

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1647-AIR-E **TCEQ ID:** RN102302353 **CASE NO.:** 36670

RESPONDENT NAME: Nelson Bros. Ready Mix, Ltd.

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 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>SITE WHERE VIOLATION(S) OCCURRED: Nelson Bros. Ready-Mix Prosper, 570 South Dallas Parkway, Prosper, Collin County</p> <p>TYPE OF OPERATION: Concrete manufacturing plant</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on June 18, 2008, alleging that dust emissions were emanating from the property. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 6, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Suzanne Walrath, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-2134; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Bill Murphy, General Manager, Nelson Bros. Ready Mix, Ltd., 570 South Dallas Parkway, Prosper, Texas 75078 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: June 18, 2008</p> <p>Date of Investigation Relating to this Case: June 24, 2008</p> <p>Date of NOV/NOE Relating to this Case: October 7, 2008 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>AIR</p> <p>1) Failure to control visible emissions from a stationary source and failed to maintain emission control equipment in good condition and operating properly during operation of the Plant. Specifically, at the time of the investigation, the opacity of the dust emissions from the cement silo averaged 21% over a six minute period. In addition, the cement silo was being operated with ruptured filters [30 TEX. ADMIN. CODE §§ 106.4, 111.111(a)(1)(B) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failure to sprinkle the sand stockpile with water and/or dust suppressant chemicals as necessary to achieve maximum control of dust emissions, and failure to maintain the sprinkler so it is operable at all times. Specifically, at the time of the investigation, a sprinkler system for the sand stockpile was not available [30 TEX. ADMIN. CODE § 106.201(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>3) Failure to keep a final record of all reportable and non-reportable emission events on-site for a minimum of five years [30 TEX. ADMIN. CODE § 101.201(b) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$1,975</p> <p>Total Deferred: \$395 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,580</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input 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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:</p> <p>a. On June 24, 2008, replaced the ruptured filter cartridges on the cement silo, began conducting regular visible inspections of the filters, and gave written instructions to all tanker drivers to notify Plant personnel if cement dust is observed from the discharge line to the top of the silo while unloading; and</p> <p>b. On June 25, 2008, repaired the broken wire on the cement shaker, installed a sprinkler system at the sand stockpile, and purchased a journal and implemented procedures for keeping records of emission events at the Plant.</p>

Additional ID No(s): Air - CP0529E



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision June 12, 2008

DATES	Assigned	13-Oct-2008			
	PCW	18-Nov-2008	Screening	14-Oct-2008	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Nelson Bros. Ready Mix, Ltd.
Reg. Ent. Ref. No.	RN102302353
Facility/Site Region	4
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36670	No. of Violations	3
Docket No.	2008-1647-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Suzanne Walrath
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,500
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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	4.0% Enhancement	Subtotals 2, 3, & 7	\$100
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Notes	The Respondent has received one Notice of Violation for same or similar violations, and has submitted one letter notifying the agency of an intended audit.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$625
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$0	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$2,117	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,975
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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	
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Final Penalty Amount	\$1,975
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,975
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DEFERRAL	20.0% Reduction	Adjustment	-\$395
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral offered for expedited settlement.
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PAYABLE PENALTY	\$1,580
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Screening Date 14-Oct-2008

Docket No. 2008-1647-AIR-E

PCW

Respondent Nelson Bros. Ready Mix, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 36670

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102302353

Media [Statute] Air

Enf. Coordinator Suzanne Walrath

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)	1	-1%
	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%
<i>Please Enter Yes or No</i>			
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) 4%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

The Respondent has received one Notice of Violation for same or similar violations, and has submitted one letter notifying the agency of an intended audit.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 4%

Screening Date 14-Oct-2008 Docket No. 2008-1647-AIR-E PCW

Respondent Nelson Bros. Ready Mix, Ltd. Policy Revision 2 (September 2002)
 Case ID No. 36670 PCW Revision June 12, 2008
 Reg. Ent. Reference No. RN102302353
 Media [Statute] Air
 Enf. Coordinator Suzanne Walrath

Violation Number

Rule Cite(s) 30 Tex. Admin. Code §§ 106.4, 111.111(a)(1)(B) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to control visible emissions from a stationary source, and failed to maintain emission control equipment in good condition and operating properly during operation of the plant. Specifically, at the time of the investigation, the opacity of the dust emissions from the cement silo averaged 21% over a six minute period. In addition, the cement silo was being operated with ruptured filters.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="checkbox"/>
monthly	<input type="checkbox"/>
quarterly	<input type="checkbox"/>
semiannual	<input type="checkbox"/>
annual	<input type="checkbox"/>
single event	<input checked="" type="checkbox"/>

Violation Base Penalty

One single event is recommended.

Good Faith Efforts to Comply Reduction

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

Notes The Respondent achieved compliance for this violation on June 25, 2008.

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: Nelson Bros. Ready Mix, Ltd.
Case ID No.: 36670
Reg. Ent. Reference No.: RN102302353
Media: Air
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	\$1,267	24-Jun-2008	24-Jun-2008	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)	\$350	24-Jun-2008	25-Jun-2008	0.00	\$0	n/a	\$0

Notes for DELAYED costs

These are actual costs for replacing the fabric filter on the cement silo and for repairing the loose wire on the shaker, beginning on the date of the investigation, and ending on the date compliance was achieved.

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

Approx. Cost of Compliance

\$1,617

TOTAL

\$0

Screening Date 14-Oct-2008 **Docket No.** 2008-1647-AIR-E **PCW**
Respondent Nelson Bros. Ready Mix, Ltd. *Policy Revision 2 (September 2002)*
Case ID No. 36670 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN102302353
Media [Statute] Air
Enf. Coordinator Suzanne Wairath

Violation Number
Rule Cite(s) 30 Tex. Admin. Code § 106.201(1) and Tex. Health & Safety Code § 382.085(b)
Violation Description Failed to sprinkle the sand stockpile with water and/or dust suppressant chemicals as necessary to achieve maximum control of dust emissions, and failed to maintain the sprinkler so it is operable at all times. Specifically, at the time of the investigation, a sprinkler system for the sand stockpile was not available.

Base Penalty

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5%"/>
Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	<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 have been exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

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.

Good Faith Efforts to Comply

Reduction

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

Notes The Respondent achieved compliance with this violation on June 25, 2008.

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: Nelson Bros. Ready Mix, Ltd.
Case ID No.: 36670
Reg. Ent. Reference No.: RN102302353
Media: Air
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
No commas or \$							

Delayed Costs

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment	\$400	24-Jun-2008	25-Jun-2008	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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: This is an estimated cost to set up a sprinkler system for the sand stockpile, beginning on the date of the investigation, and ending on the date compliance was achieved.

Avoided Costs

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

	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:

Approx. Cost of Compliance	\$400	TOTAL	\$0
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Screening Date 14-Oct-2008		Docket No. 2008-1647-AIR-E		PCW	
Respondent Nelson Bros. Ready Mix, Ltd.			<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 36670			<i>PCW Revision June 12, 2008</i>		
Reg. Ent. Reference No. RN102302353					
Media [Statute] Air					
Enf. Coordinator Suzanne Wairath					
Violation Number		3			
Rule Cite(s)		30 Tex. Admin. Code § 101.201(b) and Tex. Health & Safety Code § 382.085(b)			
Violation Description		Failed to keep a final record of all reportable and non-reportable emission events on-site for a minimum of five years.			
Base Penalty				\$10,000	
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
				Percent <input type="text" value="0%"/>	
>> Programmatic Matrix					
		Falsification	Major	Moderate	Minor
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				Percent <input type="text" value="10%"/>	
Matrix Notes		100% of the rule requirement was not met.			
Adjustment				\$9,000	
				\$1,000	
Violation Events					
Number of Violation Events		<input type="text" value="1"/>		Number of violation days	
		<input type="text" value="3"/>			
<i>mark only one with an x</i>	daily	<input type="checkbox"/>		Violation Base Penalty	
	monthly	<input type="checkbox"/>			
	quarterly	<input type="checkbox"/>			
	semiannual	<input type="checkbox"/>			
	annual	<input type="checkbox"/>			
	single event	<input checked="" type="checkbox"/>			
One single event is recommended.				\$1,000	
Good Faith Efforts to Comply		25.0% Reduction		\$250	
		Before NOV	NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="checkbox"/>		<input type="checkbox"/>		
Ordinary	<input checked="" type="checkbox"/>		<input type="checkbox"/>		
N/A	<input type="checkbox"/>		(mark with x)		
Notes		The Respondent achieved compliance for this violation on June 25, 2008.			
Violation Subtotal				\$750	
Economic Benefit (EB) for this violation					
		Statutory Limit Test			
Estimated EB Amount		<input type="text" value="\$0"/>		Violation Final Penalty Total	
				\$790	
This violation Final Assessed Penalty (adjusted for limits)				\$790	

Economic Benefit Worksheet

Respondent: Nelson Bros. Ready Mix, Ltd.
Case ID No.: 36670
Reg. Ent. Reference No.: RN102302353
Media: Air
Violation No.: 3

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	n/a	\$0
Record Keeping System	\$100	24-Jun-2008	25-Jun-2008	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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs This is the approximate cost for a journal for keeping records of emission events at the plant, beginning on the date of the investigation, and ending on the date compliance was achieved.

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

Approx. Cost of Compliance	\$100		TOTAL		\$0
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Compliance History Report

Customer/Respondent/Owner-Operator:	CN600482467 Nelson Bros. Ready Mix, Ltd.	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN102302353 NELSON BROS. READY-MIX PROSPER	Classification: HIGH	Site Rating: 0.00
ID Number(s):	AIR NEW SOURCE PERMITS PERMIT		43065
	AIR NEW SOURCE PERMITS ACCOUNT NUMBER		CP0529E
	AIR NEW SOURCE PERMITS PERMIT		38731
	AIR NEW SOURCE PERMITS REGISTRATION		73621
	STORMWATER PERMIT		TXR05S301
Location:	570 S DALLAS PKWY, PROSPER, TX, 75078	Rating Date: 9/1/2008 Repeat Violator: NO	
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	October 14, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	October 14, 2003 to October 14, 2008		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	<u>Suzanne Walrath</u>	Phone:	<u>239 - 2134</u>

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 11/02/2005 (433372)

2 01/26/2006 (452300)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 11/03/2005 (433372)

Self NO Classification: Minor

Report?

Citation: 30 TAC Chapter 106, SubChapter A 106.4(c)

5C THC Chapter 382, SubChapter A 382.085(b)

Description: Failure to maintain emissions control equipment.

- F. Environmental audits.

Notice of Intent Date: 01/31/2006 (458730)

No DOV Associated

- 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
NELSON BROS. READY MIX, LTD.
RN102302353

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§
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§
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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1647-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 Nelson Bros. Ready Mix, Ltd. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 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 a concrete manufacturing plant at 570 South Dallas Parkway in Prosper, Collin 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 October 12, 2008.
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 One Thousand Nine Hundred Seventy-Five Dollars (\$1,975) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Five Hundred Eighty Dollars (\$1,580) of the administrative penalty and Three Hundred Ninety-Five Dollars (\$395) 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 recognizes that the Respondent has implemented the following corrective measures at the Plant:
 - a. On June 24, 2008, replaced the ruptured filter cartridges on the cement silo, began conducting regular visible inspections of the filters, and gave written instructions to all tanker drivers to notify Plant personnel if cement dust is observed from the discharge line to the top of the silo while unloading; and
 - b. On June 25, 2008, repaired the broken wire on the cement shaker, installed a sprinkler system at the sand stockpile, and purchased a journal and implemented procedures for keeping records of emission events at the Plant.
 10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
 11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
 12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to control visible emissions from a stationary source and failed to maintain emission control equipment in good condition and operating properly during operation of the Plant, in violation of 30 TEX. ADMIN. CODE §§ 106.4, 111.111(a)(1)(B) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on June 24, 2008. Specifically, at the time of the investigation, the opacity of the dust emissions from the cement silo averaged 21% over a six minute period. In addition, the cement silo was being operated with ruptured filters.
2. Failed to sprinkle the sand stockpile with water and/or dust suppressant chemicals as necessary to achieve maximum control of dust emissions, and failed to maintain the sprinkler so it is operable at all times, in violation of 30 TEX. ADMIN. CODE § 106.201(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on June 24, 2008.

Specifically, at the time of the investigation, a sprinkler system for the sand stockpile was not available.

3. Failed to keep a final record of all reportable and non-reportable emission events on-site for a minimum of five years, in violation of 30 TEX. ADMIN. CODE § 101.201(b) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on June 24, 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: Nelson Bros. Ready Mix, Ltd., Docket No. 2008-1647-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. 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.
3. 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.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), 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

John Szalai
For the Executive Director

3/9/2009
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.

Bill Murphy
Signature

12-23-2008
Date

Bill Murphy
Name (Printed or typed)
Authorized Representative of
Nelson Bros. Ready Mix, Ltd.

G.M.
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.