

**BEFORE THE
EDWARDS AQUIFER AUTHORITY
State of Texas**

**IN THE MATTER OF A SECTION 1.37 ADMINISTRATIVE
PENALTY ACTION CONCERNING THE FOLLOWING
REGULAR PERMITS:**

P105-286 James Goodman

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) No. 1.37-2022-002
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**ORDER ASSESSING AN ADMINISTRATIVE PENALTY FOR EXCEEDING
ANNUAL AUTHORIZED GROUNDWATER WITHDRAWALS FROM AN
EDWARDS AQUIFER WELL**

ON THIS DAY CAME ON TO BE HEARD the above-styled and numbered Administrative Penalty Matter of James Goodman (Respondent). As set forth below, the General Manager of the Edwards Aquifer Authority (EAA) provided a preliminary report of Respondent's violation of the EAA Act, EAA Rules and Respondent's permit, the opportunity to request an informal review of the violation, and a recommended administrative penalty to resolve the violation. The Respondent did not consent to the preliminary report or the recommended administrative penalty or request informal review. The Board of Directors (Board) of the EAA, after having reviewed and considered the evidence relevant to the violation, as contained in the materials in the Board Packet, and the arguments and presentation of the General Manager of the EAA, and the Respondent, if any, the Board is of the opinion and finds that:

1. the facts necessary to support the General Manager's recommended Administrative Penalty have been established; and
2. the facts necessary to assess the Administrative Penalty have been established.

Accordingly, the Board is of the opinion and finds that the Administrative Penalty should be **ASSESSED**. In support of this Order, the Board makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. Respondent filed a well construction permit application, C104-029, which was approved on March 1, 2013, for a new well that was drilled and completed on April 2, 2013. The well was designated W108-152 (the well) and authorized for withdrawals under EAA Regular Permit P105-286, thus, the well is registered with the EAA and authorized for groundwater withdrawals of up to the permitted amount.
2. On December 17, 2021, EAA staff sent the Respondent, by first-class U.S. mail, the *2021 Annual Groundwater Use Report* (the report) form, pursuant to Section 711.69 of the EAA Rules. Respondent submitted the completed and signed report, which was received by EAA staff on June 16, 2022.

3. On June 16, 2022, EAA staff, after processing and reviewing the report, determined that the Respondent had exceeded his permitted amount for the well, and that there were no other recognized water rights available to the Respondent, therefore, the Respondent was identified as violating EAA Rules by exceeding his annual authorized groundwater withdrawal amount, and not covering his exceedance by filing a transfer application prior to the December 31, 2021 deadline to do so.
4. On June 24, 2022, in accordance with the EAA's enforcement settlement guidelines, EAA staff sent to the Respondent, by first-class U.S. mail, a *Notice of EAA General Manager Settlement Offer* (the notice) notifying the Respondent of his exceedance of his annual authorized groundwater withdrawal amount from his permitted well. The notice also included the settlement option available to reconcile the exceeded amount, through the *EAA Groundwater Trust*, where the Respondent agrees to resolve the exceedance from the Groundwater Trust and make a payment of \$208.46, with a response deadline of July 8, 2022.
5. Respondent emailed EAA staff in response to the notice, stating that he did not believe that he had used that much water, as provided in his submitted report. EAA staff emailed the Respondent clarifying that the report had been completed incorrectly due to a misreading of the meter on the Respondent's part and provided a corrected report, with a picture of the meter and an explanation on how it is properly read. The Respondent did not respond further.
6. On July 22, 2022, the Respondent was sent by certified U.S. mail, return receipt requested, a *Second Notice of EAA General Manager Settlement Offer*, with the notice enclosed and a response deadline of August 5, 2022.
7. Respondent did not respond to the *Second Notice of EAA General Manager Settlement Offer*.
8. On July 25, 2022, a reminder email was sent to Respondent of the outstanding violation and the lack of receipt of any payment to settle the violation.
9. Respondent did not respond to the reminder email.
10. On August 8, 2022, Respondent was sent a third *Notice of EAA General Manager Settlement Offer*, containing a final offer by EAA staff to reach a settlement of the violation, and providing a preliminary report about the facts supporting EAA staff's conclusion that a violation of EAA Rules had occurred, providing Respondent with the General Manager's recommended administrative penalty for the violation and informing Respondent of his right to consent to the report and penalty or request informal review, and notifying Respondent that failure to timely respond would lead to staff's recommendation that the EAA Board approve an administrative penalty for the violation.
11. On August 31, 2022, a reminder call was made to the Respondent of the need to respond to the third *Notice of EAA General Manager Settlement Offer* and preliminary report and to either consent to the report and recommended administrative penalty or request informal review.

12. Respondent did not settle in response to the third *Notice of EAA General Manager Settlement Offer* and did not request informal review of the matter.

CONCLUSIONS OF LAW

1. Respondent is the registered owner of the well and of Permit P105-286.
2. Section 711.12 of the EAA Rules requires a person to have a groundwater withdrawal permit prior to making non-exempt withdrawals from the Aquifer. Section 711.224 of the EAA Rules states, "A person may not withdraw groundwater from the Aquifer unless authorized by a groundwater withdrawal permit issued by the Authority," and "a person may not withdraw groundwater in violation of an Authority rule or groundwater permit." Furthermore, Section 711.228 of the EAA Rules states, "A person may not violate the Act, the Authority's rules, an order of the Board, or the terms or conditions of a permit."
3. On January 1, 2022, the EAA had no record of any transfer applications filed to cover groundwater withdrawals exceeding the permitted amount for the well and applied to Permit P105-286.
4. Respondent has neither consented to the preliminary report and recommended administrative penalty nor requested informal review for this violation.
5. Section 1.37(a) of the EAA Act and Section 717.118(g) of the EAA Rules authorize the EAA to assess an administrative penalty in an amount of between \$100 and \$1,000 for each violation and each day of a continuing violation against a person who violates the EAA Act, EAA Rules, or orders issued by the Board.
6. Section 1.37(f) of the EAA Act and Section 717.118(f) of the EAA Rules provide that if a person alleged by the EAA to have committed a violation fails to timely request an informal review, the Board shall assess the penalty.
7. Respondent has no prior or open violations that would affect the recommendation of a penalty amount.
8. An administrative penalty of \$308.46 is proposed by the General Manager for this violation.

ORDERING PROVISIONS

IT IS THEREFORE ADJUDGED, ORDERED, AND DECREED as follows:

1. that an administrative penalty of \$308.46 for exceeding annual authorized groundwater withdrawals from an Edwards Aquifer well is hereby **ASSESSED**; and

2. that the administrative penalty of \$308.46 shall be paid by Respondent within 30 days of the issuance of this order or the administrative penalty may be referred to the EAA's counsel or to the Texas Attorney General for collection.

PASSED AND APPROVED by the Board of Directors of the Edwards Aquifer Authority this 13th day of September, 2022.

LUANA BUCKNER
Chairman, Board of Directors

ATTEST:

BENJAMIN F. YOUNGBLOOD III
Secretary, Board of Directors

APPROVED AS TO FORM:

DARCY ALAN FROWNFELTER
General Counsel