

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2004-1989-WQ-E      TCEQ ID: RN104319249      CASE NO.: 22423  
RESPONDENT NAME: FINCHER BROS., INC.**

<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 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 checked="" 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> 5500 Jessica Lane, Mansfield, Tarrant County</p> <p><b>TYPE OF OPERATION:</b> Sand Quarry</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 are no record of additional pending enforcement actions.</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 July 14, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Mr. Jim Sallans, Litigation Division, MC 175, (512) 239-2053             Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873  <b>TCEQ Enforcement Coordinator:</b> Merrilee Gerberding Hupp, Enforcement Division, TCEQ, MC 169  <b>TCEQ Regional Contact:</b> Sid Slocum, Water Section Manager, Dallas/Fort Worth, TCEQ, MC R-4  <b>Respondent:</b> Mark Fincher, Vice President, Fincher Bros., Inc., 5500 Jessica Lane, Mansfield, Texas 76063  <b>Respondent's Attorney:</b> Wayne Watson, Wagstaff &amp; Watson, P.O. Box 888, Abilene, Texas 79604</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b></p> <p><b>Dates of Investigation Relating to this Case:</b>                      May 26, 2004 and September 29, 2004</p> <p><b>Date of NOE Relating to this Case:</b>                      July 13, 2004 and October 17, 2004</p> <p><b>Background Facts:</b>                      After the date of the investigation, the Respondent ceased operating which made it difficult to obtain service of the EDPRP on the Respondent. A valid address for service was obtained in 2007 and the Respondent received notice of the petition. Settlement negotiations were initiated and a signed Agreed Order was received in May 2008.</p> <p><b>Water Quality</b>                      1. Failed to obtain authorization to discharge storm water associated with industrial activity to water the state through an individual permit or the Multi-Sector General Permit. [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CFR § 122.26(a)].</p>	<p><b>Total Assessed:</b> \$7,350</p> <p><b>Total Deferred:</b> \$0</p> <p><b>Total Paid/Due to General Revenue:</b>                      \$312/\$7,038</p> <p>Respondent paid \$312.00 of the administrative penalty. The remaining amount of \$7.038 shall be payable in 23 monthly payments of \$306.00 each.</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 Executive Director recognizes that the Respondent ceased operations.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 10, 2004

<b>DATES</b>	Assigned	25-Oct-2004	Screening	07-Dec-2004	Priority Due	24-Dec-2004	EPA Due	
	PCW	07-Apr-2008						

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Fincher Bros., Inc.
Reg. Ent. Ref. No.	RN104319249
Additional ID No(s)	
Facility/Site Region	4-Dallas/Fort Worth <input checked="" type="checkbox"/> Major/Minor Source <input type="checkbox"/> Minor Source <input checked="" type="checkbox"/>

<b>CASE INFORMATION</b>			
Enf./Case ID No.	22423	No. of Violations	1
Docket No.	2004-1989-WQ-E	Order Type	1660 without deferral <input checked="" type="checkbox"/>
Case Priority	3 <input checked="" type="checkbox"/>	Enf. Coordinator	Merrilee Hupp <input checked="" type="checkbox"/>
Media Program(s)	Water Quality <input checked="" type="checkbox"/>	EC's Team	Enforcement Team 1 <input checked="" type="checkbox"/>
Multi-Media			
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** 5% Enhancement Subtotals 2, 3, & 7

Notes

**Culpability**  No  0% Enhancement Subtotal 4

Notes

**Good Faith Effort to Comply** 0% Reduction Subtotal 5

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes

**Economic Benefit** 0% Enhancement\* Subtotal 6

Total EB Amounts	\$2,300	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$2,000	

**SUM OF SUBTOTALS 1-7** Final Subtotal

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty

**DEFERRAL**  Reduction Adjustment

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

**PAYABLE PENALTY**

<b>Screening Date</b> 07-Dec-2004	<b>Docket No.</b> 2004-1989-WQ-E	<b>PCW</b>
<b>Respondent</b> Fincher Bros., Inc.		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 22423		<i>PCW Revision December 10, 2004</i>
<b>Reg. Ent. Reference No.</b> RN104319249		
<b>Additional ID No(s).</b> 0		
<b>Media [Statute]</b> Water Quality		
<b>Enf. Coordinator</b> Merrilee Hupp		
<b>Site Address</b>	5530 Jessica Lane, Mansfield, Tarrant County	

**Compliance History Worksheet**

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

Component	Number of...	<i>Enter Number Here</i>	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%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>		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%
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%
	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%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>		0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>		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 disclosed)</i>		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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more		0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program		0%
	Participation in a voluntary pollution reduction program		0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements		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 is increased because of a prior NOV with a same or similar violation.

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

<b>Screening Date</b> 07-Dec-2004	<b>Docket No.</b> 2004-1989-WQ-E	<b>PCW</b>
<b>Respondent</b> Fincher Bros., Inc.	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 22423	<i>PCW Revision December 10, 2004</i>	
<b>Reg. Ent. Reference No.</b> RN104319249		
<b>Additional ID No(s)</b> 0		
<b>Media [Statute]</b> Water Quality		
<b>Enf. Coordinator</b> Merrilee Hupp		
<b>Violation Number</b> <input type="text" value="1"/>		
<b>Primary Rule Cite(s)</b>	30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(a)	
<b>Secondary Rule Cite(s)</b>		
<b>Violation Description</b>	Failure to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or the Multi-Sector General Permit, as documented during investigations conducted on May 26, 2004, and September 29, 2004.	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>

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

		<b>Harm</b>			
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

	<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>Percent</b> <input type="text" value="10%"/>

**Matrix Notes**

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

**Number of Violation Events**

<i>mark only one use a small x</i>	<i>daily</i>	<input type="text"/>
	<i>monthly</i>	<input checked="" type="checkbox"/>
	<i>quarterly</i>	<input type="text"/>
	<i>semiannual</i>	<input type="text"/>
	<i>annual</i>	<input type="text"/>
	<i>single event</i>	<input type="text"/>

**Violation Base Penalty**

Seven monthly events are recommended for the time period beginning with the date of the first investigation, May 26, 2004, until December 7, 2004, when operations ceased.

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

### Economic Benefit Worksheet

Respondent Fincher Bros., Inc.  
 Case ID No. 22423  
 Reg. Ent. Reference No. RN104319249  
 Additional ID No(s). 0  
 Media [Statute] Water Quality  
 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
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$2,000	15-Aug-2002	17-Feb-2005	3.0	\$300	\$2,000	\$2,300

Notes for AVOIDED costs  
 The amount listed above is an estimate of the cost of submitting an NOI and preparing a storm water pollution prevention plan. The time period is from authorization of the program until the date that operations ceased.

Approx. Cost of Compliance **\$2,000** TOTAL **\$2,300**

## Compliance History

Customer/Respondent/Owner-Operator:	CN600334874 Fincher Bros., Inc.	Classification: AVERAGE	Rating: 2.750
Regulated Entity:	RN104319249 FINCHER BROTHERS SAND PIT	Classification: AVERAGE	Site Rating: 2.50
ID Number(s):			
Location:	5500 JESSICA LN UNINCORPORATED TARRANT COUNTY	Rating Date: 9/1/04 Repeat Violator: NO	
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	December 07, 2004		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	December 07, 1999 to December 07, 2004		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Lawrence King	Phone:	(512) 239-7037

### 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. Comments:   |     |

### 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 07/07/2004 (279383)
  - 2 10/18/2004 (336940)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
  - Date: 07/08/2004 (279383) Classification: Major
  - Self Report? NO
  - Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
  - Description: Failure to obtain authorization to discharge storm water associated with industrial activity to water in the state.
- 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

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
FINCHER BROS., INC.,  
RN104319249

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2004-1989-WQ-E

### I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Fincher Bros., Inc. ("Fincher Bros.") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Fincher Bros. represented by Wayne Watson of the law firm of Wagstaff & Watson, appear before the Commission and together stipulate that:

1. Fincher Bros. operates a sand quarry located at 5500 Jessica Lane, Mansfield, Tarrant County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Fincher Bros. agree that the Commission has jurisdiction to enter this Agreed Order, and that Fincher Bros. is subject to the Commission's jurisdiction.
4. Fincher Bros. received notice of the violations alleged in Section II ("Allegations") on or about July 13, 2004 and October 17, 2004.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Fincher Bros. of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of seven thousand three hundred fifty dollars (\$7,350.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Fincher Bros. has paid three hundred twelve dollars (\$312.00) of the administrative penalty. The remaining amount of seven thousand thirty-eight dollars (\$7,038.00) of the administrative penalty shall be payable in 23 monthly payments of three hundred six dollars (\$306.00) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Fincher Bros. fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Fincher Bros. to meet the payment schedule of this Agreed Order constitutes the failure by Fincher Bros. to timely and satisfactorily comply with all of the terms of this Agreed Order.
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 Fincher Bros. has 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 Fincher Bros. ceased operations on December 7, 2004.
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 Fincher Bros. 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

Fincher Bros. is alleged to have violated 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CFR § 122.26(a) by failing to obtain authorization to discharge storm water associated with industrial activity to water the state through an individual permit or the Multi-Sector General Permit as documented during inspections on May 26, 2004 and September 29, 2004.

## III. DENIALS

Fincher Bros. generally denies each allegation in Section II ("Allegations").

## IV. ORDER

1. It is, therefore, ordered by the TCEQ that Fincher Bros. pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Fincher Bros.'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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Fincher Bros., Inc., Docket No. 2004-1989-WQ-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 Fincher Bros.
3. This Agreed Order, issued by the Commission, shall not be admissible against Fincher Bros. 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 agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
  
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Fincher Bros., or three days after the date on which the Commission mails notice of the Order to Fincher Bros., whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Fincher Bros., Inc.  
DOCKET NO. 2004-1989-WQ-E  
Page 5

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

\_\_\_\_\_  
For the Executive Director

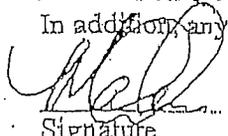
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of my permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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



Signature

5-13-08

Date

MARK FINCHER

Name (Printed or typed)

Vice President

Title

Authorized representative of  
Fincher Bros., Inc.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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ENFORCEMENT ACTION  
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FINCHER BROS., INC.,  
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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2004-1989-WQ-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Fincher Bros., Inc. ("Fincher Bros.") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Fincher Bros. represented by Wayne Watson of the law firm of Wagstaff & Watson, appear before the Commission and together stipulate that:

1. Fincher Bros. operates a sand quarry located at 5500 Jessica Lane, Mansfield, Tarrant County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Fincher Bros. agree that the Commission has jurisdiction to enter this Agreed Order, and that Fincher Bros. is subject to the Commission's jurisdiction.
4. Fincher Bros. received notice of the violations alleged in Section II ("Allegations") on or about July 13, 2004 and October 17, 2004.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Fincher Bros. of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of seven thousand three hundred fifty dollars (\$7,350.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Fincher Bros. has paid three hundred twelve dollars (\$312.00) of the

administrative penalty. The remaining amount of seven thousand thirty-eight dollars (\$7,038.00) of the administrative penalty shall be payable in 23 monthly payments of three hundred six dollars (\$306.00) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Fincher Bros. fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Fincher Bros. to meet the payment schedule of this Agreed Order constitutes the failure by Fincher Bros. to timely and satisfactorily comply with all of the terms of this Agreed Order.

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 Fincher Bros. has 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 Fincher Bros. ceased operations on December 7, 2004.
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 Fincher Bros. 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

Fincher Bros. is alleged to have violated 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CFR § 122.26(a) by failing to obtain authorization to discharge storm water associated with industrial activity to water the state through an individual permit or the Multi-Sector General Permit as documented during inspections on May 26, 2004 and September 29, 2004.

### III. DENIALS

Fincher Bros. generally denies each allegation in Section II ("Allegations").

### IV. ORDER

1. It is, therefore, ordered by the TCEQ that Fincher Bros. pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Fincher Bros.'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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Fincher Bros., Inc., Docket No. 2004-1989-WQ-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 Fincher Bros.
3. This Agreed Order, issued by the Commission, shall not be admissible against Fincher Bros. 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 agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Fincher Bros., or three days after the date on which the Commission mails notice of the Order to Fincher Bros., whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Fincher Bros., Inc.  
DOCKET NO. 2004-1989-WQ-E  
Page 5

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Penland

8/11/08

For the Executive Director

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of my permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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

Mark Fincher

Signature

5-13-08

Date

MARK FINCHER

Name (Printed or typed)

Authorized representative of  
Fincher Bros., Inc.

Vice President

Title