

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.: 2005-0295-AIR-E TCEQ ID: RN102743747 CASE NO.: 24616**  
**RESPONDENT NAME: PRICE CONSTRUCTION, LTD.,**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" 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> one mile east of University Avenue on North Loop 289, Lubbock, Lubbock County</p> <p><b>TYPE OF OPERATION:</b> mobile hot mix asphalt plant</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. Enforcement Action Docket No. 2007-0876-AIR-E remains pending against 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 December 17, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Mr. Robert Mosley, Litigation Division, MC175, (512) 239-0627  Ms. Jennifer Cook, Litigation Division, MC175, (512) 239-1873  <b>TCEQ Enforcement Coordinator:</b> Mr. Terry Murphy, Air Enforcement Section, MC 149, (512) 239-5025  <b>TCEQ Regional Contact:</b> Mr. Randy Ammons, Lubbock Regional Office, MC R-2, (806) 796-7092  <b>Respondent:</b> Mr. Lane McMillan, Permit Officer, Price Construction, Ltd. P.O. Box 1029, Big Spring, Texas 79721  <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></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> None</p> <p><b>Dates of Investigation Relating to this Case:</b> December 16, 2004</p> <p><b>Date of NOE Relating to this Case:</b> January 20, 2005 (NOE)</p> <p><b>Background Facts:</b> An EDRP was filed and the Respondent signed an Agreed Order.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>AIR:</b></p> <ol style="list-style-type: none"> <li>Failed to submit registration for the installation of a pollution control device. Specifically, the Respondent installed a bag house without an Air Quality Standard permit for Pollution Control Projects registration [30 TEX. ADMIN. CODE § 116.110(a)(2)(A) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</li> <li>Failed to use only the fuel specified by NSR Air Permit No. 7901. Specifically, the Respondent used Number 4 fuel oil, rather than the pipeline quality sweet natural gas or Number 2 fuel oil specified by Special Condition 3 of the permit [30 TEX. ADMIN CODE § 116.115(c), TEX. HEALTH &amp; SAFETY CODE § 382.085(b) and NSR Air Permit No. 7901, Special Condition 3].</li> </ol>	<p><b>Total Assessed:</b> \$5,500</p> <p><b>Total Deferred:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$5,500</p> <p>The Respondent has paid the total amount of \$5,500 in full.</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>Findings Order Justification:</b> Absence of management practices designed to ensure compliance.</p>	<p><b>Corrective Action(s) Taken:</b></p> <p>The Executive Director recognizes that the Respondent, immediately after the investigation conducted on December 16, 2004, took measures to ensure that only fuels authorized by the permit are used at the Plant.</p> <p><b>Technical Requirement(s)</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Within 15 days:             <ol style="list-style-type: none"> <li>Submit the registration required by 30 TEX. ADMIN. CODE § 116.110(a)(2)(A) and § 116.611 for a Standard permit for Pollution Control Projects under 30 TEX. ADMIN. CODE § 116.617 to authorize the bag house installation; or</li> <li>Cease operations of the bag house.</li> </ol> </li> <li>Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning registration within 30 days after the date of such requests, or by any other deadline specified in writing.</li> <li>Within 60 days, submit written certification notarized by a State of Texas Notary Public, and include detailed supporting documentation including photographs, receipts, and or other records to demonstrate compliance with these Ordering Provisions.</li> </ol>

**Penalty Calculation Worksheet (PCW)**  
 Policy Revision 2 (September 2002) PCW Revision May 10, 2005

<b>DATES</b>	Assigned	25-Jan-2005	Screening	16-Feb-2005	EPA Due	
	PCW	26-May-2005				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Price Construction, Ltd.		
Reg. Ent. Ref. No.	RN102743747		
Facility/Site Region	2-Lubbock	Major/Minor Source	Minor Source

<b>CASE INFORMATION</b>			
Enf./Case ID No.	24616	No. of Violations	2
Docket No.	2005-0295-AIR-E	Order Type	Findings
Media Program(s)	Air Quality	Enf. Coordinator	Terry Murphy
Multi-Media		EC's Team	Enforcement Team 5
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** 0% Enhancement **Subtotals 2, 3, & 7**

Notes

**Culpability** 0% Enhancement **Subtotal 4**

Notes

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

Before NOV      NOV to EDPRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	X	<i>(mark with a small x)</i>

Notes

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

Total EB Amounts	\$93	<small>*Capped at the Total EB \$ Amount</small>
Approx. Cost of Compliance	\$2,700	

**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** 0% Reduction **Adjustment**

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

Notes

**PAYABLE PENALTY**

Screening Date 16-Feb-2005

Docket No. 2005-0295-AIR-E

PCW

Respondent Price Construction, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 24616

PCW Revision May 10, 2005

Reg. Ent. Reference No. RN102743747

Media [Statute] Air Quality

Enf. Coordinator Terry Murphy

**Compliance History Worksheet**

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	0	0%
	Other written NOV's	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	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%
Please Enter Yes or No			
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)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No change due to average performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 16-Feb-2005

Docket No. 2005-0295-AIR-E

PCW

Respondent Price Construction, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 24616

PCW Revision May 10, 2005

Reg. Ent. Reference No. RN102743747

Media [Statute] Air Quality

Enf. Coordinator Terry Murphy

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="10%"/>

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

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

Violation Base Penalty

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 Price Construction, Ltd.  
 Case ID No. 24616  
 Reg. Ent. Reference No. RN102743747  
 Media [Statute] Air 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
Delayed Costs							
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	\$2,500	16-Dec-2004	15-Sep-2005	0.7	\$93	n/a	\$93
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to prepare and submit a standard Permit registration for the control device. The Final Date is the date the registration is expected to be submitted and its review concluded.

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)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance

TOTAL

<b>Screening Date</b> 16-Feb-2005	<b>Docket No.</b> 2005-0295-AIR-E	<b>PCW</b>
<b>Respondent</b> Price Construction, Ltd.	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 24616	<i>PCW Revision May 10, 2005</i>	
<b>Reg. Ent. Reference No.</b> RN102743747		
<b>Media [Statute]</b> Air Quality		
<b>Enf. Coordinator</b> Terry Murphy		
<b>Violation Number</b> <input type="text" value="2"/>		
<b>Primary Rule Cite(s)</b>	30 Tex. Admin. Code § 116.115(c) and NSR Air Permit 7901, Special Condition 3	
<b>Secondary Rule Cite(s)</b>	Tex. Health & Safety Code § 382.085(b)	
<b>Violation Description</b>	Failed to use only the fuel specified by the permit. Specifically, the Respondent used Number 4 fuel oil, rather than the pipeline quality sweet natural gas or Number 2 fuel oil specified by Special Condition 3 of the permit, as documented during an investigation conducted on December 16, 2004.	

**Base Penalty**

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

		<b>Harm</b>			
		Major	Moderate	Minor	
OR	Release	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>	<b>Percent</b> <input style="width: 50px;" type="text" value="5%"/>

>> **Programmatic Matrix**

		Major	Moderate	Minor	
	Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input style="width: 50px;" type="text"/>

**Matrix Notes**

Use of an inappropriate fuel could have exposed human health or the environment to insignificant amounts of pollutants not exceeding levels protective of human health or environmental receptors as a result of the violation.

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

Number of Violation Events

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

**Violation Base Penalty**

One single event is recommended based on the date of the investigation.

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

Estimated EB Amount

**Statutory Limit Test**

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

### Economic Benefit Worksheet

Respondent Price Construction, Ltd.  
 Case ID No. 24616  
 Reg.-Ent. Reference No. RN102743747  
 Media [Statute] Air Quality  
 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
<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	\$200	16-Dec-2004	16-Dec-2004	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: Estimated costs for additional personnel training.

<b>Avoided Costs</b>							
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)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance

TOTAL

# Compliance History

Customer/Respondent/Owner-Operator: CN601268295 Price Construction, Ltd. Classification: Average Rating: 2.680

Regulated Entity: RN102743747 Price Construction Classification: Average by default Site Rating: 3.01

ID Number(s): AIR NEW SOURCE PERMITS AFS NUM 0134  
 AIR NEW SOURCE PERMITS ACCOUNT NUMBER 907901D  
 AIR NEW SOURCE PERMITS PERMIT 7901

Location: 1 MI E OF University Ave on N Loop 289, Lubbock, TX, 79403 Rating Date: 9/1/04 Repeat Violator: No

TCEQ Region: Region 02 - Lubbock

Date Compliance History Prepared: February 15, 2005

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 15, 2000 to February 15, 2005

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
 Name: Terry Murphy Phone: (512) 239-5025

## 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 |

## 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. 01/21/2005 (345162)   |     |
| E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  | 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  
PRICE CONSTRUCTION LTD.;  
RN102743747

§  
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BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2005-0295-AIR-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Price Construction, Ltd. ("Price") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Price, presented this agreement to the Commission.

Price understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Price agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon Price.

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

**FINDINGS OF FACT**

1. Price owns and operates a mobile hot mix asphalt plant (the "Plant") located one mile east of University Avenue on North Loop 289 in Lubbock, Lubbock County, Texas (the "Site").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

3. During an inspection on December 16, 2004, a Texas Lubbock Regional Office investigator documented that Price failed to submit registration for the installation of a pollution control device. Specifically, Price installed a bag house without an Air Quality Standard Permit for Pollution Control Projects registration.
4. During an inspection on December 16, 2004, a Texas Lubbock Regional Office investigator documented that Price failed to use only the fuel specified by New Source Review ("NSR") Air Permit No. 7901. Specifically, Price used Number 4 fuel oil, rather than the pipeline quality sweet natural gas or Number 2 fuel oil specified by Special Condition 3 of the permit.
5. Price received notice of the violations on January 24, 2005.
6. The Executive Director recognizes that Price, immediately after the investigation conducted on December 16, 2004, took measures to ensure that only fuels authorized by the permit are used at the Plant.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Price is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE § 7.002, TEX. HEALTH & SAFETY CODE ch. 382 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Price failed to submit registration for the installation of a pollution control device in violation of 30 TEX. ADMIN. CODE § 116.110(a)(2)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, Price installed a bag house without an Air Quality Standard Permit for Pollution Control Projects registration.
3. As evidenced by Finding of Fact No. 4, Price failed to use only the fuel specified by NSR Air Permit No. 7901 in violation of 30 TEX. ADMIN. CODE § 116.115(c), TEX. HEALTH & SAFETY CODE § 382.085(b) and NSR Air Permit No. 7901, Special Condition 3. Specifically, Price used Number 4 fuel oil, rather than the pipeline quality sweet natural gas or Number 2 fuel oil specified by Special Condition 3 of the permit.
4. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Price for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

5. An administrative penalty in the amount of five thousand five hundred dollars (\$5,500.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Price has paid five thousand five hundred dollars (\$5,500.00) of the administrative penalty.

### ORDERING PROVISIONS

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

1. Price is assessed an administrative penalty in the amount of five thousand five hundred dollars (\$5,500.00) as set forth in Conclusion of Law No. 5 for violations of TCEQ rules and state statutes. The payment of this administrative penalty and Price's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that 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: Price Construction, Ltd.; Docket No. 2005-0295-AIR-E; Enforcement ID No. 24616" 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. Price shall undertake the following technical requirements:
  - a. Within 15 days after the effective date of this Agreed Order, Price shall either:
    - i. Submit the registration required by 30 Tex. Admin. Code §§ 116.110(a)(2)(A) and 116.611 for a Standard Permit for Pollution Control Projects under 30 Tex. Admin. Code § 116.617 to authorize the bag house installation to:

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

or

- ii. Cease operations of the bag house.
- b. Price shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning registration within 30 days after the date of such requests, or by any other deadline specified in writing.
- c. Within 60 days after the effective date of this Agreed Order, Price shall 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 I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

The 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:

---

Mr. Randy Ammons, Manager  
Air/Waste Section  
Lubbock Regional Office  
Texas Commission on Environmental Quality  
3113 34<sup>th</sup> Street  
Lubbock, Texas 79410-3227

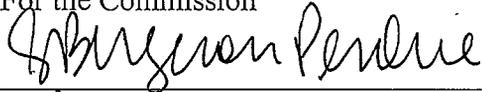
3. The provisions of this Agreed Order shall apply to and be binding upon Price. Price is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If Price fails to comply with any of the Ordering Provisions 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, Price's failure to comply is not a violation of this Agreed Order. Price has the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Price shall notify the Executive Director within seven days after Price 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 Price shall be made in writing to the Executive Director. Extensions are not effective until Price receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Price if the Executive Director determines that Price has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. This Agreed Order, issued by the Commission, shall not be admissible against Price 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.
9. 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.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the

effective date is the date of hand-delivery of the Order to Price, or three days after the date on which the Commission mails notice of the Order to Price, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

1/17/07

Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Price Construction, Ltd. I represent that I am authorized to agree to the attached Agreed Order on behalf of Price Construction, Ltd., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Price Construction, Ltd. waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order; notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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 Price Construction, Ltd.'s compliance history;
- Greater scrutiny of any permit applications submitted by Price Construction, Ltd.;
- 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 Price Construction, Ltd.;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Price Construction, Ltd.; and
- TCEQ seeking other relief as authorized by law.

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



Signature

1/31/06

Date

Lane McMillan

Name (printed or typed)

Permit Officer

Title

Authorized Representative

Price Construction, Ltd.