

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

January 5, 2009

Les Trobman, General Counsel
Texas Commission on Environmental Quality
PO Box 13087
Austin Texas 78711-3087

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 JAN -5 PM 4: 26
CHIEF CLERKS OFFICE

Re: SOAH Docket No. 582-08-2652; TCEQ Docket No.2007-1935-PWS-E; In Re:
Executive Director of the Texas Commission Environmental Quality v. MPR
Investments, L.L.C., dba Oakridge Square Mobile Home Park, Respondent

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the original documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than January 26, 2009. Any replies to exceptions or briefs must be filed in the same manner no later than February 5, 2009.

This matter has been designated **TCEQ Docket No. 2007-1935-PWS-E; SOAH Docket No. 582-08-2652**. All documents to be filed must clearly reference these assigned docket numbers. Copies of all exceptions, briefs and replies must be served promptly on the State Office of Administrative Hearings and all parties. Certification of service to the above parties and an **original and eleven copies** shall be furnished to the Chief Clerk of the Commission. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in black ink that reads "William G. Newchurch".

William G. Newchurch
Administrative Law Judge

WGN/sb
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: MPR INVESTMENTS, LLC / OAKRIDGE SQUARE MOBILE HOME PARK
SOAH DOCKET NUMBER: 582-08-2652
REFERRING AGENCY CASE: 2007-1935-PWS-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ WILLIAM G. NEWCHURCH**

REPRESENTATIVE / ADDRESS

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MOBILE HOME PARK

xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-08-2652
TCEQ DOCKET NO. 2007-1935-PWS-E

2009 JAN -5 PM 4: 26

EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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BEFORE THE STATE OFFICE
CHIEF CLERKS OFFICE

OF

V.

MPR INVESTMENTS, L.L.C., dba
OAKRIDGE SQUARE MOBILE
HOME PARK, Respondent

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

The Executive Director (ED) Of the Texas Commission on Environmental Quality (TCEQ or Commission) alleges that MPR Investments, LLC, dba Oakridge Square Mobile Home Park (MPR) has violated Tex. Health & Safety Code § 341.0315(c), numerous public-water-supply-program rules, and two provisions of an agreed order issued in a prior case. For these violations, the ED recommends that the Commission enter an order assessing an administrative penalty of \$13,420. He also recommends that the Commission order MPR to undertake certain corrective actions to bring its operations into compliance.

MPR concedes that it committed ten of the alleged violations, but argues that it did not commit two of them. The penalties proposed for the two disputed violations would total \$11,132. MPR does not quarrel with the ED's method of calculating any of the penalties.

The Administrative Law Judge (ALJ) finds that MPR committed each of the alleged violations and recommends that the Commission assess the penalties and order the corrective actions proposed by the ED.

II. OVERVIEW AND JURISDICTION

MPR owns and operates a mobile home park with a public water supply located at 248 E. Bethesda Road in Burleson, Johnson County, Texas (Facility). The Facility has 62 service connections and serves approximately 186 people who live in the mobile home park. Commission rule 30 TAC § 290.38¹ includes the following definitions:

(13) Community water system -- A public water system which has a potential to serve at least 15 residential service connections on a year-round basis or serves at least 25 residents on a year-round basis.

(47) Public water system -- A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. . . .

Thus, MPR's Facility is both a public water system and a community water system. MPR is subject to the Commission's enforcement authority pursuant to Tex. Health & Safety Code § 341.049. MPR does not question the jurisdiction of either the Commission or the State Office of Administrative Hearings (SOAH).

III. UNDISPUTED VIOLATIONS

During an inspection conducted on October 11, 2007, Erin Tanski Gorman, a TCEQ Dallas/Fort Worth (DFW) Regional Office investigator concluded that MPR had committed 12 violations.² At the hearing on the merits, MPR conceded that it had committed ten of those violations and that the ED had properly calculated administrative penalties for them. Additionally, the ED stipulated that MPR has taken all necessary corrective action concerning those ten uncontested violations. Below is a list of those ten undisputed violations:

¹ All citations to the rules allegedly violated are to the versions that were in effect on the date of the inspection. See ED Exs. 1-5. MPR did not dispute that these rule are applicable.

² ED Ex. 8.

- 30 Tex. Admin. Code § 290.121(a) and Agreed Order Docket No. 2005-2004-PWS-E, Ordering Provision No. 2.b.iv., by failing to keep on file and make available for Commission review an up-to-date chemical and microbiological monitoring plan.
- 30 Tex. Admin. Code § 290.46(n)(3) and Agreed Order Docket No. 2005-2004-PWS-E, Ordering Provision No. 2.b.ii., by failing to keep on file and make available for Commission review a copy of well completion data for Well No. 1.
- 30 Tex. Admin. Code § 290.46(m)(1)(B) and Agreed Order Docket No. 2005-2004-PWS-E, Ordering Provision No. 2.a.i., by failing to inspect the water system's pressure tank annually.
- 30 Tex. Admin. Code § 290.46(m)(1)(A) and Agreed Order Docket No. 2005-2004-PWS-E, Ordering Provision No. 2.a.i., by failing to inspect the water system's ground storage tank annually.
- 30 Tex. Admin. Code § 290.41(c)(3)(K) and Agreed Order Docket No. 2005-2004-PWS-E, Ordering Provision No. 2.a.iv., by failing to provide a casing vent for the water system's well.
- 30 Tex. Admin. Code § 290.41(c)(3)(J) by failing to maintain the concrete sealing block surrounding the water system well. Specifically, at the time of the investigation, it was documented that there was an opening between the ground and the underside of the sealing block surrounding Well No. 1.
- 30 Tex. Admin. Code § 290.45(b)(1)(F)(iv) and Tex. Health & Safety Code § 341.0315(c) by failing to provide a pressure tank capacity of 20 gallons per connection. Specifically, at the time of the investigation, the system was providing a pressure tank capacity of 1,000 gallons; however, the water system is required to provide a pressure tank capacity of 1,240 gallons for the system's 62 connections, which is a 19 percent deficiency.
- 30 Tex. Admin. Code § 290.46(f)(3)(E)(i) by failing to keep on file and make available for Commission review copies of monthly operating reports for at least ten years. Specifically, at the time of the investigation, it was documented that only the October 2007 operating record was available for review.
- 30 Tex. Admin. Code § 290.46(m) by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment. Specifically, at the time of the investigation, it was noted that the paint was chipping on the ground storage tank.
- 30 Tex. Admin. Code § 290.46(s)(1) by failing to calibrate well meters at least once every three years. Specifically, it was documented that the water system well meter was not calibrated in the three years preceding the October 11, 2007 investigation.

Each violation of the Commission's rules alleged in this case was also a violation of Tex. Health & Safety Code § 341.0315(c), which provides that, "Each public drinking water supply system shall provide an adequate and safe drinking water supply . . . that meet[s] the requirements of . . . [the] commission rules."

Based on the above stipulations, the ALJ concludes that MPR violated 30 TAC §§ 290.41(c)(3)(J) and (c)(3)(K), 290.45(b)(1)(F)(iv), 290.46(f)(3)(E)(i), 290.46(m), 290.46(m)(1)(A) and (m)(1)(B), 290.46(n)(3), 290.46(s)(1), and 290.121(a); Ordering Provisions Nos. 2.a.i., 2.a.iv., 2.b.ii., and 2.b.iv. in the Agreed Order in Docket No. 2005-2004-PWS-E; and Tex. Health & Safety Code § 341.0315(c). He also concludes that MPR should pay \$2,289 in penalties for those violations, as calculated by the ED.

IV. DISPUTED VIOLATIONS

Two other violations that Ms. Gorman allegedly found during the October 11, 2007, inspection are still disputed. They concern 30 TAC § 290.45(b)(1)(F)(i) and (iii), which provide:

(b) Community water systems.

(1) Groundwater supplies must meet the following requirements.

...

(F) Mobile home parks and apartment complexes which supply . . . fewer than 100 connections and utilize ground storage must meet the following requirements:

(i) a well capacity of 0.6 [gallons per minute (gpm)] per connection. Systems with 250 or more connections must have either two wells or an approved interconnection which is capable of supplying at least 0.35 gpm for each connection in the combined system;

...

(iii) at least two service pumps with a total capacity of 2.0 gpm per connection;
and

Elevated storage has a specifically defined applicable meaning. 30 TAC § 290.38 (18) provides:

Elevated storage capacity--That portion of water which can be stored at least 80 feet above the highest service connection in the pressure plane served by the storage tank.

Michael Reince is a partner in MPR. During the hearing, Mr. Reince conceded that MPR's storage tank, though elevated off the ground, was not 80 feet or more in the air. The ALJ concludes that MPR has no elevated storage capacity as defined by 30 TAC § 290.38(18); hence, he finds that MPR utilizes ground storage.

Moreover, on June 14, 2006, the Commission issued an Agreed Order in Docket No. 2005-2004-PWS-E. It contained Ordering Provisions Nos. 2.d.i and 2.d.ii, which specifically directed MPR to comply with the same well and service-pump capacity requirements of 30 TAC § 290.45(b)(1)(F)(i) and (iii). Thus, a violation of either of those rules would also be a violation of the corresponding Ordering Provision.

A. Well Capacity

At the time of the investigation, the inspector documented that MPR's well had a capacity of only 18 gpm. To provide 0.6 gpm per connection to 62 connections would have required a well with a capacity of 37.2 gpm. Thus, MPR's well only had 48 percent of the required capacity.

MPR contends that it had a second source of water that gave it more than a 0.6-gpm-per-connection capacity when combined with its well. Michael Reince, one of MPR's partners, testified that MPR entered into a contract in 2001 with Bethesda Water Supply Corporation (Bethesda) to supply MPR with additional water when and if needed. He contended that a 1-inch connection to Bethesda was in place that could be activated within 30 seconds by turning a valve, and that connection would supply MPR with up to 40 gpm. According to Mr. Reince, this additional 40-gpm capacity means that MPR has a 58-gpm supply available, more than the 37.2-gpm supply required by the Commission's rule.

The evidence does not show that MPR has any kind of arrangement with Bethesda to provide water for MPR to serve its connections. Mr. Reince offered the documents on which he based his claim that water was available to MPR from Bethesda.³ Mr. Reince conceded that the arrangement was not a formal contract with MPR, but the documents do not even mention MPR. Instead, they show that Mr. Reince has a personal membership in Bethesda, and his membership certificate states that the connection is for the sole use of the member to serve one dwelling or business. The agreement also states, "Extensions of pipe(s) to transfer utility service from one property to another, to share, resell, or submeter water to any other persons, dwellings, businesses, or property, etc., is prohibited."⁴ A utility providing retail water service to others for a fee is clearly sharing and reselling water to its customers. Based on this evidence, the ALJ cannot conclude that any water is available from Bethesda to allow MPR to serve its customers.

Mr. Reince also testified that MPR has a 21,000-gallon elevated storage tank that has capacity to deliver 200 gallons to up to 105 customers. He claims that this would provide sufficient capacity to all of its customers for up to one and one-half days should MPR's well not be available. While that might give MPR a short time to respond if its well was not functioning, the ALJ cannot agree that one and one-half day's worth of storage is the equivalent of the perennial 0.6-gpm-per-connection well capacity that the rule requires.

The ALJ concludes that MPR violated 30 TAC § 290.45(b)(1)(F)(i), Tex. Health & Safety Code § 341.0315(c), and Ordering Provision No. 2.d.i of the Agreed Order in Docket No. 2005-2004-PWS-E, as alleged by the ED.

B. Service Pump Capacity

MPR's service pump was also below the required capacity at the time of the investigation. The service pump capacity was 60 gpm. To serve its 62 connections at 2.0 gpm per connection,

³ Reince Ex. 3.

⁴ Reince Ex. 3, p. 2.

however, MPR's service pumps should have had a total capacity of at least 124 gpm. Once again, MPR only had 48 percent of the required capacity.

MPR concedes that its pumps alone did not provide the 2.0-gpm-per-connection pressure required by 30 TAC § 290.45(b)(1)(F)(iii), but it argues that its 21,000 gallons of storage provides additional pressure that met an alternative standard. Mr. Reince quoted from a letter that he received from Charles Marshall in the Commission's DFW regional office. That indicated that if a system provides elevated storage capacity of 200 gallons per connection, the required delivery rate from the two service pumps drops from 2.0 to 0.6 gpm per connection.⁵ MPR contends that the 60-gpm capacity of its pumps would meet that 0.6 gpm standard for its 62 connections.

In his letter, Mr. Marshall apparently was referring to 30 TAC § 290.45(b)(1)(C)(iii). It allows for that lower 0.6 standard if a groundwater supplied system serving 50 to 250 connections provides elevated storage.

As already indicated, MPR's storage tank is not 80 feet above the ground; hence it does not comply with the definition of "elevated storage capacity" set out in the applicable rule. Mr. Reince stated that he was not aware of the definition of "elevated storage capacity" when the tank was constructed. The ALJ concludes that on the day of inspection MPR did not have elevated storage capacity as defined by the applicable rule; hence, it was not covered by a 0.6-gpm-per-connection pump-capacity standard. Instead, it was subject to and failed to comply with the 2.0-gpm-per-connection requirement of 30 TAC § 290.45(b)(1)(F)(iii).

The ALJ concludes that MPR violated 30 TAC § 290.45(b)(1)(F)(iii), Tex. Health & Safety Code § 341.0315(c), and Ordering Provision No. 2.d.ii of the Agreed Order in Docket No. 2005-2004-PWS-E, as alleged by the ED.

⁵ Reince Ex. 2.

V. PENALTIES

The ED seeks a total of \$13,420 in penalties for the violations.⁶ TCEQ Enforcement Coordinator Yuliya Dunaway calculated and testified in support of the ED's proposed penalties. She used the Commission's September 2002 penalty policy (Penalty Policy)⁷ to calculate the penalties. Because MPR has less than 1,100 connections, the Penalty Policy treats MPR as a minor source, which pays smaller penalties than a major source.

Ms. Dunaway calculated, before certain adjustments, that the base penalties for all 12 violations should total \$10,850. Of that, \$1,850 is for the ten undisputed violations. For the well-capacity violation of 30 TAC § 290.45(b)(1)(F)(i), the base penalty is \$4,500; and for the service-pump-capacity violation of 30 TAC § 290.45(b)(1)(F)(iii), the base penalty is also \$4,500. The latter two penalties are the same because the ED:

- found no evidence of an actual harm;
- treated each as a major potential violation for which a \$250 base penalty per event would be due; and
- counted one event per month for each of the 18 months between the date of the Agreed Order concerning the same violations and the December 2, 2007, screening date for the current violations.

The \$10,850 total base penalties were adjusted upward by 20 percent due to MPR's compliance history, which included a prior agreed order. Another upward adjustment of three percent, rounded off to \$400, was made to account for the costs that MPR avoided by failing to comply with rules violated. MPR agreed that the penalties were appropriate to the ten undisputed violations.

With one exception, MPR offered no evidence or argument to suggest that the proposed penalties were improperly calculated or that MPR could not pay the penalties. Suggesting that the

⁶ ED Ex. 14.

penalties for the disputed violations might be too high, Mr. Reince did testify that MPR has never had an outage or even a customer complaint due the violations.

If there had been an outage, a higher penalty might have been appropriate under the Penalty Policy because the violation would have caused actual harm. But the ED does not propose an actual-harm penalty. Instead, he appropriately treated the pump- and well-capacity violations as presenting a risk of potential harm and proposed lower penalties than would have been appropriate for actual-harm violations. To calculate the penalties, Ms. Dunaway treated the potential harm as major because a lack of capacity could lead to water outages and compromise the safety and adequacy of the water supplied to customers.

The ALJ concludes that all of the penalties were correctly calculated in accordance with the applicable law as reflected in the Penalty Policy. The ALJ also concludes that the Commission should assess MPR a total of \$13,420 in administrative penalties for the violations at issue in this case.

VI. CORRECTIVE ACTIONS

In the EDPRP, the ED proposed several corrective actions, but during the hearing, he stipulated that all but three of those were no longer necessary. As to two of those that the ED still proposes, he clarified that he meant to recommend that MPR be required to either add elevated storage capacity (as defined by the applicable rule) or increase its service pump capacity to 2.0 gpm per connection, but not both. With those clarifications, the ED now asks the Commission to order only the following corrective actions:

Within 90 days after the effective date of the Commission Order, MPR shall:

1. Provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection, as required by 30 Tex. Admin. Code § 290.45; or

⁷ ED Ex. 13.

2. Provide a minimum of two service pumps with a total rated capacity of 2.0 gallons per minute per connection, as required by 30 Tex. Admin. Code § 290.45; and
3. Provide a well production capacity of 0.6 gpm per connection, as required by 30 Tex. Admin. Code § 290.45.

Mr. Reince generally testified that elevating the storage tank by 80 feet was not affordable, but he offered no specific evidence concerning the cost or MPR's ability to pay the cost. Moreover, as clarified by the ED, MPR could instead come into compliance by upgrading the service pumps to a higher capacity.

In any event, the proposed corrective actions would require no more than MPR comply with the rules that it is presently violating. Even if compliance is expensive for MPR, the ALJ sees no basis for ordering anything less. The ALJ recommends that the Commission order MPR to take the corrective actions proposed by the ED with one change, to specify that the elevated storage capacity, if MPR chooses that option, shall be as defined by the Commission's rules.

VI. SUMMARY

The ALJ recommends that the Commission adopt the attached proposed order, assess MPR a \$13,420 administrative penalty for the violations discussed above, and order MPR to take the corrective actions proposed by the ED.

SIGNED January 5, 2009.



WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHIEF CLERKS OFFICE

2009 JAN - 5 PM 4:27

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER

**Assessing Administrative Penalties and Requiring Corrective Action By
MPR Investments, LLC, dba Oakridge Square Mobile Home Park
SOAH DOCKET NO. 582-08-2652
TCEQ DOCKET NO. 2007-1935-PWS-E**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by MPR Investments, LLC, dba Oakridge Square Mobile Home Park (MPR or Respondent). A Proposal for Decision (PFD) was presented by William G. Newchurch, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

Jurisdiction

1. MPR owns and operates a mobile home park with a public water supply located at 248 E. Bethesda Road in Burleson, Johnson County, Texas (Facility).
2. The Facility has 62 service connections and serves at least 25 people per day for each day of the year and provides water for human consumption.

3. During an inspection conducted on October 11, 2007, Erin Tanski Gorman, a TCEQ Dallas/Fort Worth Regional Office Investigator, concluded that MPR had violated the following:
- a. 30 Tex. Admin. Code § 290.121(a) and Agreed Order Docket No. 2005-2004-PWS-E, Ordering Provision No. 2.b.iv., by failing to keep on file and make available for Commission review an up-to-date chemical and microbiological monitoring plan.
 - b. 30 Tex. Admin. Code § 290.46(n)(3) and Agreed Order Docket No. 2005-2004-PWS-E, Ordering Provision No. 2.b.ii., by failing to keep on file and make available for Commission review a copy of well completion data for Well No. 1.
 - c. 30 Tex. Admin. Code § 290.46(m)(1)(B) and Agreed Order Docket No. 2005-2004-PWS-E, Ordering Provision No. 2.a.i., by failing to inspect the water system's pressure tank annually.
 - d. 30 Tex. Admin. Code § 290.46(m)(1)(A) and Agreed Order Docket No. 2005-2004-PWS-E, Ordering Provision No. 2.a.i., by failing to inspect the water system's ground storage tank annually.
 - e. 30 TAC § 290.45(b)(1)(F)(i), Tex. Health & Safety Code § 341.0315(c) and Agreed Order Docket No. 2005-2004-PWS-E, Ordering Provision No. 2.d.i., by failing to provide a well capacity of 0.6 gallons per minute (gpm) per connection. Specifically, at the time of the investigation, it was documented that the well capacity was 18 gpm; however, the system is required to provide a well capacity of 37.2 gpm for 62 connections, which is a 52 percent deficiency.

- f. 30 Tex. Admin. Code § 290.45(b)(1)(F)(iii), Tex. Health & Safety Code § 341.0315(c) and Agreed Order Docket No. 2005-2004-PWS-E, Ordering Provision No. 2.d.ii., by failing to provide two or more service pumps having a total capacity of 2.0 gpm per connection. Specifically, at the time of the investigation, it was documented that the service pump capacity was 60 gpm; however, the system is required to provide a minimum service pump capacity of 124 gpm for 62 connections, which is a 52 percent deficiency.
- g. 30 Tex. Admin. Code § 290.41(c)(3)(K) and Agreed Order Docket No. 2005-2004-PWS-E, Ordering Provision No. 2.a.iv., by failing to provide a casing vent for the water system's well.
- h. 30 Tex. Admin. Code § 290.41(c)(3)(J) by failing to maintain the concrete sealing block surrounding the water system well. Specifically, at the time of the investigation, it was documented that there was an opening between the ground and the underside of the sealing block surrounding Well No. 1.
- i. 30 Tex. Admin. Code § 290.45(b)(1)(F)(iv) and Tex. Health & Safety Code § 341.0315(c) by failing to provide a pressure tank capacity of 20 gallons per connection. Specifically, at the time of the investigation, the system was providing a pressure tank capacity of 1,000 gallons; however, the water system is required to provide a pressure tank capacity of 1,240 gallons for the system's 62 connections, which is a 19 percent deficiency.
- j. 30 Tex. Admin. Code § 290.46(f)(3)(E)(i) by failing to keep on file and make available for Commission review copies of monthly operating reports for at least

ten years. Specifically, at the time of the investigation, it was documented that only the October 2007 operating record was available for review.

- k. 30 Tex. Admin. Code § 290.46(m) by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment. Specifically, at the time of the investigation, it was noted that the paint was chipping on the ground storage tank.
- l. 30 Tex. Admin. Code § 290.46(s)(1) by failing to calibrate well meters at least once every three years. Specifically, it was documented that the water system well meter was not calibrated in the three years preceding the October 11, 2007 investigation.
4. On or about November 24, 2007, MPR received from the Executive Director (ED) of the TCEQ a notice of the violations alleged above.
5. On February 27, 2008, the ED filed the EDPRP with the Commission's Chief Clerk recommending that the Commission enter an order assessing administrative penalties of \$13,420 against MPR for the alleged violations and requiring MPR to take certain corrective actions, including those set out below in this Order.
6. On February 27, 2008, the EDPRP was mailed by certified mail return receipt requested and by first class mail postage prepaid to MPR Investments, LLC, Attn: Mr. Michael P. Reince, Registered Agent, 8600 Iron Gate Court, Fort Worth, Texas 76179.
7. On March 6, 2008, the Respondent filed an answer to the EDPRP requesting a hearing. On April 17, 2008, the Chief Clerk referred this case to SOAH for hearing.

On May 2, 2008, the TCEQ Chief Clerk mailed notice of a preliminary hearing to Respondent that was scheduled for May 22, 2008. The notice of hearing:

- a. indicated the time, date, place, and nature of the hearing;
 - b. stated the legal authority and jurisdiction for the hearing;
 - c. indicated the statutes and rules the Executive Director alleged Respondent violated;
 - d. referred to the EDPRP, a copy of which was attached, which indicated the matters asserted by the Executive Director; and
 - e. included a copy of the Executive Director's penalty calculation worksheet, which showed how the penalty was calculated for the alleged violations.
8. On May 21, 2008, the ED filed an agreed motion to waive the preliminary hearing, admit exhibits that proved jurisdiction, set a case schedule on which the parties had agreed, and hold a hearing on the merits of the case on September 23, 2008. The motion was granted by written order, which was faxed to each party on May 22, 2008.
9. On August 14, 2008, the ED filed an agreed motion to continue the hearing on the merits from September 23 to November 4, 2008. The motion was granted by written order, which was faxed to each party on August 15, 2008.
10. On November 4, 2008, the ALJ convened the hearing on the merits as indicated in the previously issued order. The hearing was concluded and the record was closed on that same date.
11. The ED appeared at the hearing through his attorney of record, Barham A. Richard.
12. MPR appeared at the preliminary hearing and was represented by its partners, Carol and Michael Reince.

Undisputed Violations

13. MPR does not dispute that it violated 30 TAC §§ 290.41(c)(3)(J) and (c)(3)(K), 290.45(b)(1)(F)(iv), 290.46(f)(3)(E)(i), 290.46(m), 290.46(m)(1)(A) and (m)(1)(B), 290.46(n)(3), 290.46(s)(1), and 290.121(a); Agreed Order Docket No. 2005-2004-PWS-E, Ordering Provisions Nos. 2.a.i., 2.a.iv., 2.b.ii., and 2.b.iv.; and Tex. Health & Safety Code § 341.0315(c).

Disputed Violations

Well Capacity

14. At the time of the investigation, the inspector documented that MPR's well had a capacity of only 18 gpm.
15. To provide 0.6 gpm per connection to 62 connections would have required a well with a capacity of 37.2 gpm.

Service Pump Capacity

16. 16At the time of the investigation, MPR's service pumps had a combined capacity of 60 gpm.
17. To serve its 62 connections at 2.0 gpm per connection would have required service pumps with a combined capacity of 124 gpm.
18. MPR has 21,000 gallons of water storage capacity at its Facility, but that storage is not elevated 80 feet or more off of the ground.

Agreed Order

19. On June 14, 2006, the Commission issued an Agreed Order in Docket No. 2005-2004-PWS-E (Agreed Order). It contained Ordering Provisions Nos. 2.d.i and 2.d.ii, which

specifically directed MPR to comply with the well and service-pump capacity requirements of 30 TAC § 290.45(b)(1)(F)(i) and (iii).

Penalties

20. MPR has never had an outage or even a customer complaint due to the alleged violations.
21. In the EDPRP, the ED proposed a total of \$13,420 in penalties for the violations he alleged.
22. The Commission has adopted a Penalty Policy, effective September 1, 2002, setting forth its policy regarding the computation and assessment of administrative penalties.
23. The ED used the Commission's September 2002 penalty policy to calculate the penalties he proposed.
24. Because it has less than 1,100 connections, the Penalty Policy treats MPR as a minor source.
25. Before certain adjustments, base penalties under the Penalty Policy would total \$10,850 for the 12 violations alleged in this case.
 - a. The base penalties for the ten undisputed violations would be \$1,850.
 - b. For the disputed well-capacity violation of 30 TAC § 290.45(b)(1)(F)(i), the base penalty would be \$4,500.
 - c. For the disputed service-pump-capacity violation of 30 TAC § 290.45(b)(1)(F)(iii), the base penalty would be also \$4,500.
 - d. Neither of the two disputed violations caused actual harm.
 - e. Each of the two disputed violations presented a risk of major potential harm because a lack of well or pump capacity could have led to water outages that

would have compromised the safety and adequacy of the water supplied to MPR's customers.

f. Each of the two disputed violations continued for at least 18 months, from the date of the Agreed Order until December 2, 2007, when the ED screened this case for formal enforcement action.

26. Under the Penalty Policy, the \$10,850 total in base penalties would be adjusted upward by 20 percent due to MPR's compliance history, which included a prior agreed order.

27. Under the Penalty Policy, another upward adjustment of three percent, rounded off to \$400, would be made to account for the costs that MPR avoided by failing to comply with rules violated.

Corrective Actions

28. In the EDPRP, the ED proposed several corrective actions, including the three set out below in this Order.

II. CONCLUSIONS OF LAW

1. The Facility is both a public water system and a community water system, as defined in 30 Tex. Admin Code § 290.38.

2. Under Tex. Health & Safety Code § 341.049, the Commission may assess an administrative penalty against any person who violates Subchapter C of Chapter 341 of the Texas Health & Safety Code or of any rule or order adopted or issued thereunder.

3. Under Tex. Health & Safety Code § 341.049, the penalty may not be less than \$50 nor more than \$1,000 per day for each violation of Tex. Health & Safety Code Chapter 341 Subchapter C or a rule or order adopted or issued thereunder.

4. As required by Tex. Health & Safety Code § 341.049 and 30 Tex. Admin. Code §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations, the penalties, or the corrective actions proposed therein.
5. As required by Tex. Gov't Code Ann. § 2001.052; Tex. Health & Safety Code § 341.049; 1 Tex. Admin. Code § 155.27, and 30 Tex. Admin. Code §§ 1.11, 1.12, 39.25, 70.104, and 80.6, the Respondent was notified of the hearing on the alleged violations, the proposed penalties, and the proposed corrective actions.
6. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to Tex. Gov't Code Ann. ch. 2003.
7. Tex. Health & Safety Code § 341.0315(c) provides that, "Each public drinking water supply system shall provide an adequate and safe drinking water supply . . . that meet[s] the requirements of . . . [the] commission rules."
8. Based on the above Findings of Fact, the ALJ concludes that MPR violated 30 TAC §§ 290.41(c)(3)(J) and (c)(3)(K), 290.45(b)(1)(F)(i), (iii), and (iv), 290.46(f)(3)(E)(i), 290.46(m), 290.46(m)(1)(A) and (m)(1)(B), 290.46(n)(3), 290.46(s)(1), and 290.121(a) as they were in effect on the date of the inspection; Agreed Order Docket No. 2005-2004-PWS-E, Ordering Provisions Nos. 2.a.i., 2.a.iv., 2.b.ii., 2.b.iv., 2.d.i, and 2.d.ii; and Tex. Health & Safety Code § 341.0315(c).
9. In determining the amount of an administrative penalty, Tex. Health & Safety Code § 341.049(b) requires the Commission to consider several factors including:
 - a. the nature, circumstances, extent, duration, and gravity of the prohibited act;
 - b. the history and extent of previous violations by the violator;

- c. the violator's degree of culpability, good faith, and economic benefit gained through the violation;
 - d. the amount necessary to deter future violations; and
 - e. any other matters that justice may require.
10. Based on the above Findings of Fact and Conclusions of Law, MPR should be required to pay a total of \$13,420 in administrative penalties for the violations at issue in this case.
11. Based on the above Findings of Fact and Conclusions of Law, MPR should be required to take the corrective action measures set out below in this Order.

III. ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Within 30 days after the effective date of this Commission Order, MPR Investments, LLC, dba Oakridge Square Mobile Home Park (MPR) shall pay an administrative penalty in the amount of \$13,420 for its violations of 30 TAC §§ 290.41(c)(3)(J) and (c)(3)(K), 290.45(b)(1)(F)(i), (iii), and (iv), 290.46(f)(3)(E)(i), 290.46(m), 290.46(m)(1)(A) and (m)(1)(B), 290.46(n)(3), 290.46(s)(1), and 290.121(a); Agreed Order Docket No. 2005-2004-PWS-E, Ordering Provisions Nos. 2.a.i., 2.a.iv., 2.b.ii., 2.b.iv., 2.d.i, and 2.d.ii; and Tex. Health & Safety Code § 341.0315(c).
2. The payment of this administrative penalty and the performance of all corrective action listed herein will completely resolve the violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here.

3. Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: MPR Investments, LLC, dba Oakridge Square Mobile Home Park, TCEQ Docket No. 2007-1935-PWS-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

4. Within 90 days after the effective date of this Order, MPR shall:
 - a. Provide an elevated storage capacity, as defined by the Commission's rules, of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection, as required by 30 Tex. Admin. Code § 290.45; or
 - b. Provide a minimum of two service pumps with a total rated capacity of 2.0 gallons per minute per connection, as required by 30 Tex. Admin. Code § 290.45; and
 - c. Provide a well production capacity of 0.6 gpm per connection, as required by 30 Tex. Admin. Code § 290.45.
5. Within 105 days after the effective date of this Order, MPR shall submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records, to demonstrate compliance with the above Ordering Provision. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Dallas, Texas 76118-6951

6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to MPR if the Executive Director determines that MPR has not complied with one or more of the terms or conditions in this Order.
7. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
8. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Gov't Code § 2001.144.
9. As required by Water Code § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to MPR.

10. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Buddy Garcia, Chairman
For the Commission