

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-0220-EAQ-E TCEQ ID: RN105116677 CASE NO.: 32661
RESPONDENT NAME: MILO DRIVE, INC.

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

CASE TYPE:		
<input 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 checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Approximately 36.41 acres located at the northeast corner of Kyle Seale Parkway and Arroyo Hondo, San Antonio, Bexar County

TYPE OF OPERATION: Residential construction

SMALL BUSINESS: Yes No

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

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

COMMENTS RECEIVED: The *Texas Register* comment period expired on January 28, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
TCEQ Enforcement Coordinator: Mr. Tom Jecha, Air Enforcement Section, MC 128, (512) 239-2576
TCEQ Regional Contact: Mr. Thomas Haberle, San Antonio Regional Office, MC R-13, (210) 403-4050
Respondent: Mr. Juan Ramon Zaragosa, President, Milo Drive, Inc., 834 Union Pacific Blvd., Ste. C, Laredo, Texas 78045
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: November 30, 2006</p> <p>Date of NOE Relating to this Case: January 31, 2007</p> <p>Background Facts: The EDPRP was filed on August 31, 2007. It was sent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on September 12, 2007, as evidenced by the signature on the card. The Respondent failed to respond to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>EAQ: Failed to submit an Edwards Aquifer Protection Plan for Commission approval prior to conducting regulated activities in the Edwards Aquifer Recharge Zone [30 TEX. ADMIN. CODE § 213.4(a)(1)].</p>	<p>Total Assessed: \$6,000</p> <p>Total Deferred: \$0</p> <p>Total Due to General Revenue: \$6,000</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this order</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Respondent submitted an Edwards Aquifer Protection Plan to the Commission, which was approved on January 30, 2007.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

TCEQ

DATES	Assigned	5-Feb-2007	Screening	14-Feb-2007	EPA Due	
	PCW	30-Aug-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Milo Drive, Inc.
Reg. Ent. Ref. No.	RN105116677
Facility/Site Region	13-San Antonio
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	32661	No. of Violations	1
Docket No.	2007-0220-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Enf. Coordinator	Thomas Jecha
Multi-Media		EC's Team	EnforcementTeam 3
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 0% Enhancement *Subtotals 2, 3, & 7*

Notes: No enhancement is recommended because no NOVs or Enforcement Orders were issued to the Respondent within the past five years.

Culpability No 0% Enhancement *Subtotal 4*

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction *Subtotal 5*

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

Notes: No good faith reduction in default situations.

Total EB Amounts \$12 **Approx. Cost of Compliance** \$10,000 0% Enhancement* *Subtotal 6*
*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: Deferral not offered for non-expedited settlement

PAYABLE PENALTY

Screening Date 14-Feb-2007

Docket No. 2007-0220-EAQ-E

PCW

Respondent Milo Drive, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32661

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105116677

Media [Statute] Edwards Aquifer

Enf. Coordinator Thomas Jecha

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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

No enhancement is recommended because no NOVs or Enforcement Orders were issued to the Respondent within the past five years.

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

Screening Date 14-Feb-2007

Docket No. 2007-0220-EAQ-E

PCW

Respondent Milo Drive, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32661

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105116677

Media [Statute] Edwards Aquifer

Enf. Coordinator Thomas Jecha

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.4(a)(1)

Violation Description Failed to submit an Edwards Aquifer Protection Plan for Commission approval prior to conducting regulated activities on the Edwards Aquifer Recharge Zone, as documented during a site assessment conducted on January 24, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential			x	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment could be exposed to insignificant amounts of pollutants as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 6 Number of violation days 6

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$6,000

Six single events are recommended from the January 24, 2007 site assessment until approval of the WPAP on January 30, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$12

Violation Final Penalty Total \$6,000

This violation Final Assessed Penalty (adjusted for limits) \$6,000

Economic Benefit Worksheet

Respondent Milo Drive, Inc.
 Case ID No. 32661
 Reg. Ent. Reference No. RN105116677
 Media Edwards Aquifer
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$10,000	24-Jan-2007	30-Jan-2007	0.0	\$1	\$11	\$12
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

The delayed costs include the amount to prepare, submit, and receive approval of an Edwards Aquifer Protection Plan, including all associated fees, calculated from the date of the investigation to the date of compliance.

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

\$10,000

TOTAL

\$12

Compliance History

Customer/Respondent/Owner-Operator: CN603125287 MILO DRIVE INC Classification: AVERAGE Rating: 3.01
Regulated Entity: RN105116677 VISTAS AT SONOMA Classification: AVERAGE BY Site Rating: 3.01
DEFAULT
ID Number(s): EDWARDS AQUIFER REGISTRATION 13-06113001
Location: NE CORNER OF KYLE SEALE PKWY AND ARROYO Rating Date: 9/1/2006 Repeat Violator: NO
HONDO, BEXAR COUNTY
TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: February 14, 2007
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: February 14, 2002 to February 14, 2007
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Brent Hurta Phone: 512-239-6589

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? Yes
3. If Yes, who is the current owner? MILO DRIVE INC
4. If Yes, who was/were the prior owner(s)?
LAREDO CFG DEVELOPMENT
CEDAR CREEK JOINT VENTURE
5. When did the change(s) in ownership occur?
03/16/2005
10/06/2004

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.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
1 11/30/2006 (532892)
 - 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
MILO DRIVE, INC.;
RN105116677**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2007-0220-EAQ-E

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

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

FINDINGS OF FACT

1. Milo Drive owns approximately 36.41 acres located at the northeast corner of Kyle Seale Parkway and Arroyo Hondo, San Antonio, Bexar County, Texas (the "Site").
2. The Site is regulated under the Edwards Aquifer rules found in 30 TEX. ADMIN. CODE ch. 213 and is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. During an investigation conducted on November 30, 2006, a TCEQ Austin Regional Office investigator documented that Milo Drive failed to submit an Edwards Aquifer Protection Plan ("EAPP") for Commission approval prior to conducting regulated activities in the Edwards Aquifer Recharge Zone.
4. Milo Drive received notice of the violation on or about February 5, 2007.
5. The Executive Director recognizes that Milo Drive submitted an EAPP to the Commission, which was approved by the Executive Director on January 30, 2007.
6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Milo Drive, Inc." (the "EDPRP") in the TCEQ Chief Clerk's office on August 30, 2007.

7. By letter dated August 31, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Milo Drive with notice of the EDPRP. According to the return receipt "green card," Milo Drive received notice of the EDPRP on September 12, 2007, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Milo Drive received notice of the EDPRP, provided by the Executive Director. Milo Drive failed to file an answer to the EDPRP.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Milo Drive is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Milo Drive failed to submit an EAPP for Commission approval prior to conducting regulated activities in the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1).
3. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Milo Drive with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 8, Milo Drive failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Milo Drive and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Milo Drive for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of six thousand dollars (\$6,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Milo Drive is assessed an administrative penalty in the amount of six thousand dollars (\$6,000.00) for violations of the Texas Water Code and the rules of the TCEQ. The payment of this administrative penalty and Milo Drive's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Milo Drive, Inc.; Docket No. 2007-0220-EAQ-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. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon Milo Drive.
4. If Milo Drive fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Milo Drive's failure to comply is not a violation of this Order. Milo Drive shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Milo Drive shall notify the Executive Director within seven days after Milo Drive 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 Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Milo Drive shall be made in writing to the Executive Director. Extensions are not effective until Milo Drive 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 Milo Drive if the Executive Director determines that Milo Drive has not complied with one or more of the terms or conditions in this Order.
7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF LENA ROBERTS

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Milo Drive, Inc.” (the “EDPRP”) was filed with the Office of the Chief Clerk on August 31, 2007.

The EDPRP was mailed to the registered agent for Milo Drive at his last known address on August 31, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Milo Drive received notice of the EDPRP on September 12, 2007, as evidenced by the signature on the card.

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



Lena Roberts, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 6th day of December, A.D., 2007.



Notary Signature

