

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-0876-AIR-E TCEQ ID: RN102743747 CASE NO.: 33658**  
**RESPONDENT NAME: PRICE CONSTRUCTION, LTD.**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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

**SITE WHERE VIOLATION(S) OCCURRED:** 2538 Broadbent Avenue, Del Rio, Val Verde County

**TYPE OF OPERATION:** portable asphalt plant

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There were three complaints. The complainants alleged that there was a release of excessive visible emissions emanating from a hot mix batching operation owned by Price Construction. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** The complainants have not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on April 6, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Anna M. Cox, Litigation Division, MC 175, (512) 239-0974  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  
**TCEQ Enforcement Coordinator:** Mr. Terry Murphy, Air Enforcement Section, MC 149, (512) 239-5025  
**TCEQ Regional Contact:** Ms. Rose Luna-Pirtle, Laredo Regional Office, MC R-16, (956) 753-4052  
**Respondent:** Mr. Bobby W. Price, President, Price Construction, Ltd., P.O. Box 1231, Big Spring, Texas 79721  
**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 checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Dates of Complaints Relating to this Case:</b>  September 26, 2006, October 5, 2006, and November 29, 2006</p> <p><b>Dates of Investigation Relating to this Case:</b>  September 28, 2006 – November 21, 2006</p> <p><b>Date of NOE Relating to this Case:</b>  November 21, 2006</p> <p><b>Background Facts:</b>  The EDRP was filed December 19, 2007, 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 EDRP on December 27, 2007, as evidenced by the signature on the card. A Default Order for this case was scheduled to be presented at the Commission's March 25, 2009, agenda. On or about March 6, 2009, the Respondent contacted the Litigation Attorney requesting an Agreed Order, which was received March 13, 2009.</p> <p><b>Current Compliance Status:</b>  Not yet in compliance.</p> <p><b>AIR:</b></p> <p>1. Failed to notify the TCEQ of an excess opacity event [30 TEX. ADMIN. CODE § 101.201(e) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>2. Allowed excess opacity emissions. Since this event was not reported within 24 hours, and because the opacity could have been avoided by better operational practices, the emissions do not meet the demonstrations in 30 TEX. ADMIN. CODE § 101.222 and are not subject to an affirmative defense under 30 TEX. ADMIN. CODE § 101.222(b)(1-11) [30 TEX. ADMIN. CODE § 111.111(a)(8)(A) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$5,145</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid to General Revenue:</b> \$5,145</p> <p>The Respondent paid the assessed penalty in full.</p> <p><b>Site Compliance History Classification:</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Order Justification:</b>  Absence of management practices designed to ensure compliance. Specifically, the Respondent has four additional recent Commission Orders for this plant and for other locations for the same violations.</p>	<p><b>Ordering Provisions:</b>  The Respondent shall undertake the following corrective measures:</p> <ol style="list-style-type: none"> <li>1. Within 10 days, submit an emissions event report for the event; and</li> <li>2. Within 25 days, submit documentation to demonstrate compliance with Ordering Provision No. 1.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 25, 2007

**TCEQ**

DATES	Assigned	14-May-2007	Screening	4-Jun-2007	EPA Due	
	PCW	19-Jun-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Price Construction, Ltd.		
Reg. Ent. Ref. No.	RN102743747		
Facility/Site Region	16-Laredo	Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	33658	No. of Violations	2	
Docket No.	2007-0876-AIR-E	Order Type	Findings	
Media Program(s)	Air	Enf. Coordinator	Terry Murphy	
Multi-Media		EC's Team	EnforcementTeam 4	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1:

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History**  Enhancement Subtotals 2, 3, & 7:

Notes:

**Culpability**   Enhancement Subtotal 4:

Notes:

**Good Faith Effort to Comply**  Reduction Subtotal 5:

	Before NOV	NOV to EDRP/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:

**Total EB Amounts**  Subtotal 6:   
 Approx. Cost of Compliance  \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal:

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  Adjustment:

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty:

**DEFERRAL**  Reduction Adjustment:

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

Notes:

**PAYABLE PENALTY**

Screening Date 4-Jun-2007

Docket No. 2007-0876-AIR-E

PCW

Respondent Price Construction, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 33658

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN102743747

Media [Statute] Air

Enf. Coordinator Terry Murphy

**Compliance History Worksheet**

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	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	1	25%
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) 47%

>> 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 penalty was enhanced by one 1660-style agreed order, one findings agreed order, and one dissimilar NOV.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 47%

<b>Screening Date</b> 4-Jun-2007	<b>Docket No.</b> 2007-0876-AIR-E	<b>PCW</b>
<b>Respondent</b> Price Construction, Ltd.		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 33658		<i>PCW Revision May 25, 2007</i>
<b>Reg. Ent. Reference No.</b> RN102743747		
<b>Media [Statute]</b> Air		
<b>Enf. Coordinator</b> Terry Murphy		
<b>Violation Number</b> <input type="text" value="1"/>		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 101.201(e) and Tex. Health & Safety Code § 382.085(b)	
<b>Violation Description</b>	Failed to notify the TCEQ of an excess opacity event, as documented during an investigation conducted September 28 through November 11, 2006. Specifically, the Respondent failed to provide notice to the TCEQ, within 24 hours of the event, of excess opacity that occurred on September 28, 2006.	
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>

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

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

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>	
					<b>Percent</b> <input type="text" value="10%"/>
<b>Matrix Notes</b>	The Respondent failed to comply with 100% of the rule.				

**Adjustment**

**Violation Events**

Number of Violation Events <input type="text" value="1"/>	<input type="text" value="248"/>	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 type="text" value="x"/>		<b>Violation Base Penalty</b> <input type="text" value="\$1,000"/>
One single event is recommended.		

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount <input type="text" value="\$25"/>	Violation Final Penalty Total <input type="text" value="\$1,470"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,470"/>	

## Economic Benefit Worksheet

**Respondent** Price Construction, Ltd.

**Case ID No.** 33658

**Reg. Ent. Reference No.** RN102743747

**Media Air**

**Violation No.** 1

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<i>No commas or \$</i>							
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$400	29-Sep-2006	1-Jan-2008	1.3	\$25	n/a	\$25
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated costs to prepare and submit a report of the event. The Date Required is the date the report was due, and the Final Date is the date the Respondent is expected to have provided the required notice of the event.

**Avoided Costs**

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$400

**TOTAL**

\$25

<b>Screening Date</b> 4-Jun-2007	<b>Docket No.</b> 2007-0876-AIR-E	<b>PCW</b>
<b>Respondent</b> Price Construction, Ltd.		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 33658		<i>PCW Revision May 25, 2007</i>
<b>Reg. Ent. Reference No.</b> RN102743747		
<b>Media [Statute]</b> Air		
<b>Enf. Coordinator</b> Terry Murphy		
<b>Violation Number</b> <input type="text" value="2"/>		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 111.111(a)(8)(A) and Tex. Health & Safety Code § 382.085(b)	
<b>Violation Description</b>	Allowed excess opacity emissions. Specifically, the Respondent allowed lime dust emissions at the plant to occur at an average 92.8% opacity over a seven minute period on September 28, 2006. Since this was not reported within 24 hours of the event, and because the opacity could have been avoided by better operational practices, the emissions do not meet the demonstrations in 30 Tex. Admin. Code § 101.222 and are not subject to an affirmative defense under 30 Tex. Admin. Code § 101.222(b)(1-11). This violation was documented during an investigation conducted September 28 through November 11, 2006.	
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	<b>Actual</b>	<input type="text"/>	x	<input type="text"/>	<b>Percent</b> <input type="text" value="25%"/>
<b>Potential</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>		

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>
<b>Matrix Notes</b>	Human health or the environment were exposed to significant amounts of pollutants which did not exceed levels protective of human health or environmental receptors as a result of the violation.				

**Adjustment**

Violation Events

Number of Violation Events        Number of violation days

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

**Violation Base Penalty**

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Price Construction, Ltd.

**Case ID No.** 33658

**Reg. Ent. Reference No.** RN102743747

**Media Air**

**Violation No. 2**

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

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

No commas or \$

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

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

Disposal				0.0	\$0	\$0	\$0
Personnel	\$1,000	28-Sep-2006	5-Apr-2007	0.5	\$26	\$518	\$544
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated costs to provide better oversight over plant operations. The Date Required is the date of the event, and the Final Date is the date the Respondent certified cessation of operations at the site.

Approx. Cost of Compliance

\$1,000

**TOTAL**

\$544

# Compliance History

Customer/Respondent/Owner-Operator:	CN601268295	Price Construction, Ltd.	Classification: AVERAGE	Rating: 2.89
Regulated Entity:	RN102743747	PRICE CONSTRUCTION	Classification: HIGH	Site Rating: 0.00
ID Number(s):	AIR NEW SOURCE PERMITS	PERMIT		7901
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER		907901D
	AIR NEW SOURCE PERMITS	AFS NUM		4830301632
Location:	2538 Broadbent Avenue, Del Rio, Val Verde County		Rating Date: 9/1/2006 Repeat Violator: NO	
TCEQ Region:	REGION 16 - LAREDO			
Date Compliance History Prepared:	June 11, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 11, 2002 to June 11, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Terry Murphy	Phone:	(512) 239-5025	

## Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 03/05/2007	ADMINORDER 2006-0537-AIR-E
Classification: Major	

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)  
 5C THC Chapter 382, SubChapter A 382.0518(a)  
 5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failure to obtain authorization to construct and operate an asphalt concrete plant.

Effective Date: 03/19/2007	ADMINORDER 2006-2224-WQ-E
Classification: Major	

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)  
 Description: Field Citation - Failure to have a storm water discharge permit.

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	01/21/2005	(345162)
2	11/21/2006	(515216)
3	11/21/2006	(531800)
4	03/21/2007	(554377)
5	05/15/2007	(535480)

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

Date: 11/21/2006 (531800)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Description: Failure to develop and implement a Storm Water Pollution Prevention Plan (SWP3) as per TPDES Multi-Sector General Permit requirements.

- F. Environmental audits.

N/A

- G. Type of environmental management systems (EMSs).

N/A

- H. Voluntary on-site compliance assessment dates.

N/A

- I. Participation in a voluntary pollution reduction program.

N/A

- J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
PRICE CONSTRUCTION, LTD.;  
RN102743747

§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2007-0876-AIR -E**

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

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

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Price.

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

**FINDINGS OF FACT**

1. Price owns and operates a portable asphalt plant located at 2538 Broadbent Avenue, Del Rio, Val Verde County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

3. During an investigation conducted on September 28, 2006, a TCEQ Laredo Office investigator documented that Price:
  - a. Failed to notify the TCEQ of an excess opacity event. Specifically, Price failed to provide notice to the TCEQ, within 24 hours of the event, of excess opacity that occurred on September 28, 2006.
  - b. Allowed excess opacity emissions. Specifically, Price allowed lime dust emissions at the facility to occur at an average 92.8% opacity over a seven minute period on September 28, 2006.
4. Price received notice of the violations on or about November 21, 2006.

#### CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Price is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE § 7.002, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3.a., Price failed to notify the TCEQ of an excess opacity event. Specifically, Price failed to provide notice to the TCEQ, within 24 hours of the event, of excess opacity that occurred on September 28, 2006, in violation of 30 TEX. ADMIN. CODE § 101.201(e) and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Findings of Fact No. 3.b., Price allowed excess opacity emissions. Specifically, Price allowed lime dust emissions at the facility to occur at an average 92.8% opacity over a seven minute period on September 28, 2006, in violation of 30 TEX. ADMIN. CODE § 111.111(a)(8)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b).
4. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Price for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
5. An administrative penalty in the amount of five thousand one hundred forty-five dollars (\$5,145.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Price has paid five thousand one hundred forty-five dollars (\$5,145.00) of the administrative penalty.

## ORDERING PROVISIONS

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

1. It is, therefore, ordered by the TCEQ that Price pay an administrative penalty as set forth in Conclusion of Law No. 5, above. The payment of this administrative penalty and Price's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Price Construction, Ltd.; Docket No. 2007-0876-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. Price shall undertake the following technical requirements:

- a. Within 10 days after the effective date of this Commission order, Price shall submit an emissions event report for the event that occurred on September 28, 2006, in accordance with 30 TEX. ADMIN. CODE § 101.201(e), to:

Rose Luna-Pirtle, Air Section Manager  
Texas Commission on Environmental Quality  
Laredo Regional Office  
1403 Seymour, Suite 2  
Laredo, Texas 78040-8752

- b. Within 25 days after the effective date of the Commission Order, Price shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. above.

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.”

Price shall submit copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Rose Luna-Pirtle, Air Section Manager  
Texas Commission on Environmental Quality  
Laredo Regional Office  
1403 Seymour, Suite 2  
Laredo, Texas 78040-8752

3. The provisions of this Agreed Order shall apply to and be binding upon Price. Price is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant referenced in this Agreed Order.
4. If Price fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Price's failure to comply is not a violation of this Agreed Order. Price shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Price shall notify the Executive Director within seven days after Price becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Price shall be made in writing to the Executive Director. Extensions are not effective until Price receives written

approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Price if the Executive Director determines that Price has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against Price in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
10. 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 Order to Price, or three days after the date on which the Commission mails notice of the Order to Price, 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

Robert Penland

For the Executive Director

5/3/2009

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, 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 Price Construction, Ltd.'s failure to timely pay the penalty amount, may result in:

- A negative impact on Price Construction, Ltd.'s compliance history;
- Greater scrutiny of any permit applications submitted Price Construction, Ltd.;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against Price Construction, Ltd.;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Price Construction, Ltd.; and
- TCEQ seeking other relief as authorized by law.

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

Bob Price  
Signature

3-6-09  
Date

Bob Price  
Name (Printed or typed)  
Price Construction, Ltd.

Gen. Mang  
Title