# EXECUTIVE SUMMARY - ENFORCEMENT MATTER



**DOCKET NO.:** 2008-1745-EAQ-E **TCEQ ID:** RN105594253 **CASE NO.:** 36895

**RESPONDENT NAME:** MPII, Inc. dba Mission Park Dominion Funeral Chapel

| ORDER TYPE: | | |
|---|---|---|
| X 1660 AGREED ORDER | __FINDINGS AGREED ORDER | __FINDINGS ORDER FOLLOWING SOAH HEARING |
| __FINDINGS DEFAULT ORDER | __SHUTDOWN ORDER | __IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| __AMENDED ORDER | __EMERGENCY ORDER | |
| CASE TYPE: | | |
| __AIR | __MULTI-MEDIA (check all that apply) | __INDUSTRIAL AND HAZARDOUS WASTE |
| __PUBLIC WATER SUPPLY | __PETROLEUM STORAGE TANKS | __OCCUPATIONAL CERTIFICATION |
| __WATER QUALITY | __SEWAGE SLUDGE | __UNDERGROUND INJECTION CONTROL |
| __MUNICIPAL SOLID WASTE | __RADIOACTIVE WASTE | X EDWARDS AQUIFER |

**SITE WHERE VIOLATION(S) OCCURRED:** Mission Park Dominion Funeral Chapel, located at Interstate Highway 10 West Exit to Camp Bullis Road, on the frontage road, Bexar County

**TYPE OF OPERATION:** Cemetery

**SMALL BUSINESS:** X **Yes** ___ **No**

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

**INTERESTED PARTIES:** No one other than the ED and the Respondent has 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/SEP Coordinator:** None

**TCEQ Enforcement Coordinator:** Ms. Lauren Smitherman, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-5223; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387

**Respondent:** Mr. Robert D. Tips, Chairman & CEO, MPII, Inc., 20900 Interstate Highway 10 West, San Antonio, Texas 78257

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

## VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|---|---|---|
| **Type of Investigation:**<br>__ Complaint<br>_X_ Routine<br>__ Enforcement Follow-up<br>__ Records Review<br><br>**Date(s) of Complaints Relating to this Case:** None<br><br>**Date of Investigation Relating to this Case:** September 24, 2008<br><br>**Date of NOV/NOE Relating to this Case:** October 23, 2008 (NOE)<br><br>**Background Facts:** This was a routine investigation.<br><br>**WATER**<br><br>Failure to obtain approval of an Edwards Aquifer Contributing Zone Plan ("CZP") prior to beginning construction of a regulated activity over the Edwards Aquifer Contributing Zone. Specifically, the investigator observed the construction of a parking lot located on the southern portion of the Site and a pile of stone that had been compacted and graded on the northern portion of the Site, which corresponded with the location of the proposed funeral chapel. The total area disturbed was approximately 1.53 acres [30 TEX. ADMIN. CODE § 213.23(a)(1)]. | **Total Assessed:** $750<br><br>**Total Deferred:** $150<br>_X_ Expedited Settlement<br><br>__Financial Inability to Pay<br><br>**SEP Conditional Offset:** $0<br><br>**Total Paid to General Revenue:** $600<br><br>**Site Compliance History Classification**<br>__ **High** _X_ **Average** __ **Poor**<br><br>**Person Compliance History Classification**<br>__ **High** _X_ **Average** __ **Poor**<br><br>**Major Source:** __ Yes _X_ No<br><br>**Applicable Penalty Policy:** September 2002 | **Corrective Actions Taken:**<br><br>The Executive Director recognizes that the Respondent received approval of a CZP on October 17, 2008. |

Additional ID No(s).: 13-08072501

# Penalty Calculation Worksheet (PCW)

*Policy Revision 2 (September 2002)* *PCW Revision October 30, 2008*

TCEQ

| DATES | | | | | |
|---|---|---|---|---|---|
| Assigned | 27-Oct-2008 | | | | |
| PCW | 5-Dec-2008 | Screening | 5-Dec-2008 | EPA Due | |

**RESPONDENT/FACILITY INFORMATION**

| | | | |
|---|---|---|---|
| Respondent | MPII, Inc. dba Mission Park Dominion Funeral Chapel | | |
| Reg. Ent. Ref. No. | RN105594253 | | |
| Facility/Site Region | 13-San Antonio | Major/Minor Source | Minor |

**CASE INFORMATION**

| | | | |
|---|---|---|---|
| Enf./Case ID No. | 36895 | No. of Violations | 1 |
| Docket No. | 2008-1745-EAQ-E | Order Type | 1660 |
| Media Program(s) | Edwards Aquifer | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Lauren Smitherman |
| | | EC's Team | Enforcement Team 1 |

Admin. Penalty $ Limit Minimum $0 Maximum $10,000

## Penalty Calculation Section

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

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

| | | | |
|---|---|---|---|
| Compliance History | 0.0% Enhancement | *Subtotals 2, 3, & 7* | $0 |

Notes: No enhancement due to Average Performer Classification.

| | | | |
|---|---|---|---|
| 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* | $250 |
| Economic Benefit | 0.0% Enhancement* *Subtotal 6* | $0 |

Total EB Amounts $36
Approx. Cost of Compliance $10,500
**Capped at the Total EB $ Amount*

| | | |
|---|---|---|
| **SUM OF SUBTOTALS 1-7** | *Final Subtotal* | $750 |
| **OTHER FACTORS AS JUSTICE MAY REQUIRE** 0.0% | *Adjustment* | $0 |

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

| | |
|---|---|
| *Final Penalty Amount* | $750 |
| **STATUTORY LIMIT ADJUSTMENT** *Final Assessed Penalty* | $750 |
| **DEFERRAL** 20.0% Reduction *Adjustment* | -$150 |

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

Notes: Deferral offered for expedited settlement.

| | |
|---|---|
| **PAYABLE PENALTY** | $600 |

**Screening Date** 5-Dec-2008 **Docket No.** 2008-1745-EAQ-E **PCW**

**Respondent** MPII, Inc. dba Mission Park Dominion Funeral Chapel *Policy Revision 2 (September 2002)*

**Case ID No.** 36895 *PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN105594253

**Media [Statute]** Edwards Aquifer

**Enf. Coordinator** Lauren Smitherman

# 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% |

| | | 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)*** 0%

## >> 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**

No enhancement due to Average Performer Classification.

***Total Adjustment Percentage (Subtotals 2, 3, & 7)*** 0%

**Screening Date** 5-Dec-2008 **Docket No.** 2008-1745-EAQ-E **PCW**

**Respondent** MPII, Inc. dba Mission Park Dominion Funeral Chapel *Policy Revision 2 (September 2002)*

**Case ID No.** 36895 *PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN105594253

**Media [Statute]** Edwards Aquifer

**Enf. Coordinator** Lauren Smitherman

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 213.23(a)(1)

**Violation Description** Failed to obtain approval of an Edwards Aquifer Contributing Zone Plan ("CZP") prior to beginning construction of a regulated activity over the Edwards Aquifer Contributing Zone, as documented during an investigation conducted on September 24, 2008. Specifically, the investigator observed the construction of a parking lot located on the southern portion of the Site and a pile of stone that had been compacted and graded on the northern portion of the Site, which corresponded with the location of the proposed funeral chapel. The total area disturbed was approximately 1.53 acres.

**Base Penalty** $10,000

## >> Environmental, Property and Human Health Matrix

OR

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | | |
| Potential | | | |

**Percent** 0%

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | x | | |

**Percent** 10%

Matrix Notes: 100% of the rule requirement was not met.

**Adjustment** $9,000

$1,000

## Violation Events

Number of Violation Events 1 — 23 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| weekly | |
| monthly | x |
| quarterly | |
| semiannual | |
| annual | |
| single event | |

**Violation Base Penalty** $1,000

One monthly event is recommended based on the investigation date (September 24, 2008) to the date of compliance (October 17, 2008).

## Good Faith Efforts to Comply

25.0% Reduction $250

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

Notes: The Respondent came into compliance on October 17, 2008.

**Violation Subtotal** $750

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $36

## Statutory Limit Test

**Violation Final Penalty Total** $750

**This violation Final Assessed Penalty (adjusted for limits)** $750

# Economic Benefit Worksheet

**Respondent** MPII, Inc. dba Mission Park Dominion Funeral Chapel
**Case ID No.** 36895
**Reg. Ent. Reference No.** RN105594253
**Media** Edwards Aquifer
**Violation No.** 1

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description (No commas or $) | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|---|---|---|---|---|---|---|---|
| **Delayed Costs** | | | | | | | |
| Equipment | | | | 0.00 | $0 | $0 | $0 |
| Buildings | | | | 0.00 | $0 | $0 | $0 |
| Other (as needed) | | | | 0.00 | $0 | $0 | $0 |
| Engineering/construction | $2,500 | 24-Sep-2008 | 17-Oct-2008 | 0.06 | $1 | $11 | $11 |
| 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 | $8,000 | 24-Sep-2008 | 17-Oct-2008 | 0.06 | $25 | n/a | $25 |
| Other (as needed) | | | | 0.00 | $0 | n/a | $0 |

Notes for DELAYED costs: Cost reflects the amount to prepare and submit a CZP. Date required is the investigation date. Final date is the 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: $10,500

TOTAL: $36

# Compliance History Report

| | | | | |
|---|---|---|---|---|
| Customer/Respondent/Owner-Operator: | CN601400476 | MPII, Inc. | Classification: AVERAGE | Rating: 3.01 |
| Regulated Entity: | RN105594253 | MISSION PARK DOMINION FUNERAL CHAPEL | Classification: AVERAGE BY DEFAULT | Site Rating: 3.01 |
| ID Number(s): | EDWARDS AQUIFER | REGISTRATION | | 13-08072501 |
| Location: | IH10 W EXIT TO CAMP BULLIS RD ON FRONTAGE RD, BEXAR CO, TX | | | |
| TCEQ Region: | REGION 13 - SAN ANTONIO | | | |
| Date Compliance History Prepared: | December 07, 2008 | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | |
| Compliance Period: | December 07, 2003 to December 07, 2008 | | | |

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

Name: Lauren Smitherman Phone: 512-239-5223

## 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
6. Rating Date: 9/1/2008 Repeat Violator: NO

### Components (Multimedia) for the Site :

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

N/A

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

N/A

C. Chronic excessive emissions events.

N/A

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

1 10/23/2008 (688588)

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

N/A

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** | § | **BEFORE THE** |
| **ENFORCEMENT ACTION** | § | |
| **CONCERNING** | § | **TEXAS COMMISSION ON** |
| **MPII, INC. DBA MISSION PARK** | § | |
| **DOMINION FUNERAL CHAPEL** | § | |
| **RN105594253** | § | **ENVIRONMENTAL QUALITY** |

**AGREED ORDER**
**DOCKET NO. 2008-1745-EAQ-E**

## I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding MPII, Inc. dba Mission Park Dominion Funeral Chapel ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a cemetery located at Interstate Highway 10 West Exit to Camp Bullis Road on the frontage road in Bexar County, Texas (the "Site").

2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.

3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about October 28, 2008.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Seven Hundred Fifty Dollars ($750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent

has paid Six Hundred Dollars ($600) of the administrative penalty and One Hundred Fifty Dollars ($150) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that the Respondent received approval of an Edwards Aquifer Contributing Zone Plan ("CZP") on October 17, 2008.

10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have failed to obtain approval of a CZP prior to beginning construction of a regulated activity over the Edwards Aquifer Contributing Zone, in violation of 30 TEX. ADMIN. CODE § 213.23(a)(1), as documented during an investigation conducted on September 24, 2008. Specifically, the investigator observed the construction of a parking lot located on the southern portion of the Site and a pile of stone that had been compacted and graded on the northern portion of the Site, which corresponded with the location of the proposed funeral chapel. The total area disturbed was approximately 1.53 acres.

## III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

## IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: MPII, Inc. dba Mission Park Dominion Funeral Chapel, Docket No. 2008-1745-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. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.

3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

# SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 3/9/2009
For the Executive Director Date

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

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

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

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

_____ Jan 16, 2009
Signature Date

Robert D. Tips Chairman & CEO
Name (Printed or typed) Title
Authorized Representative of
MPII, Inc. dba Mission Park Dominion Funeral Chapel

**Instructions**: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.