

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2008-0188-AIR-E TCEQ ID: RN103004099 CASE NO.: 35313**

**RESPONDENT NAME: Brothers Materials, Ltd.**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Asphalt Plant, located six miles west of Loop 20 on Highway 359, Laredo, Webb County</p> <p><b>TYPE OF OPERATION:</b> Asphalt plant</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on July 7, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. James Nolan, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-6634; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  <b>Respondent:</b> Mr. Ramon Soliz, Owner &amp; Manager, Brothers Materials, Ltd., 8114 Highway 359, Laredo, Texas 78043  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" 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 6, 2007 and February 4, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> December 21, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation and record review.</p> <p><b>AIR</b></p> <p>1) Failure to conduct performance testing within 60 days after achieving the maximum production rate of operation, but no later than 180 days after initial startup. Specifically, the Respondent has not conducted performance testing and began operation on April 21, 2002 [40 CODE OF FEDERAL REGULATIONS § 60.8, 30 TEX. ADMIN. CODE §§ 101.20(1) and 106.147(a), and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>2) Failure to water, oil, or pave all in-plant roads as necessary to achieve maximum control of dust emissions. Specifically, in-plant roads are partially paved (20%), but not maintained to control dust emissions and no functioning water truck was present [30 TEX. ADMIN. CODE § 106.147(a)(4) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>3) Failure to prevent unauthorized outdoor burning. Specifically, the Respondent allowed the unauthorized burning of materials in a 55 gallon drum [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$3,000</p> <p><b>Total Deferred:</b> \$600  <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> \$2,400</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, cease all unauthorized burning.</p> <p>b. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Submit payment for all outstanding fees, including any associated penalties and interest;</p> <p>ii. Conduct a pretest meeting concerning the required stack sampling in accordance with 30 TEX. ADMIN. CODE § 106.147(a)(1);</p> <p>iii. Implement procedures to control dust emissions from in-plant roads in accordance with 30 TEX. ADMIN. CODE § 106.147(a)(4); and</p> <p>iv. Remove all remains of the unauthorized burning area and dispose of the waste at an authorized facility.</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. and b.</p> <p>d. Within 60 days after the effective date, perform a stack sampling test in accordance with 40 CODE OF FEDERAL REGULATIONS Part 60, Subparts A and I.</p> <p>e. Within 45 days after the stack sampling, submit stack sampling results.</p>

4) Failure to pay Air Inspection fees and all applicable late fees for Fiscal Year 2008 (Financial Administration Account No. 21505942) [30 TEX. ADMIN. CODE § 101.24, TEX. HEALTH & SAFETY CODE § 382.085(b), and TEX. WATER CODE § 5.702].		
--	--	--

Additional ID No(s): AIR 50051



**Penalty Calculation Worksheet (PCW)**  
 Policy Revision 2 (September 2002) PCW Revision November 6, 2007

<b>ICEQ</b>	<b>DATES</b>	<b>Assigned</b>	2-Jan-2008	<b>Screening</b>	24-Jan-2008	<b>EPA Due</b>	
	<b>PCW</b>		25-Jan-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Brothers Materials, Ltd.		
<b>Reg. Ent. Ref. No.</b>	RN103004099		
<b>Facility/Site Region</b>	16-Laredo	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	35313	<b>No. of Violations</b>	4
<b>Docket No.</b>	2008-0188-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Enf. Coordinator</b>	James Nolan
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 4
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

**Penalty Calculation Section**

**TOTAL BASE PENALTY (Sum of violation base penalties)** *Subtotal 1* **\$3,000**

**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* **\$0**

**Notes** No penalty enhancement due to average performer classification.

**Culpability** **No** **0%** Enhancement *Subtotal 4* **\$0**

**Notes** The Respondent does not meet the culpability criteria.

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

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

**Notes** The Respondent does not meet the good faith criteria.

**Total EB Amounts** **0%** Enhancement\* *Subtotal 6* **\$0**  
\*Capped at the Total EB \$ Amount  
**Approx. Cost of Compliance** **\$1,649**  
**\$15,500**

**SUM OF SUBTOTALS 1-7** *Final Subtotal* **\$3,000**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0%** *Adjustment* **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

*Final Penalty Amount* **\$3,000**

**STATUTORY LIMIT ADJUSTMENT** *Final Assessed Penalty* **\$3,000**

**DEFERRAL** **20%** Reduction *Adjustment* **-\$600**

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

**Notes**

Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$2,400**

Screening Date 24-Jan-2008

Docket No. 2008-0188-AIR-E

PCW

Respondent Brothers Materials, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 35313

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN103004099

Media [Statute] Air

Enf. Coordinator James Nolan

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

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 penalty enhancement due to average performer classification.

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

**Screening Date** 24-Jan-2008 **Docket No.** 2008-0188-AIR-E **PCW**  
**Respondent** Brothers Materials, Ltd. *Policy Revision 2 (September 2002)*  
**Case ID No.** 35313 *PCW Revision November 6, 2007*  
**Reg. Ent. Reference No.** RN103004099  
**Media [Statute]** Air  
**Enf. Coordinator** James Nolan

**Violation Number**   
**Rule Cite(s)** 40 Code of Federal Regulations § 60.8, 30 Tex. Admin. Code §§ 101.20(1) and 106.147(a), and Tex. Health & Safety Code § 382.085(b)  
**Violation Description** Failed to conduct performance testing within 60 days after achieving the maximum production rate of operation, but no later than 180 days after initial startup. Specifically, the Respondent has not conducted performance testing and began operation on April 21, 2002.

**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" value="10%"/>
Potential	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

**Matrix Notes** Human health or the environment could be exposed to significant amounts of pollutants which would not exceed levels protective of human health or environmental receptors as a result of the violation.

**Adjustment**

Violation Events

Number of Violation Events   Number of violation days

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

**Violation Base Penalty**

One single event is recommended.

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** Brothers Materials, Ltd.  
**Case ID No.** 35313  
**Reg. Ent. Reference No.** RN103004099  
**Media Air**  
**Violation No.** 1

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

**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	\$3,000	18-Oct-2002	24-Oct-2008	6.0	\$903	n/a	\$903
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 cost of performance testing. Date required is 180 days after initial startup. Final date is estimated date of compliance.

**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**

\$3,000

**TOTAL**

\$903

<b>Screening Date</b> 24-Jan-2008	<b>Docket No.</b> 2008-0188-AIR-E	<b>PCW</b>
<b>Respondent</b> Brothers Materials, Ltd.		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 35313		<i>PCW Revision November 6, 2007</i>
<b>Reg. Ent. Reference No.</b> RN103004099		
<b>Media [Statute]</b> Air		
<b>Enf. Coordinator</b> James Nolan		

**Violation Number**

**Rule Cite(s)** 30 Tex. Admin. Code § 106.147(a)(4) and Tex. Health & Safety Code § 382.085(b)

**Violation Description** Failed to water, oil, or pave all in-plant roads as necessary to achieve maximum control of dust emissions. Specifically, in-plant roads are partially paved (20%), but not maintained to control dust emissions and no functioning water truck was present.

**Base Penalty**

>> Environmental, Property and Human Health Matrix

OR	<b>Harm</b>				
		Major	Moderate		Minor
	<b>Release</b>				
	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	<b>Percent</b> <input type="text" value="10%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
					<b>Percent</b> <input type="text" value="0%"/>

**Matrix Notes** Human health or the environment was exposed to insignificant amounts of pollutants which did not exceed levels protective of human health or environmental receptors as a result of the violation.

**Adjustment**

Violation Events

Number of Violation Events   Number of violation days

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

**Violation Base Penalty**

One single event is recommended.

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** Brothers Materials, Ltd.  
**Case ID No.** 35313  
**Reg. Ent. Reference No.** RN103004099  
**Media** Air  
**Violation No.** 2

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

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

**Delayed Costs**

Equipment	\$11,000	6-Nov-2007	24-Sep-2008	0.9	\$32	\$649	\$681
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	\$1,000	6-Nov-2007	24-Sep-2008	0.9	\$44	n/a	\$44
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 cost of equipment and policies to achieve compliance. Date required is the date of investigation. Final date is estimated date of compliance.

**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	\$12,000	<b>TOTAL</b>	\$726
----------------------------	----------	--------------	-------

<b>Screening Date</b> 24-Jan-2008	<b>Docket No.</b> 2008-0188-AIR-E	<b>PCW</b>
<b>Respondent</b> Brothers Materials, Ltd.	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 35313	<i>PCW Revision November 6, 2007</i>	
<b>Reg. Ent. Reference No.</b> RN103004099		
<b>Media [Statute]</b> Air		
<b>Enf. Coordinator</b> James Nolan		
<b>Violation Number</b> <input type="text" value="3"/>		
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 111.201 and Tex. Health &amp; Safety Code § 382.085(b)"/>	
<b>Violation Description</b>	<input type="text" value="Failed to prevent unauthorized outdoor burning. Specifically, the Respondent allowed the unauthorized burning of materials in a 55 gallon drum."/>	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>

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

OR	<b>Harm</b>				
	<b>Release</b>	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		x
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				<b>Percent</b> <input type="text" value="10%"/>	

**>> Programmatic Matrix**

	<b>Falsification</b>	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events        Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	x	

**Violation Base Penalty**

One single event is recommended.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$20"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$1,000"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,000"/>	

## Economic Benefit Worksheet

**Respondent** Brothers Materials, Ltd.  
**Case ID No.** 35313  
**Reg. Ent. Reference No.** RN103004099  
**Media** Air  
**Violation No.** 3

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

**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	\$500	6-Nov-2007	24-Aug-2008	0.8	\$20	n/a	\$20
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 cost of policies to achieve compliance. Date required is the date of investigation. Final date is estimated date of compliance.

**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**

<b>Approx. Cost of Compliance</b>	\$500	<b>TOTAL</b>	\$20
-----------------------------------	-------	--------------	------

<b>Screening Date</b> 24-Jan-2008	<b>Docket No.</b> 2008-0188-AIR-E	<b>PCW</b>
<b>Respondent</b> Brothers Materials, Ltd.	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 35313	<i>PCW Revision November 6, 2007</i>	
<b>Reg. Ent. Reference No.</b> RN103004099		
<b>Media [Statute]</b> Air		
<b>Enf. Coordinator</b> James Nolan		
<b>Violation Number</b>	4	
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 101.24, Tex. Health & Safety Code § 382.085(b), and Tex. Water Code § 5.702	
<b>Violation Description</b>	Failed to pay Air Inspection fees and all applicable late fees for Fiscal Year 2008 (Financial Administration Account No. 21505942).	
<b>Base Penalty</b>		\$10,000

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

OR	<b>Harm</b>					
		Major	Moderate	Minor		
	<b>Release</b>					
	Actual				<b>Percent</b>	0%
	Potential					

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor		
					<b>Percent</b>	0%
<b>Matrix Notes</b>						
<b>Adjustment</b>						\$10,000

\$0

**Violation Events**

Number of Violation Events				Number of violation days													
<i>mark only one with an x</i>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td style="text-align: center;">daily</td><td style="width:30px; border: 1px solid black; text-align: center;"> </td></tr> <tr><td style="text-align: center;">monthly</td><td style="border: 1px solid black; text-align: center;"> </td></tr> <tr><td style="text-align: center;">quarterly</td><td style="border: 1px solid black; text-align: center;"> </td></tr> <tr><td style="text-align: center;">semiannual</td><td style="border: 1px solid black; text-align: center;"> </td></tr> <tr><td style="text-align: center;">annual</td><td style="border: 1px solid black; text-align: center;"> </td></tr> <tr><td style="text-align: center;">single event</td><td style="border: 1px solid black; text-align: center;"> </td></tr> </table>	daily		monthly		quarterly		semiannual		annual		single event		<b>Violation Base Penalty</b>			\$0
daily																	
monthly																	
quarterly																	
semiannual																	
annual																	
single event																	

No administrative penalty is recommended because penalty and interest will be assessed at the next billing.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount	Violation Final Penalty Total
\$0	\$0
<b>This violation Final Assessed Penalty (adjusted for limits)</b>	
\$0	

## Economic Benefit Worksheet

Respondent Brothers Materials, Ltd.  
 Case ID No. 35313  
 Reg. Ent. Reference No. RN103004099  
 Media Air  
 Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

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

### 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				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

n/a

### 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

\$0

TOTAL

\$0

# Compliance History

Customer/Respondent/Owner-Operator: CN601542236 BROTHERS MATERIALS, LTD Classification: Rating: 12.75  
AVERAGE

Regulated Entity: RN103004099 ASPHALT PLANT Classification: Site Rating: 3.01  
AVERAGE BY

ID Number(s): AIR NEW SOURCE PERMITS ACCOUNT NUMBER WE0319D  
AIR NEW SOURCE PERMITS PERMIT 50051

Location: 6 MI W ON HIGHWAY 359 FROM LOOP 20 Rating Date: 9/1/2007 Repeat Violator: NO

TCEQ Region: REGION 16 - LAREDO

Date Compliance History Prepared: January 25, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 24, 2003 to January 24, 2008

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

Name: James Nolan Phone: (512) 239-6634

## 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 12/21/2007 (612832)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
  - 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  
BROTHERS MATERIALS, LTD.  
RN103004099

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2008-0188-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 Brothers Materials, Ltd. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE chs. 5 and 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 asphalt plant six miles west of Loop 20 on Highway 359 in Laredo, Webb County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about December 26, 2007.
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 Three Thousand Dollars (\$3,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Four Hundred Dollars (\$2,400) of the administrative penalty and Six



Hundred Dollars (\$600) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

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

## II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have:

1. Failed to conduct performance testing within 60 days after achieving the maximum production rate of operation, but no later than 180 days after initial startup, in violation of 40 CODE OF FEDERAL REGULATIONS § 60.8, 30 TEX. ADMIN. CODE §§ 101.20(1) and 106.147(a), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 6, 2007. Specifically, the Respondent has not conducted performance testing and began operation on April 21, 2002.
2. Failed to water, oil, or pave all in-plant roads as necessary to achieve maximum control of dust emissions, in violation of 30 TEX. ADMIN. CODE § 106.147(a)(4) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 6, 2007. Specifically, in-plant roads are partially paved but not maintained to control dust emissions and no functioning water truck was present.
3. Failed to prevent unauthorized outdoor burning, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 6, 2007. Specifically, the Respondent allowed the unauthorized burning of materials in a 55 gallon drum.
4. Failed to pay Air Inspection fees and all applicable late fees for Fiscal Year 2008 (Financial Administration Account No. 21505942), in violation of 30 TEX. ADMIN. CODE



§ 101.24, TEX. HEALTH & SAFETY CODE § 382.085(b), and TEX. WATER CODE § 5.702(a), as documented during a record review conducted on February 4, 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: Brothers Materials, Ltd., Docket No. 2008-0188-AIR-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, cease all unauthorized burning;
  - b. Within 30 days after the effective date of this Agreed Order, submit payment for all outstanding fees, including any associated penalties and interest and with the notation, "Re: Brothers Materials, Ltd. - Financial Administration Account No. 21505942." to the address provided in Ordering Provision No. 1;
  - c. Within 30 days after the effective date of this Agreed Order, conduct a pretest meeting concerning the required stack sampling in accordance with 30 TEX. ADMIN. CODE § 106.147(a)(1);
  - d. Within 30 days after the effective date of this Agreed Order, implement procedures to control dust emissions from in-plant roads in accordance with 30 TEX. ADMIN. CODE § 106.147(a)(4);
  - e. Within 30 days the effective date of this Agreed Order, remove all remains of the unauthorized burning area and dispose of the waste at an authorized facility;
  - f. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering



Provision Nos. 2.a., 2.b., 2.c., 2.d., and 2.e. The certification shall 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 certifications shall be submitted to:

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

with a copy to:

Air Section, Manager  
Laredo Regional Office  
Texas Commission on Environmental Quality  
707 East Calton Road Suite 304,  
Laredo Texas 78041

- g. Within 60 days after the effective date of this Agreed Order, perform a stack sampling test in accordance with 40 CODE OF FEDERAL REGULATIONS Part 60, Subparts A and I; and
  - h. Within 45 days after the stack sampling, submit stack sampling results to the addresses provided in Ordering Provision No. 2.f.
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
  4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
  5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.



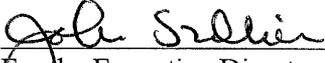
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted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



**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

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

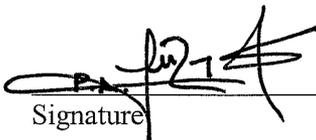
07/30/2008  
Date

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.

  
\_\_\_\_\_  
Signature

04-21-08  
Date

RAMON SOLIZ  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Brothers Materials, Ltd.

OWNER/MANAGER  
\_\_\_\_\_  
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.

1870-1871

1871-1872

1872-1873

1873-1874