

Executive Summary – Enforcement Matter – Case No. 62877
BRAUNTEX MATERIALS, INC.
RN100853555
Docket No. 2022-1202-EAQ-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

EAQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Southern Tank Transport, 1870 Wald Road, New Braunfels, Comal County

Type of Operation:

Motor freight transportation facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: November 24, 2023

Comments Received: No

Penalty Information

Total Penalty Assessed: \$9,000

Amount Deferred for Expedited Settlement: \$1,800

Total Paid to General Revenue: \$7,200

Total Due to General Revenue: \$0

Payment Plan: N/A

Compliance History Classifications:

Person/CN - High

Site/RN - High

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: May 25, 2022 through June 27, 2022

Date(s) of NOE(s): August 29, 2022

Executive Summary – Enforcement Matter – Case No. 62877
BRAUNTEX MATERIALS, INC.
RN100853555
Docket No. 2022-1202-EAQ-E

Violation Information

Failed to obtain approval of a modification of an approved Edwards Aquifer Aboveground Storage Tank ("AST") Facility Plan prior to commencing a regulated activity over the Edwards Aquifer Transition Zone. Specifically, a 500-gallon AST was observed installed outside of the motor freight maintenance facility. An Edwards Aquifer AST Facility Plan authorizing the installation of the AST was not on file with the TCEQ [30 TEX. ADMIN. CODE § 213.4(j)(6) and Edwards Aquifer AST Facility Plan No. 13-02042601, Standard Condition No. 6].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days, submit a request for a modification of Edwards Aquifer AST Facility Plan No. 13-02042601 to the TCEQ San Antonio Regional Office;
- b. Within 120 days, obtain approval of a modification of an Edwards Aquifer Protection Plan; and
- c. Within 135 days, submit written certification that approval of a modification has been obtained to demonstrate compliance with a. and b.

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Cheryl Thompson, Enforcement Division, Enforcement Team 1, MC R-04, (817) 588-5865; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: William D. Fischer, President, BRAUNTEX MATERIALS, INC., 1504 Wald Road, New Braunfels, Texas 78130

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	29-Aug-2022			
	PCW	12-Sep-2022	Screening	8-Sep-2022	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	BRAUNTEX MATERIALS, INC.				
Reg. Ent. Ref. No.	RN100853555				
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	62877	No. of Violations	1		
Docket No.	2022-1202-EAQ-E	Order Type	1660		
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Cheryl Thompson		
		EC's Team	Enforcement Team 1		
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$25,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$10,000
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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.

Compliance History	-10.0%	Adjustment	Subtotals 2, 3, & 7	-\$1,000
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Notes	Reduction for High Performer Classification.			
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Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.			
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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	\$210	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$3,150	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$9,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
Final Penalty Amount	\$9,000

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$9,000
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DEFERRAL	20.0%	Reduction	Adjustment	-\$1,800
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral offered for expedited settlement.
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PAYABLE PENALTY	\$7,200
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Screening Date

8-Sep-2022

Docket No.

2022-1202-EAQ-E

PCW

Respondent

BRAUNTEX MATERIALS, INC.

Case ID No.

62877

Reg. Ent. Reference No.

RN100853555

Media

Edwards Aquifer

Enf. Coordinator

Cheryl Thompson

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

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 Classification.

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

-10%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%

-10%

Screening Date 8-Sep-2022		Docket No. 2022-1202-EAQ-E		PCW	
Respondent BRAUNTEX MATERIALS, INC.		<i>Policy Revision 5 (January 28, 2021)</i>			
Case ID No. 62877		<i>PCW Revision February 11, 2021</i>			
Reg. Ent. Reference No. RN100853555					
Media Edwards Aquifer					
Enf. Coordinator Cheryl Thompson					
Violation Number		1			
Rule Cite(s)		30 Tex. Admin. Code § 213.4(j)(6) and Edwards Aquifer Aboveground Storage Tank ("AST") Facility Plan No. 13-02042601, Standard Condition No. 6			
Violation Description		Failed to obtain approval of a modification of an approved Edwards Aquifer AST Facility Plan prior to commencing a regulated activity over the Edwards Aquifer Transition Zone. Specifically, a 500-gallon AST was observed installed outside of the motor freight maintenance facility. An Edwards Aquifer AST Facility Plan authorizing the installation of the AST was not on file with the TCEQ.			
		Base Penalty		\$25,000	
>> Environmental, Property and Human Health Matrix					
OR	Release		Harm		
		Major	Moderate	Minor	
	Actual				
	Potential				Percent 0.0%
>> Programmatic Matrix					
	Falsification	Major	Moderate	Minor	
		x			Percent 10.0%
Matrix Notes	100% of the rule requirements were not met.				
Adjustment					\$22,500
					\$2,500
>> Violation Events					
Number of Violation Events		4	106	Number of violation days	
	daily				
	weekly				
	monthly	x			
	quarterly				
	semiannual				
	annual				
	single event				
					Violation Base Penalty \$10,000
Four monthly events are recommended from the May 25, 2022 investigation date to the September 8, 2022 screening date.					
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					\$10,000
>> Economic Benefit (EB) for this violation					
>> Statutory Limit Test					
Estimated EB Amount		\$210		Violation Final Penalty Total \$9,000	
This violation Final Assessed Penalty (adjusted for limits)					\$9,000

Economic Benefit Worksheet

Respondent Case ID No. BRAUNTEX MATERIALS, INC. 62877
Reg. Ent. Reference No. RN100853555
Media Edwards Aquifer
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				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$3,150	25-May-2022	23-Sep-2023	1.33	\$210	n/a	\$210
Other (as needed)				0.00	\$0	n/a	\$0
Notes for DELAYED costs	Estimated Permit cost to prepare, submit, and obtain approval of an Edwards Aquifer AST Facility Plan modification. The Date required is the 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	\$3,150	TOTAL	\$210
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Compliance History Report

Compliance History Report for CN600618581, RN100853555, Rating Year 2022 which includes Compliance History (CH) components from September 1, 2017, through August 31, 2022.

Customer, Respondent, or Owner/Operator: CN600618581, Brauntex Materials, Inc. **Classification:** HIGH **Rating:** 0.03

Regulated Entity: RN100853555, SOUTHERN TANK TRANSPORT **Classification:** HIGH **Rating:** 0.00

Complexity Points: 6 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 1870 Wald Road, New Braunfels, Comal County, Texas

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s):

PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 75421

EDWARDS AQUIFER PERMIT 13-02042601

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

Date Compliance History Report Prepared: August 28, 2023

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: August 28, 2018 to August 28, 2023

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Cheryl Thompson

Phone: (817) 588-5865

Site and Owner/Operator History:

- 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/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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
BRAUNTEX MATERIALS, INC.
RN100853555

§ BEFORE THE
§ TEXAS COMMISSION ON
§ ENVIRONMENTAL QUALITY
§

AGREED ORDER DOCKET NO. 2022-1202-EAQ-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding BRAUNTEX MATERIALS, INC. (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a motor freight transportation facility located at 1870 Wald Road in New Braunfels, Comal County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$9,000 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$7,200 of the penalty, and \$1,800 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order. The deferred amount shall be waived only upon full compliance with all the terms and conditions contained in this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms or requirements contained in this Order, the Executive Director may demand payment of all or part of the deferred penalty amount.
5. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). 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.

6. 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 Order.
7. This Order represents the complete and fully integrated agreement of the parties. 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.
8. 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.

II. ALLEGATIONS

During an investigation at the Facility conducted on May 25, 2022 through June 27, 2022, an investigator documented that the Respondent failed to obtain approval of a modification of an approved Edwards Aquifer Aboveground Storage Tank ("AST") Facility Plan prior to commencing a regulated activity over the Edwards Aquifer Transition Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(j)(6) and Edwards Aquifer AST Facility Plan No. 13-02042601, Standard Condition No. 6. Specifically, a 500-gallon AST was observed installed outside of the motor freight maintenance facility. An Edwards Aquifer AST Facility Plan authorizing the installation of the AST was not on file with the TCEQ.

III. DENIALS

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

IV. ORDERING PROVISIONS

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

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph No. 4. The payment of this penalty and the Respondent's compliance with all of the requirements set forth in this 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. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: BRAUNTEX MATERIALS, INC., Docket No. 2022-1202-EAQ-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, submit a request for a modification of Edwards Aquifer AST Facility Plan No. 13-02042601 the TCEQ San Antonio Regional Office:

Edwards Aquifer Protection Program
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

Respond completely and adequately to all TCEQ requests for additional information with 30 days of such request by any other deadlines specified in writing.

- b. Within 120 days after the effective date of this Order, obtain approval of a modification of an Edwards Aquifer Protection Plan.
- c. Within 135 days after the effective date of this Order, submit written certification that approval of a modification has been obtained in accordance with Ordering Provisions Nos. 2.a and 2.b. The certification shall be signed by the 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

Enforcement Division, R-04
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

with a copy to:

Water Section Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

- 3. All relief not expressly granted in this Order is denied.
- 4. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
- 5. If the Respondent fails to comply with any of the Ordering Provisions in this 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 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.

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 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. Extension requests shall be sent to the Enforcement Division at the address listed above.
7. This 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 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.
8. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director

12/8/2023

Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, 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 OAG 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 OAG 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.



Signature

11/1/2023

Date

William D. Fischer

Name (Printed or typed)
Authorized Representative of
BRAUNTEX MATERIALS, INC.

President

Title

☐ If mailing address has changed, please check this box and provide the new address below:

Instructions: Send the original, signed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Ordering Provision 1 of this Order.