

Executive Summary – Enforcement Matter – Case No. 40037
BROTHERS MATERIALS, LTD.
RN103004099 and RN103004081
Docket No. 2010-1147-AIR-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Indifference to legal duty based on violation of a previous order.

Media:

AIR

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Six miles west of Loop 20 on Highway 359, Laredo, Webb County ("Site A"); El Venado Ranch, 13 miles north of the Highway 359 and Farm-to-Market Road 2050 intersection, two miles east on San Pablo Road and 0.5 miles west to the main gate at El Venado Ranch, Webb County ("Site B")

Type of Operation:

asphalt plant (Site A); rock crusher (Site B)

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: June 10, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$12,625

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$375

Total Due to General Revenue: \$12,250

Payment Plan: 35 payments of \$350 each

SEP Conditional Offset: N/A

Compliance History Classifications:

Site A: Person/CN – Average
Site/RN – Poor

Site B: Person/CN – Average
Site/RN – High

Major Source: No (Both Sites)

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): June 26, 2008
Complaint Information: Complaint alleged the release of excessive visible emissions from a hot mix batching operation owned by Brothers Materials, Ltd. and a tar-like odor was entering the residences downwind.

Date(s) of Investigation: May 21, 2010; July 8, 2010; May 20, 2010

Date(s) of NOV(s): March 31, 2010 (Site A); November 23, 2009 (Site B)

Date(s) of NOE(s): July 1, 2010 (Site A); July 14, 2010 (Site B)

Violation Information

1. Failed to conduct the required stack sampling test, failed to conduct a pretest meeting concerning the stack sampling test, and failed to submit the stack sampling test results to the TCEQ (Site A) [40 C.F.R. § 60.8; TEX. HEALTH & SAFETY CODE § 382.085(b); 30 TEX. ADMIN. CODE §§ 101.20(1) and 106.147(a); TCEQ Agreed Order Docket No. 2008-0188-AIR-E, Ordering Provisions Nos. 2.c., 2.g., and 2.h.].
2. Failed to pay outstanding air emissions, inspection, and late fees for TCEQ Financial Account Nos. 21006623 and 215-5042 for fiscal year 2010 (Site A) [TEX. WATER CODE § 5.702, TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE §§ 101.24 and 101.27].
3. Failed to conduct performance testing no later than 180 days after the initial start-up (Site B) [40 C.F.R. § 60.8; TEX. HEALTH & SAFETY CODE § 382.085(b); 30 TEX. ADMIN. CODE §§ 101.20(1) and 116.615(6); Air Quality Standard Permit for Temporary Rock and Concrete Crushers, Condition 1(O)].
4. Failed to install permanently mounted spray bars at the inlet and outlet of all crushers, at all shaker screens, and at all material transfer points for use, as necessary, to maintain compliance with all commission regulations; and failed to prevent visible emissions from exceeding 10% opacity (Site B) [TEX. HEALTH & SAFETY CODE § 382.085(b); 30 TEX. ADMIN. CODE § 116.615(9) and (10); Air Quality Standard Permit for Temporary Rock and Concrete Crushers, Conditions 1(G) and 1(H)].
5. Failed to comply with the standard permit conditions limiting the plant to operate for no more than 180 non-consecutive days (Site B) [TEX. HEALTH & SAFETY CODE § 382.085(b); 30 TEX. ADMIN. CODE §§ 116.115(b) and 116.615(2); Air Quality Standard Permit for Temporary Rock and Concrete Crushers, Condition (3)(E)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
N/A

Technical Requirements:

1. Within 30 days:
 - a. Conduct performance testing at Sites A and B (Violation Nos. 1 and 3);
 - b. Submit payment for all outstanding fees, including any associated penalties and interest (Violation No. 2);
 - c. Install permanent mounted spray bar emissions control equipment at the inlet and outlet of all crushers, at all shaker screens, at primary conveyer drop points and the primary shaker

Executive Summary – Enforcement Matter – Case No. 40037
BROTHERS MATERIALS, LTD.
RN103004099 and RN103004081
Docket No. 2010-1147-AIR-E

screen, and at all material transfer points at Site B, for use as necessary to maintain compliance with all commission regulations (Violation No. 4);

- d. Implement operational procedures at Site B designed to ensure opacity of emissions are not exceeded (Violation No. 4); and
 - e. Implement measures at Site B to ensure that the rock crusher complies with operational limitations (Violation No. 5).
2. Within 60 days after the performance testing required by Technical Requirement No. 1.a. is completed, submit the testing results to the TCEQ.
 3. Within 90 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: January 25, 2011
Date Answer(s) Filed: March 2, 2011
SOAH Referral Date: April 11, 2011
Hearing Date(s):
Preliminary hearing: May 19, 2011
Evidentiary hearing: N/A
Settlement Date: May 17, 2011

Contact Information

TCEQ Attorneys: Jeffrey Huhn, Litigation Division, (210) 403-4023
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Heather Podlipny, Air Enforcement Section, (512) 239- 2603

TCEQ Regional Contact: Rosa Luna-Pirtle, Laredo Regional Office, (956) 753-4052

Respondent: Ramon Soliz, Partner, Brothers Materials, Ltd., 8114 Hwy. 359, Laredo, TX 78043

Respondent's Attorney: N/A

THIS PAGE INTENTIONALLY LEFT BLANK



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	6-Jul-2010	Screening	12-Jul-2010	EPA Due	
	PCW	16-Jul-2010				

RESPONDENT/FACILITY INFORMATION

Respondent	Brothers Materials, Ltd. (Site A)		
Reg. Ent. Ref. No.	RN103004099		
Facility/Site Region	16-Laredo	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	40037	No. of Violations	2
Docket No.	2010-1147-AIR-E	Order Type	Findings
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Heather Podlipny
		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**

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 Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts
 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.

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 12-Jul-2010

Docket No. 2010-1147-AIR-E

PCW

Respondent Brothers Materials, Ltd. (Site A)

Policy Revision 2 (September 2002)

Case ID No. 40037

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103004099

Media [Statute] Air

Enf. Coordinator Heather Podlipny

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 (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of</i>	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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) 25%

>> 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

Enhancement for one NOV for same/similar violations and for one order with denial.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 25%

Screening Date 12-Jul-2010	Docket No. 2010-1147-AIR-E	PCW
Respondent Brothers Materials, Ltd. (Site A)		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 40037		<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No. RN103004099		
Media [Statute] Air		
Enf. Coordinator Heather Podlipny		

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> 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" value="x"/>	<input type="text"/>	Percent <input type="text" value="10%"/>

>> Programmatic Matrix

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

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	0.0% Reduction		
	Extraordinary	Before NOV	NOV to EDPRP/Settlement Offer
	Ordinary	<input type="text"/>	<input type="text"/>
	N/A	<input type="text" value="x"/>	(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 Materials, Ltd. (Site A)
Case ID No. 40037
Req. Ent. Reference No. RN103004099
Media Violation No. Air
 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)	\$3,000	22-Sep-2008	12-Jun-2011	2.72	\$408	n/a	\$408

Notes for DELAYED costs Estimated cost to conduct the performance testing for the asphalt plant. The Date Required is the effective date of the agreed order and 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

Approx. Cost of Compliance	\$3,000	TOTAL	\$408
-----------------------------------	---------	--------------	-------

Screening Date	12-Jul-2010	Docket No.	2010-1147-AIR-E	PCW
Respondent	Brothers Materials, Ltd. (Site A)			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	40037			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN103004099			
Media [Statute]	Air			
Enf. Coordinator	Heather Podlipny			
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code §§ 101.24 and 101.27, Tex. Health & Safety Code § 382.085(b), and Tex. Water Code § 5.702			
Violation Description	Failed to pay outstanding air emissions, inspection, and late fees for TCEQ Financial Account Nos. 21006623 and 21505942 for fiscal year 2010.			
		Base Penalty	\$10,000	

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>
Matrix Notes	<input type="text"/>				
				Adjustment	\$10,000

\$0

Violation Events

Number of Violation Events	<input type="text"/>	Number of violation days	<input type="text"/>	
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty	\$0
	weekly	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
single event	<input type="text"/>			
<input type="text" value="No additional administrative penalty was calculated for this violation as penalties and interest will be assessed on the next billing."/>				

Good Faith Efforts to Comply

	0.0%	Reduction	\$0
		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"/>	(mark with x)	
Notes	<input type="text"/>		
		Violation Subtotal	\$0

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$0"/>	Violation Final Penalty Total <input type="text" value="\$0"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$0"/>	

Economic Benefit Worksheet

Respondent Brothers Materials, Ltd. (Site A)
Case ID No. 40037
Req. Ent. Reference No. RN103004099
Media Air
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description 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)			0.00	\$0	n/a	\$0

Notes for DELAYED costs

N/A

Avoided Costs

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

Disposal			0.00	\$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

TOTAL



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	19-Jul-2010	Screening	29-Jul-2010	EPA Due	
	PCW	30-Jul-2010				

RESPONDENT/FACILITY INFORMATION

Respondent	Brothers Materials, Ltd. (Site B)		
Reg. Ent. Ref. No.	RN103004081		
Facility/Site Region	16-Laredo	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	40037	No. of Violations	3
Docket No.	2010-1147-AIR-E	Order Type	Findings
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Heather Podlipny
		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**

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	\$125
Notes	Enhancement for one same/similar NOV.		
Culpability	No 0.0% Enhancement	Subtotal 4	\$0
Notes	The Respondent does not meet the culpability criteria.		
Good Faith Effort to Comply Total Adjustments		Subtotal 5	\$0
Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$1,538	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$6,500		

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$2,625**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes		Final Penalty Amount	\$2,625
-------	--	-----------------------------	----------------

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$2,625**

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

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

Notes	No deferral is recommended for Findings Orders.		
-------	---	--	--

PAYABLE PENALTY **\$2,625**

Screening Date	29-Jul-2010	Docket No.	2010-1147-AIR-E	PCW
Respondent	Brothers Materials, Ltd. (Site B)			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	40037			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN103004081			
Media [Statute]	Air			
Enf. Coordinator	Heather Podlipny			

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 (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of</i>	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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) 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

Enhancement for one same/similar NOV.

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

Screening Date	29-Jul-2010	Docket No.	2010-1147-AIR-E	PCW
Respondent	Brothers Materials, Ltd. (Site B)			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	40037			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN103004081			
Media [Statute]	Air			
Enf. Coordinator	Heather Podlipny			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code §§ 101.20(1) and 116.615(6), Tex. Health & Safety Code § 382.085(b), 40 Code of Federal Regulations § 60.8, and Air Quality Standard Permit for Temporary Rock and Concrete Crushers, Condition 1(O)			
Violation Description	Failed to conduct performance testing no later than 180 days after the initial start-up, as documented during an investigation conducted on May 20, 2010.			
		Base Penalty	\$10,000	

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				
	Potential			x	Percent 5%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0%

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

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events: 1 70 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$500

One single event is recommended.

Good Faith Efforts to Comply **0.0%** Reduction \$0

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

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

Violation Subtotal \$500

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$1,297 **Violation Final Penalty Total** \$525

This violation Final Assessed Penalty (adjusted for limits) \$525

Economic Benefit Worksheet

Respondent Brothers Materials, Ltd. (Site B)
Case ID No. 40037
Req. Ent. Reference No. RN103004081
Media Violation No. Air
 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)	\$3,000	27-Sep-2002	20-May-2011	8.65	\$1,297	n/a	\$1,297

Notes for DELAYED costs
 Estimated cost to conduct the performance testing of the rock crusher. The Date Required is 180 days after initial startup of the rock crusher, when the performance testing was due. The Final Date is the estimated 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

Approx. Cost of Compliance \$3,000

TOTAL \$1,297

Screening Date 29-Jul-2010 **Docket No.** 2010-1147-AIR-E **PCW**
Respondent Brothers Materials, Ltd. (Site B) *Policy Revision 2 (September 2002)*
Case ID No. 40037 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN103004081
Media [Statute] Air
Enf. Coordinator Heather Podlipny

Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 116.615(9) and (10), Tex. Health & Safety Code § 382.085(b), and Air Quality Standard Permit for Temporary Rock and Concrete Crushers, Conditions 1(G) and 1(H)
Violation Description Failed to install permanently mounted spray bars at the inlet and outlet of all crushers, at all shaker screens, and at all material transfer points, and for use as necessary to maintain compliance with all commission regulations. In addition, the Respondent failed to prevent visible emissions from exceeding 10% opacity. Specifically, visible emissions were observed emanating from the primary conveyor drop points and the primary shaker screen at an average of 11.45% opacity over a 6-minute period using EPA Test Method 9.

Base Penalty \$10,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual			x	10%
	Potential				

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 70 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

One quarterly event is recommended.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark w th x)

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$210 **Violation Final Penalty Total** \$1,050

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

Economic Benefit Worksheet

Respondent Brothers Materials, Ltd. (Site B)
Case ID No. 40037
Req. Ent. Reference No. RN103004081
Media Violation No. Air
 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

Equipment	\$3,000	20-May-2010	20-May-2011	1.00	\$10	\$200	\$210
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
 Estimated cost to install permanently mounted spray bars at the inlet and outlet of all crushers, at all shaker screens, and at all material transfer points. The Date Required is the date of investigation and the Final Date is the estimated 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

Approx. Cost of Compliance \$3,000

TOTAL \$210

Screening Date	29-Jul-2010	Docket No.	2010-1147-AIR-E	PCW
Respondent	Brothers Materials, Ltd. (Site B)	Policy Revision 2 (September 2002)		
Case ID No.	40037	PCW Revision October 30, 2008		
Reg. Ent. Reference No.	RN103004081			
Media [Statute]	Air			
Enf. Coordinator	Heather Podlipny			
Violation Number	3			
Rule Cite(s)	30 Tex. Admin. Code §§ 116.115(b) and 116.615(2), Tex. Health & Safety Code § 382.085(b), and Air Quality Standard Permit for Temporary Rock and Concrete Crushers, Condition (3)(E)			
Violation Description	Failed to comply with the standard permit conditions limiting the plant to operate for no more than 180 non-consecutive days. Specifically, the Respondent operated Rock Crushing Facility 1 a total of six days (February 8, 2010, February 9, 2010, May 3, 2010, May 11, 2010, May 12, 2010 and May 13, 2010) beyond the 180 non-consecutive calendar day requirement.			
Base Penalty	\$10,000			

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate	Minor	
	Actual			x	Percent 10%
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent 0%
Human health or the environment has been exposed to insignificant amounts of pollutants which did not exceed levels protective of human health or environmental receptors as a result of the violation.					
Adjustment					\$9,000

\$1,000

Violation Events

Number of Violation Events	1	Number of violation days	6	Violation Base Penalty	\$1,000
<i>mark only one with an x</i>	daily				
	weekly				
	monthly				
	quarterly	x			
	semiannual				
	annual				
single event					
One quarterly event is recommended.					

Good Faith Efforts to Comply

		0.0% Reduction	\$0
		Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary			
Ordinary			
N/A	x		(mark with x)
Notes	The Respondent does not meet the good faith criteria for this violation.		
Violation Subtotal			\$1,000

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$30	Violation Final Penalty Total \$1,050
This violation Final Assessed Penalty (adjusted for limits) \$1,050	

Economic Benefit Worksheet

Respondent Brothers Materials, Ltd. (Site B)
Case ID No. 40037
Req. Ent. Reference No. RN103004081
Media Violation No. Air
 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

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	\$500	8-Feb-2010	29-Apr-2011	1.22	\$30	n/a	\$30
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 Estimated cost for additional oversight and management practices designed to ensure proper practices are followed. The Date Required is the first day of violation and the Final Date is the estimated 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

Approx. Cost of Compliance \$500

TOTAL \$30

Compliance History Report

Customer/Respondent/Owner-Operator: CN601542236 BROTHERS MATERIALS, LTD. Classification: AVERAGE Rating: 30.00
 Regulated Entity: RN103004099 ASPHALT PLANT Classification: POOR Site Rating: 60.00
 ID Number(s): AIR NEW SOURCE PERMITS ACCOUNT NUMBER WE0319D
 AIR NEW SOURCE PERMITS REGISTRATION 50051
 Location: 6 MILES WEST OF LOOP 20 ON HIGHWAY 359
 TCEQ Region: REGION 16 - LAREDO

Date Compliance History Prepared: July 12, 2010
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: July 12, 2005 to July 12, 2010
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
 Name: Heather Podlipny Phone: 239 - 2603

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 09/22/2008 ADMINORDER 2008-0188-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)
30 TAC Chapter 106, SubChapter E 106.147(a)
40 CFR Chapter 60, SubChapter C, PT 60, SubPT A 60.8
5C THSC Chapter 382 382.085(b)

Description: Failed to conduct performance testing within 60 days after achieving the maximum production rate of operation, but no later than 180 days after initial startup.

Classification: Moderate

Citation: 30 TAC Chapter 106, SubChapter E 106.147(a)(4)
5C THSC Chapter 382 382.085(b)

Description: Failed to water, oil, or pave all in-plant roads as necessary to achieve maximum control of dust emissions

Classification: Minor

Citation: 30 TAC Chapter 111, SubChapter B 111.201
5C THSC Chapter 382 382.085(b)

Description: Failed to prevent unauthorized outdoor burning.

Classification: Minor

Citation: 2A TWC Chapter 5, SubChapter A 5.702(a)
30 TAC Chapter 101, SubChapter A 101.24
5C THSC Chapter 382 382.085(b)

Description: Failed to pay Air Inspection fees and all applicable late fees for Fiscal Year 2008 (Financial Administration Account No. 21505942), in violation of 30 TEX. ADMIN. CODE § 101.24, TEX. HEALTH & SAFETY CODE § 382.085(b), and TEX. WATER CODE § 5.702(a), as documented during a record review conducted on February 4, 2008.

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

N/A

C. Chronic excessive emissions events.

N/A

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

- 1 12/21/2007 (612832)
- 2 04/01/2010 (786409)
- 3 07/01/2010 (829346)

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

Date: 03/31/2010 (786409) CN601542236

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)
30 TAC Chapter 106, SubChapter E 106.147(a)
40 CFR Chapter 60, SubChapter C, PT 60, SubPT A 60.8
5C THSC Chapter 382 382.085(b)

Description: Failed to conduct performance testing within 60 days after achieving the maximum production rate of operation, but no later than 180 days after initial startup.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 106, SubChapter E 106.147(a)(4)
5C THSC Chapter 382 382.085(b)

Description: Failed to water, oil, or pave all in-plant roads as necessary to achieve maximum control of dust emissions

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 111, SubChapter B 111.201
5C THSC Chapter 382 382.085(b)

Description: Failed to prevent unauthorized outdoor burning.

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

Compliance History Report

Customer/Respondent/Owner-Operator:	CN601542236 BROTHERS MATERIALS, LTD	Classification: AVERAGE	Rating: 30.00
Regulated Entity:	RN103004081 ROCK CRUSHING FACILITY 1	Classification: HIGH	Site Rating: 0.00
ID Number(s):	AIR NEW SOURCE PERMITS	AFS NUM	4877701658
	AIR NEW SOURCE PERMITS	REGISTRATION	92706
	AIR NEW SOURCE PERMITS	PERMIT	50261
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	9502610
	AIR NEW SOURCE PERMITS	PERMIT	74746L001
	AIR NEW SOURCE PERMITS	PERMIT	74746L002
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	9502610

Location: ON EL VENADO RANCH, 13 MILES NORTH OF THE HIGHWAY 359 AND FARM-TO-MARKET ROAD 2050 INTERSECTION, TWO MILES EAST ON SAN PABLO ROAD AND 0.5 MILES WEST TO THE MAIN GATE AT EL VENADO RANCH

TCEQ Region: REGION 16 - LAREDO

Date Compliance History Prepared: July 20, 2010
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: July 20, 2005 to July 20, 2010

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

Name: Heather Podlipny Phone: 239 - 2603

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, 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 | 08/06/2007 | (571187) |
| 2 | 08/20/2008 | (700472) |
| 3 | 11/23/2009 | (783270) |
| 4 | 07/14/2010 | (824733) |

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

Date:	11/23/2009 (783270)	CN601542236
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 116, SubChapter F 116.615(6) 5C THSC Chapter 382 382.085(b)	
Description:	Violation Track Number 382488: Violation of 30 TAC 116.615(6), for failure to conduct the NSPS Testing required under 40 CFR 60, Subpart A and OOO (Standard Permit Condition 1(O)). This testing is to be conducted no later than 180 days after initial start-up. It was noted that the plant began operation in March of 2002 at its previous location and has been running ever since.	
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 116, SubChapter F 116.615(9) 5C THSC Chapter 382 382.085(b)	
Description:	Violation of 30 TAC 116.615(9), for failure to install permanently mounted spray bars at the inlet and outlet of all crushers, at all shaker screens, and at all material transfer points and used as necessary to maintain compliance with all commission regulations. The outstanding violation was not resolved within the allowed timeframe. Referred to enforcement.	
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 116, SubChapter F 116.615(10) 5C THSC Chapter 382 382.085(b)	

Description: Violation of 30 TAC 116.615(10), for failure to maintain visible emissions from the conveyor drop points and the primary shaker screen at or below 10% over a six minute period as required by General Condition 1(G) of the Tier II Standard Permit. At the time of the investigation, an average opacity of 11.45% was calculated over a 6 minute period using EPA Test Method 9. The outstanding violation was not resolved within the allowed timeframe. Referred to enforcement.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 116, SubChapter F 116.615(10)
5C THSC Chapter 382 382.085(b)

Description: Failure to comply with General Condition 1(L), of the Tier II Standard Permit.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
BROTHERS MATERIALS, LTD;
RN103004099 and RN103004081**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2010-1147-AIR-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Brothers Materials, Ltd. ("Respondent") under the authority of TEX. WATER CODE chs. 5 and 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent presented this Agreed Order to the Commission.

Respondent 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, Respondent 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 Respondent.

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

FINDINGS OF FACT

1. Respondent owns and operates an asphalt plant located six miles west of Loop 20 on Highway 359 in Laredo, Webb County, Texas ("Site A"); and a rock crusher located on El Venado Ranch, 13 miles north of the Highway 359 and Farm-to-Market Road 2050 intersection, two miles east on San Pablo Road and 0.5 miles west to the main gate at El Venado Ranch in Webb County, Texas ("Site B") (collectively referred to as the "Sites"). The Sites consist of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. During a record review of Site A conducted on May 21, 2010, a TCEQ Central Office staff documented that Respondent failed to conduct the required stack sampling test, failed to conduct a pretest meeting concerning the stack sampling test, and failed to submit the stack sampling test results to the TCEQ.

3. During a record review of Site A conducted on July 8, 2010, a TCEQ Central Office staff documented that Respondent failed to pay outstanding air emissions, inspection, and late fees for TCEQ Financial Account Nos. 21006623 and 21505942 for fiscal year 2010.
4. During an investigation conducted at Site B on May 20, 2010, a Laredo Regional Office investigator documented that Respondent:
 - a. Failed to conduct performance testing no later than 180 days after initial start-up;
 - b. Failed to install permanently mounted spray bars at the inlet and outlet of all crushers, at all shaker screens, and at all material transfer points for use, as necessary, to maintain compliance with all commission regulations and failed to prevent visible emissions from exceeding 10% opacity. Specifically, visible emissions were observed emanating from the primary conveyer drop points and the primary shaker screen at an average of 11.45% opacity over a 6-minute period using EPA Test Method 9; and
 - c. Failed to comply with the Standard Permit conditions limiting the operation of a rock crusher to no more than 180 non-consecutive days. Specifically, Respondent operated a rock crusher located at Site B for a total of 186 days.
5. Respondent received notice of the violation alleged in Findings of Fact No. 2 on or about July 7, 2010. Respondent received notice of the violations alleged in Findings of Fact Nos. 3 and 4 on or about July 19, 2010.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 5, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to conduct the required stack sampling test, failed to conduct a pretest meeting concerning the stack sampling test, and failed to submit the stack sampling test results to the TCEQ, in violation of 30 TEX. ADMIN. CODE §§ 101.20(1), 106.147(a)¹, 40 C.F.R. § 60.8, TEX. HEALTH & SAFETY CODE § 382.085(b), and Agreed Order Docket No. 2008-0188-AIR-E, Ordering Provisions Nos. 2.c., 2.g., and 2.h.
3. As evidenced by Finding of Fact No. 3, Respondent failed to pay outstanding air emissions, inspection, and late fees for TCEQ Financial Account Nos. 21006623 and 21505942 for fiscal year 2010, in violation of 30 TEX. ADMIN. CODE §§ 101.24 and 101.27, TEX. HEALTH & SAFETY CODE § 382.085(b), and TEX. WATER CODE § 5.702.
4. As evidenced by Finding of Fact No. 4.a., Respondent failed to conduct performance testing no later than 180 days after the initial start-up, in violation of 30 TEX. ADMIN.

¹ Pursuant to 30 TEX. ADMIN. CODE § 106.13, facilities previously authorized by the standard exemptions and exemptions from permitting under repealed portions 30 TEX. ADMIN. CODE ch. 106 continue to be authorized unless modifications or changes to those facilities has caused them to no longer meet the conditions of the former standard exemption or exemption from permitting and the general requirements of this subchapter.

CODE §§ 101.20(1) and 116.615(6), TEX. HEALTH & SAFETY CODE § 382.085(b), 40 C.F.R. § 60.8, and Air quality Standard Permit for Temporary Rock and Concrete Crushers, Condition 1(O).

5. As evidenced by Finding of Fact No. 4.b., Respondent failed to install permanently mounted spray bars at the inlet and outlet of all crushers, at all shaker screens, and at all material transfer points for use, as necessary, to maintain compliance with all commission regulations; and failed to prevent visible emissions from exceeding 10% opacity, in violation of 30 TEX. ADMIN. CODE § 116.615(9) and (10), TEX. HEALTH & SAFETY CODE § 382.085(b), and Air Quality Standard Permit for Temporary Rock and Concrete Crushers, Conditions 1(G) and 1(H).
6. As evidenced by Finding of Fact No. 4.c., Respondent failed to comply with the standard permit conditions limiting the operation of a rock crusher to no more than 180 non-consecutive days, in violation of 30 TEX. ADMIN. CODE §§ 116.115(b) and 116.615(2), TEX. HEALTH & SAFETY CODE § 382.085(b), and Air Quality Standard Permit for Temporary Rock and Concrete Crushers, Condition (3)(E).
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent 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.
8. An administrative penalty in the amount of twelve thousand six hundred twenty-five dollars (\$12,625.00) 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. Respondent paid three hundred seventy-five dollars (\$375.00) of the administrative penalty. The remaining amount of twelve thousand two hundred fifty dollars (\$12,250.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of three hundred fifty dollars (\$350.00) 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 Respondent 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, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 8, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the matters set forth by this Agreed Order in this action. The Commission shall not be constrained in any manner from considering or requiring corrective actions 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 Materials, Ltd., Docket No. 2010-1147-AIR-E” to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier’s Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

2. Respondent shall undertake the following technical requirements:

a. Within 30 days after the effective date of this Agreed Order, Respondent shall:

- i. Conduct performance testing at Sites A and B in accordance with 40 C.F.R. § 60.8 (Conclusions of Law Nos. 2 and 4);
- ii. Submit payment for all outstanding fees, including any associated penalties and interest and with the notation, “Brothers Materials, Ltd., TCEQ Financial Administration Account Nos. 21006623 and 21505942” (Conclusion of Law No. 3) to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier’s Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

- iii. Install permanent mounted spray bar emissions control equipment at the inlet and outlet of all crushers, at all shaker screens, at primary conveyer drop points and the primary shaker screen, and at all material transfer points at Site B, for use as necessary to maintain compliance with all commission regulations (Conclusion of Law No. 5);
- iv. Implement operational procedures at Site B designed to ensure opacity of emissions are not exceeded, in accordance with Air Quality Standard Permit for Temporary Rock and Concrete Crushers, Condition (1)(G) (Conclusion of Law No. 5); and
- v. Implement measures at Site B to ensure that the rock crusher complies with the operational limitations of Air Quality Standard Permit for Temporary Rock and Concrete Crushers, Condition (3)(E) (Conclusion of Law No. 6).

b. Within 60 days after the performance testing required by Ordering Provision No. 2.a.i. is completed, Respondent shall submit the testing results for the Sites to the TCEQ Laredo Regional Office to the addresses listed in Ordering Provision No. 2.c.

- c. Within 90 days after the effective date of this Agreed Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.a.v. The certification shall be notarized by a State of Texas Notary Public and shall 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."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

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

3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
5. If Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. The Executive Director may, 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
8. 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.
9. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
10. Pursuant to 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 this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

7/11/2011

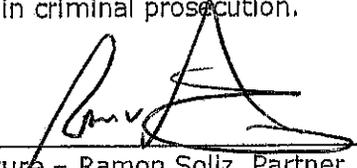
Date

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 Brothers Materials, Ltd., 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature - Ramon Soliz, Partner
Brothers Materials, Ltd.

05-17-11

Date