

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-1838-WQ-E TCEQ ID: RN105537534 CASE NO.: 36855**  
**RESPONDENT NAME: BROTHERS PAVING, LLC**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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 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

**SITE WHERE VIOLATION(S) OCCURRED:** 15 acre tract of land located approximately 900 feet south of Soria Drive and 3000 feet east of United States Highway 83 in Laredo, Webb County

**TYPE OF OPERATION:** construction site

**SMALL BUSINESS:**  Yes  No

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

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

**COMMENTS RECEIVED:** The *Texas Register* comment period expired October 5, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Benjamin Thompson Litigation Division, MC 175, (512) 239-1297  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  
**TCEQ Enforcement Coordinator:** Mr. Sam Short, Air Enforcement Section, MC 219, (512) 239-5363  
**TCEQ Regional Contact:** Ms. Rose Luna-Pirtle, Laredo Regional Office, MC R-16, (956) 753-4052  
**Respondent:** Mr. Rogelio Soliz, Jr., Manager, Brothers Paving, LLC, 2601 N. Norton, Laredo, Texas 78040  
**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></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 Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> October 9, 2008</p> <p><b>Date of NOE Relating to this Case:</b> November 17, 2008</p> <p><b>Background Facts:</b> The EDPRP was filed April 15, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on May 26, 2009. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> The Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p><b>WQ:</b></p> <ol style="list-style-type: none"> <li>Failed to post a construction site notice containing all required information in a location where it is readily available for viewing [30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR15MB92 Part II Section E.3.d.].</li> <li>Failed to develop a Storm Water Pollution Prevention Plan ("SWP3") prior to obtaining coverage under the general permit and by failed to implement a SWP3 prior to commencing construction activities [30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR15MB92 Part II section E.3.a. and Part III sections C and F].</li> </ol>	<p><b>Total Assessed:</b> \$3,150</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$3,150</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</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 Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Immediately, post the construction site notice where it is readily available for viewing by the general public, local, state, and federal authorities.</li> <li>Within 30 days, develop and implement a SWP3.</li> <li>Within 45 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	Assigned	24-Nov-2008	Screening	1-Dec-2008	EPA Due	
	PCW	9-Mar-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Brothers Paving, LLC
Reg. Ent. Ref. No.	RN105537534
Facility/Site Region	16-Laredo
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	36855	No. of Violations	2
Docket No.	2008-1838-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	J. Craig Fleming
Admin. Penalty \$ Limit Minimum	\$0	EC's Team	Enforcement Team 3
Maximum	\$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** 5.0% Enhancement Subtotals 2, 3, & 7 **\$150**

Notes: An enhancement is recommended because the Respondent has received one NOV for the same/similar violations.

**Culpability** No 0.0% Enhancement Subtotal 4 **\$0**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** Subtotal 5 **\$0**

**Economic Benefit** 0.0% Enhancement\* Subtotal 6 **\$0**

Total EB Amounts \$101  
Approx. Cost of Compliance \$2,025  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal **\$3,150**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 0.0% Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$3,150**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty **\$3,150**

**DEFERRAL** 0.0% Reduction Adjustment **\$0**

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

Notes

Deferral not offered for non-expedited settlement.

**PAYABLE PENALTY** **\$3,150**

Screening Date 1-Dec-2008

Docket No. 2008-1838-WQ-E

PCW

Respondent Brothers Paving, LLC

Policy Revision 2 (September 2002)

Case ID No. 36855

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105537534

Media [Statute] Water Quality

Enf. Coordinator J. Craig Fleming

### 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)	1	5%
	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) 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

An enhancement is recommended because the Respondent has received one NOV for the same/similar violations.

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

Screening Date 1-Dec-2008

Docket No. 2008-1838-WQ-E

PCW

Respondent Brothers Paving, LLC

Policy Revision 2 (September 2002)

Case ID No. 36855

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105537534

Media:[Statute] Water Quality

Enf. Coordinator J. Craig Fleming

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR15MB92, Part II Section E.3.d.

Violation Description Failed to post a construction site notice, containing all required information in a location where it is readily available for viewing. Specifically, the Respondent did not have a copy of the construction site notice at the construction site where it is readily available for viewing by the general public, local, state, and federal authorities prior to commencing construction activities.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10%

Matrix Notes 100% of the permit requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 1

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$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 for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

## Economic Benefit Worksheet

**Respondent** Brothers Paving, LLC  
**Case ID No.** 36855  
**Reg. Ent. Reference No.** RN105537534  
**Media** 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
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

### Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	\$0	\$0
Record Keeping System				0.00	\$0	\$0	\$0
Training/Sampling				0.00	\$0	\$0	\$0
Remediation/Disposal				0.00	\$0	\$0	\$0
Permit Costs				0.00	\$0	\$0	\$0
Other (as needed)	\$25	5-Aug-2008	1-May-2009	0.74	\$1	\$0	\$1

Notes for DELAYED costs

Estimated cost to post a construction notice where it is readily available for viewing. The Date Required was the date of the investigation. The Final Date is the expected date of compliance.

### Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

N/A

Approx. Cost of Compliance

\$25

TOTAL

\$1

Screening Date 1-Dec-2008

Docket No. 2008-1838-WQ-E

PCW

Respondent Brothers Paving, LLC

Policy Revision 2 (September 2002)

Case ID No. 36855

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105537534

Media [Statute] Water Quality

Enf. Coordinator J. Craig Fleming

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 305.125(1) and TPDES General Permit No. TXR15MB92, Part II Section E.3.a. and Part III Sections C and F

Violation Description

Failed to develop a Storm Water Pollution Prevention Plan ("SWP3") prior to obtaining coverage under the general permit and failed to implement a SWP3 prior to commencing construction activities. Specifically, a SWP3 was not available on-site or provided to TCEQ personnel upon request.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the permit requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2

Number of violation days 54

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,000

Two monthly events are recommended from the investigation date of October 9, 2008 to the screening date of December 1, 2008.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$100

Violation Final Penalty Total \$2,100

This violation Final Assessed Penalty (adjusted for limits) \$2,100

## Economic Benefit Worksheet

**Respondent:** Brothers Paving, LLC  
**Case ID No.:** 36855  
**Reg. Ent. Reference No.:** RN105537534  
**Media:** Water 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
<small>No commas or \$</small>							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	N/A	\$0
Record Keeping System				0.00	\$0	N/A	\$0
Training/Sampling				0.00	\$0	N/A	\$0
Remediation/Disposal				0.00	\$0	N/A	\$0
Permit Costs	\$2,000	1-Jul-2008	1-Jul-2009	1.00	\$100	N/A	\$100
Other (as needed)				0.00	\$0	N/A	\$0

Notes for DELAYED costs

Estimated cost of developing and implementing a SWP3 plan. The Date Required was the date the development of the SWP3 was required. The Final Date is the expected date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

N/A

Approx. Cost of Compliance

\$2,000

**TOTAL:**

\$100

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN603123977	Brothers Paving, LLC	Classification: AVERAGE	Rating: 2.40
Regulated Entity:	RN105537534	ELEDEN SUBDIVISION UNIT XX	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	STORMWATER	PERMIT		TXR15MB92
	STORMWATER	PERMIT		TXR15LA19
Location:	WITHIN A 15 ACRE TRACT LOCATED 900 FEET SOUTH OF SORIA DRIVE AND 3000 FEET EAST OF UNITED STATES HIGHWAY 83 IN LAREDO, WEBB COUNTY			
TCEQ Region:	REGION 16 - LAREDO			
Date Compliance History Prepared:	December 01, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 01, 2003 to December 01, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	J. Craig Fleming		Phone:	239 - 5806

### Site Compliance History Components

- |  |                               |
|--|-------------------------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | No                            |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | Yes                           |
| 3. If Yes, who is the current owner?   | Brothers Paving, LLC          |
| 4. If Yes, who was/were the prior owner(s)?  | Newco Development Partnership |
| 5. When did the change(s) in ownership occur?  | 1-Jul-08                      |
| 6. Rating Date: 9/1/2008 Repeat Violator: NO   |                               |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 11/17/2008 (708354)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
1 Date: 08/21/2008 (700516)  

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)		
TXR150000 PERMIT			
Description:	Failure to post construction site notice.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)		
TXR150000 PERMIT			
Description:	Failure to post copy of completed Notice of Intent.		
  - 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  
AGAINST BROTHERS PAVING,  
LLC;  
RN105537534

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

DEFAULT ORDER  
DOCKET NO. 2008-1838-WQ-E

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Brothers Paving, LLC ("Brothers Paving").

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

FINDINGS OF FACT

1. Brothers Paving operates or has operated a construction site located on a 15 acre tract of land located approximately 900 feet south of Soria Drive and 3000 feet east of United States Highway 83 in Laredo, Webb County, Texas (the "Site").
2. At the Site, Brothers Paving has discharged waste into or adjacent to any water in the state or has committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
3. During an investigation conducted on October 9, 2008, a TCEQ Laredo Regional Office investigator documented that Brothers Paving:
  - a. Failed to post a construction site notice containing all required information in a location where it is readily available for viewing. Specifically, Brothers Paving did not have a copy of the construction site notice at the construction site, where it is readily available for viewing by the general public and local, state and federal authorities, prior to commencing construction activities; and

- b. Failed to develop a Storm Water Pollution Prevention Plan ("SWP3") prior to obtaining coverage under the general permit and failed to implement a SWP3 prior to commencing construction activities. Specifically, a SWP3 was not available on-site or provided to TCEQ personnel upon request.
4. Brothers Paving received notice of the violations on or about November 22, 2008.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Brothers Paving, LLC" (the "EDPRP") in the TCEQ Chief Clerk's office on April 15, 2009.
6. By letter dated April 15, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Brothers Paving with notice of the EDPRP. According to the return receipt "green card," Brothers Paving received notice of the EDPRP on May 26, 2009, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Brothers Paving received notice of the EDPRP, provided by the Executive Director. Brothers Paving failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Brothers Paving is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Brothers Paving failed to post a construction site notice containing all required information in a location where it is readily available for viewing, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR15MB92 Part II Section E.3.d.; and
3. As evidenced by Finding of Fact No. 3.b., Brothers Paving failed to develop a Storm Water Pollution Prevention Plan ("SWP3") prior to obtaining coverage under the general permit and failed to implement a SWP3 prior to commencing construction activities, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR15MB92 Part II Section E.3.a. and Part III sections C and F.
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Brothers Paving with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

5. As evidenced by Finding of Fact No. 7, Brothers Paving failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Brothers Paving and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Brothers Paving for violations of the Texas Water 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.
7. An administrative penalty in the amount of three thousand one hundred fifty dollars (\$3,150.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### ORDERING PROVISIONS

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

1. Brothers Paving is assessed an administrative penalty in the amount of three thousand one hundred fifty dollars (\$3,150.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Brothers Paving's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Brothers Paving, LLC; Docket No. 2008-1838-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. Brothers Paving shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, post the construction site notice where it is readily available for viewing by the general public, local, state, and federal authorities, in accordance with the TPDES General Permit No. TXR15MB92;
  - b. Within 30 days after the effective date of this Order, develop and implement a SWP3, in accordance with the TPDES General Permit No. TXR15MB92; and
  - c. Within 45 days after the effective date of this 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. and 2.b. 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 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:

Water Section, Manager  
Laredo Regional Office  
Texas Commission on Environmental Quality  
707 East Calton Road, Suite 304  
Laredo, Texas 78041-3887

3. All relief not expressly granted in this Order is denied.

4. The provisions of this Order shall apply to and be binding upon Brothers Paving. Brothers Paving is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If Brothers Paving fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Brothers Paving's failure to comply is not a violation of this Order. Brothers Paving shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Brothers Paving shall notify the Executive Director within seven days after Brothers Paving becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Brothers Paving shall be made in writing to the Executive Director. Extensions are not effective until Brothers Paving receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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 Brothers Paving if the Executive Director determines that Brothers Paving has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF BENJAMIN O. THOMPSON**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Benjamin O. Thompson. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Brothers Paving, LLC” (the “EDPRP”) was filed with the Office of the Chief Clerk on April 15, 2009.

I sent the EDPRP to Brothers Paving at its last known address on April 15, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Brothers Paving received notice of the EDPRP on May 26, 2009, as evidenced by the signature on the card.

More than 20 days have elapsed since Brothers Paving received notice of the EDPRP. Brothers Paving failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”

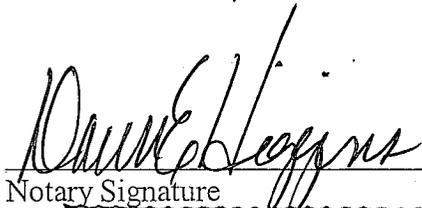


Benjamin O. Thompson  
Attorney  
Texas Commission on Environmental Quality

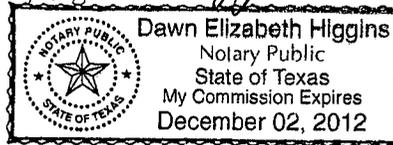
Before me, the undersigned authority, on this day personally appeared Benjamin O. Thompson, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 27<sup>th</sup> day of August, A.D., 2009.

Notary Stamp



Notary Signature



NOTARY WITHOUT BOND