

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

ORDER TYPE:		
<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	
CASE TYPE:		
<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 November 23, 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. Ramon Soliz, Manager, Brothers Paving, LLC, 8114 Highway 359, Laredo, Texas 78043

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: October 9, 2008</p> <p>Date of NOE Relating to this Case: November 17, 2008</p> <p>Background Facts: The EDP RP was filed on April 15, 2009. Settlement was achieved and the Agreed Order was signed on October 5, 2009.</p> <p>Current Compliance Status: Subsequent to settlement the Respondent completed construction activities and is no longer operating at the Site, thus, the ordering provisions are moot.</p> <p>WQ:</p> <ol style="list-style-type: none"> 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.]. 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 [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]. 	<p>Total Assessed: \$3,150</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$290/\$2,860</p> <p>The Respondent paid \$290 of the administrative penalty. The remaining amount of \$2,860 shall be payable in 11 monthly payments of \$260 each.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately, post the construction site notice where it is readily available for viewing by the general public, local, state, and federal authorities. Within 30 days, develop and implement a SWP3. Within 45 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	24-Nov-2008	Screening	1-Dec-2008	EPA Due	
	PCW	9-Mar-2009				

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

CASE INFORMATION			
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
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$150
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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
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$101
 Approx. Cost of Compliance: \$2,025
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,150
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$3,150
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,150
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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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
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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
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

>> **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="0%"/>
Potential	<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

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<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

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

Notes

Violation Subtotal

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 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

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				0.00	\$0	n/a	\$0
Other (as needed)	\$25	5-Aug-2008	1-May-2009	0.74	\$1	n/a	\$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)

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	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 36855	<small>PCW Revision October 30, 2008</small>	
Reg. Ent. Reference No. RN105537534		
Media [Statute] Water Quality		
Enf. Coordinator J. Craig Fleming		
Violation Number <input type="text" value="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		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

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 Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	<small>(mark with x)</small>

Notes

Violation Subtotal

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 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
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No commas or \$

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 Site Rating: 3.01
BY DEFAULT
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 NO Classification: Moderate
Report?
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
TXR150000 PERMIT
Description: Failure to post construction site notice.
Self NO Classification: Moderate
Report?
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
BROTHERS PAVING, LLC;
RN105537534;**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

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

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Brothers Paving, LLC ("Brothers Paving") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Brothers Paving appear before the Commission and together stipulate that:

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. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Brothers Paving agree that the Commission has jurisdiction to enter this Agreed Order, and that Brothers Paving is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Brothers Paving of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of three thousand one hundred fifty dollars (\$3,150.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Brothers Paving paid two hundred ninety dollars (\$290.00) of the administrative penalty. The remaining amount of two thousand eight hundred sixty dollars

(\$2,860.00) of the administrative penalty shall be payable in 11 monthly payments of two hundred sixty dollars (\$260.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Brothers Paving fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Brothers Paving's failure to meet the payment schedule of this Agreed Order constitutes the failure by Brothers Paving to timely and satisfactorily comply with all of the terms of this Agreed Order

6. 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.
7. The Executive Director of the TCEQ and Brothers Paving agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. 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 Brothers Paving has not complied with one or more of the terms or conditions in this Agreed Order.
9. 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.
10. 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

1. During an investigation conducted on October 9, 2008, a TCEQ Laredo Regional Office investigator documented that Brothers Paving violated:
 - a. 30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR15MB92 Part II Section E.3.d. by failing 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 Site readily available for viewing by the general public and local, state and federal authorities, prior to commencing construction activities; and

- b. 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 by failing to develop a Storm Water Pollution Prevention Plan (“SWP3”) prior to obtaining coverage under the general permit and by failing to implement a SWP3 prior to commencing construction activities. Specifically, a SWP3 was not available on-site or provided to TCEQ personnel upon request.
2. Brothers Paving received notice of the violations on or about November 22, 2008.

III. DENIALS

Brothers Paving generally denies each allegation in Section II (“Allegations”).

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Brothers Paving pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and Brothers Paving’s compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to “Texas Commission on Environmental Quality” and shall be sent with the notation “Re: 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 Agreed 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 Agreed 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 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. 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:

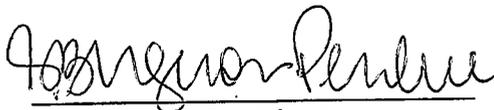
Water Section, Manager
Laredo Regional Office
Texas Commission on Environmental Quality
707 East Calton Road, Suite 304
Laredo, Texas 78041-3887

3. The provisions of this Agreed Order shall apply to and be binding upon Brothers Paving. Brothers Paving is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If Brothers Paving 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, Brothers Paving's failure to comply is not a violation of this Agreed 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.
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 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.
6. This Agreed Order, issued by the Commission, shall not be admissible against Brothers Paving 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 Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order 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) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Agreed Order to Brothers Paving, or three days after the date on which the Commission mails notice of this Agreed Order to Brothers Paving, 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

10/29/09

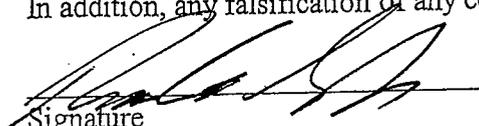
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

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

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



Signature

10-25-09

Date

ROGELIO SOLIZ JR.

Name (Printed or typed)
Authorized representative of
Brothers Paving, LLC

OWNER / MANAGER

Title