feb-2009	<b>Screening</b>	18-Feb-2009	<b>EPA Due</b>	
	<b>PCW</b>	9-Mar-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Essner Manufacturing, L.P.
<b>Reg. Ent. Ref. No.</b>	RN100751395
<b>Facility/Site Region</b>	4
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	37178	<b>No. of Violations</b>	2
<b>Docket No.</b>	2009-0249-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Suzanne Walrath
		<b>EC's Team</b>	Enforcement Team 4
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$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 Respondent has received one Notice of Violation for same or similar violations.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$500
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$18  
 Approx. Cost of Compliance \$2,620  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$1,600
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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**

**Final Penalty Amount** \$1,600

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$1,600
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$320
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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>	\$1,280
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<b>Screening Date</b> 18-Feb-2009	<b>Docket No.</b> 2009-0249-AIR-E	<b>PCW</b>
<b>Respondent</b> Essner Manufacturing, L.P.	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 37178	<i>PCW Revision October 30, 2008</i>	
<b>Reg. Ent. Reference No.</b> RN100751395		
<b>Media [Statute]</b> Air		
<b>Enf. Coordinator</b> Suzanne Walrath		

### 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 <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

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

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

No

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

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

Average Performer

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

>> **Compliance History Summary**

**Compliance History Notes**

The Respondent has received one Notice of Violation for same or similar violations.

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

<b>Screening Date</b> 18-Feb-2009	<b>Docket No.</b> 2009-0249-AIR-E	<b>PCW</b>
<b>Respondent</b> Essner Manufacturing, L.P.	<small>Policy Revision 2 (September 2002)</small>	
<b>Case ID No.</b> 37178	<small>PCW Revision October 30, 2008</small>	
<b>Reg. Ent. Reference No.</b> RN100751395		
<b>Media [Statute]</b> Air		
<b>Enf. Coordinator</b> Suzanne Walrath		
<b>Violation Number</b> <input type="text" value="1"/>		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 116.110(a) and Tex. Health & Safety Code §§ 382.0518(a) and 382.085(b)	
<b>Violation Description</b>	Failed to obtain air permit authorization for two spray booths.	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>

<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	<b>Harm</b>			<b>Percent</b> <input type="text" value="0%"/>
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>&gt;&gt; Programmatic Matrix</b>				
	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>
	<b>Matrix Notes</b>			<b>Percent</b> <input type="text" value="10%"/>
	100% of the rule requirement was not met.			
<b>Adjustment</b>				<input type="text" value="\$9,000"/>
				<input type="text" value="\$1,000"/>

<b>Violation Events</b>			
<b>Number of Violation Events</b>	<input type="text" value="1"/>	<b>Number of violation days</b>	<input type="text" value="53"/>
<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$1,000"/>
	weekly	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input checked="" type="checkbox"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
One quarterly event is recommended beginning on the date of the investigation (November 24, 2008), until the date of compliance (January 16, 2009).			

<b>Good Faith Efforts to Comply</b>		<input type="text" value="25.0%"/> Reduction	<input type="text" value="\$250"/>
		<small>Before NOV    NOV to EDRP/Settlement Offer</small>	
	Extraordinary	<input type="text"/>	<input type="text"/>
	Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>
	N/A	<input type="text"/>	<small>(mark with x)</small>
	<b>Notes</b>	The Respondent achieved compliance for this violation on January 16, 2009.	
<b>Violation Subtotal</b>			<input type="text" value="\$750"/>

<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b>	<input type="text" value="\$18"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$800"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b>			<input type="text" value="\$800"/>

## Economic Benefit Worksheet

**Respondent** Essner Manufacturing, L.P.  
**Case ID No.** 37178  
**Reg. Ent. Reference No.** RN100751395  
**Media** Air  
**Violation No.** 1

Percent Interest	Years of Depreciation
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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$2,500	24-Nov-2008	16-Jan-2009	0.15	\$18	n/a	\$18
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

This is an estimated cost to obtain air permit authorization, beginning on the date of the investigation, and ending on the date the Permit By Rule (Registration No. 74141) was obtained.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,500

TOTAL

\$18

**Screening Date** 18-Feb-2009 **Docket No.** 2009-0249-AIR-E **PCW**  
**Respondent** Essner Manufacturing, L.P. *Policy Revision 2 (September 2002)*  
**Case ID No.** 37178 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN100751395  
**Media [Statute]** Air  
**Enf. Coordinator** Suzanne Walrath  
**Violation Number** 2  
**Rule Cite(s)** 30 Tex. Admin. Code §§ 106.433(2)(C) and 115.422(5)(E) and Tex. Health & Safety Code § 382.085(b)  
**Violation Description** Failed to store all new and used coatings and solvents in closed containers.

**Base Penalty** \$10,000

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

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	10%
Potential				

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
				0%

**Matrix Notes** Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 1 14 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

**Violation Base Penalty** \$1,000

One quarterly event is recommended from the date of the investigation (November 24, 2008) until the date of compliance (December 8, 2008).

**Good Faith Efforts to Comply** 25.0% Reduction \$250

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

**Notes** The Respondent achieved compliance for this violation on December 8, 2008.

**Violation Subtotal** \$750

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

Estimated EB Amount \$0 Violation Final Penalty Total \$800

This violation Final Assessed Penalty (adjusted for limits) \$800

## Economic Benefit Worksheet

**Respondent:** Essner Manufacturing, L.P.  
**Case ID No.:** 37178  
**Reg. Ent. Reference No.:** RN100751395  
**Media:** Air  
**Violation No.:** 2

Percent Interest	Years of Depreciation
5.0	15

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

**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)	\$120	24-Nov-2008	8-Dec-2008	0.04	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

This is an actual cost for the purchase and installation of plugs for the container funnels, beginning on the date of the investigation, and ending on the date compliance was achieved.

**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

\$120

**TOTAL**

\$0

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600438063 Essner Manufacturing, L.P. Classification: AVERAGE Rating: 1.50  
Regulated Entity: RN100751395 ESSNER MANUFACTURING Classification: AVERAGE Site Rating: 1.50

ID Number(s): AIR NEW SOURCE PERMITS ACCOUNT NUMBER TA3561W  
AIR NEW SOURCE PERMITS REGISTRATION 74141  
STORMWATER PERMIT TXRNET800  
Location: 6651 WILL ROGERS BLVD, FORT WORTH, TX, 76140

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: February 19, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 19, 2004 to February 19, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Suzanne Walrath Phone: 239 - 2134

## 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 01/05/2005 (340624)

2 02/09/2009 (709215)

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

Date: 01/05/2005 (340624)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(4)

5C THC Chapter 382, SubChapter A 382.085(a)

5C THC Chapter 382, SubChapter A 382.085(b)

Description: Operating a spray booth that was not authorized/registered and did not meet the PBR 106.433 stack height requirement that would allow the booth to operate without prior written 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  
ESSNER MANUFACTURING, L.P.  
RN100751395**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2009-0249-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 Essner Manufacturing, L.P. ("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 an aerospace component manufacturing plant at 6651 Will Rogers Boulevard in Fort Worth, Tarrant 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 February 14, 2009.
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 One Thousand Six Hundred Dollars (\$1,600) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Two Hundred Eighty Dollars (\$1,280) of the administrative penalty and Three Hundred Twenty Dollars (\$320) 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 recognizes that the Respondent has implemented the following corrective measures at the Plant:
  - a. Purchased and installed plugs for the container funnels on December 8, 2008; and
  - b. Obtained a Permit-By-Rule (Registration No. 74141) on January 16, 2009 for the two spray booths.
10. 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.
11. 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.
12. 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:

1. Failed to obtain air permit authorization for two spray booths, 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 24, 2008.
2. Failed to store all new and used coatings and solvents in closed containers, in violation of 30 TEX. ADMIN. CODE §§ 106.433(2)(C) and 115.422(5)(E) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 24, 2008.

## 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: Essner Manufacturing, L.P., Docket No. 2009-0249-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. 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.
3. 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.
4. 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.
5. 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 S. Quinn*  
For the Executive Director

4/28/2009  
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.

*Dale R. Westerfeld*  
Signature

3/27/09  
Date

DALE R. WESTERFELD  
Name (Printed or typed)  
Authorized Representative of  
Essner Manufacturing, L.P.

PRESIDENT/CEO  
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.