

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

**IN THE MATTER OF AN SECTION 1.37 ADMINISTRATIVE)
PENALTY ACTION CONCERNING THE FOLLOWING)
REGULAR PERMIT:)**
P100-540 Hugo and Eva Sanchez) No. 1.37-2020-001
)

**DEFAULT ORDER ASSESSING AN ADMINISTRATIVE PENALTY FOR FAILURE
TO FILE A 2019 ANNUAL USE REPORT**

ON THIS DAY CAME ON TO BE HEARD the above-styled and numbered 1.37 Administrative Penalty Matter of Mr. and Mrs. Hugo and Eva Sanchez (“Respondent”). As set forth below, the General Manager of the Edwards Aquifer Authority (“EAA”) provided an opportunity to settle the alleged violation, a Preliminary Report of the alleged violation, the opportunity to request an informal review of the alleged violation, and a recommendation of an assessment of an Administrative Penalty as no consent to the report and recommended penalty or request for informal review was timely received from the Respondent. The Board of Directors (“Board”) of the EAA, after having reviewed and considered the evidence relevant to the alleged violation, as contained in the materials in the Board Packet, and the arguments and presentation of the General Manager of the EAA, 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 Transfer of Ownership T101-398 on an Edwards Aquifer well, designated W100-469 (“the well”), and authorized to make withdrawals under EAA Regular Permit P100-540; thus, the well was registered and authorized to make groundwater withdrawals with the EAA.
2. On December 13, 2019, EAA staff, by first-class U.S. mail, sent to the Respondent the *2019 Annual Groundwater Use Report* form with instructions that the report was to be filed with the EAA by January 31, 2020.
3. On February 1, 2020, EAA records showed that the report for the well was not on file

with the EAA.

4. *EAA General Manager Compliance and Settlement Guidelines* allow EAA staff to solicit and receive a report up to 30 days past a reporting deadline or 30 days past EAA written notification of the requirement to file a report with the EAA.

5. From February 1, 2020, through March 1, 2020, EAA staff made several attempts to contact the Respondent to file the report using telephone/email information provided on the registration.

6. On March 1, 2020, EAA records show that the report for the well was not on file with the EAA, and therefore, the Respondent was considered by EAA staff to be in violation of EAA rules for the failure to timely file a 2019 Annual Use Report (“the Violation”).

7. On May 7, 2020, the Respondent was sent a *Notice of EAA General Manager Settlement Offer* (“the May Offer”) to pay one hundred dollars (\$100.00) or attend a Well Owner’s Workshop to fully resolve the Violation. The Settlement Offer was sent by first-class U.S. mail.

8. The Respondent did not respond to the May Offer.

9. On June 17, 2020, the Respondent was sent, by certified U.S. mail – return receipt requested, a *Second Notice of EAA General Manager Settlement Offer* (“the June Offer”).

10. The Respondent did not respond to the June Offer.

11. On September 16, 2020, the Respondent was sent a third *Notice of EAA General Manager Settlement Offer* containing a final offer by EAA staff to reach a settlement on the Violation, providing a Preliminary Enforcement Report of the Violation stating the facts supporting the staff’s conclusion that a Violation of EAA rules had occurred, and notifying the Respondent that failure to timely respond would lead to staff’s recommendation that the EAA Board issue an Administrative Penalty for the Violation.

12. The September 16, 2020 third *Notice of EAA General Manager Settlement Offer* provided the Respondent with the opportunity to request an informal review of the matter.

13. The Respondent did not respond to the third *Notice of EAA General Manager Settlement Offer* and did not request an informal review of the matter.

CONCLUSIONS OF LAW

1. The Respondent is the registered owner of the well.

2. In accordance with § 711.414 of the EAA rules, “Every permit holder, or his contract user, shall accurately read the meter on a monthly and annual basis. The results shall be filed with the Authority on an annual groundwater use report in a form prescribed by the Authority.”

The owner of a permitted well shall accurately read the well's meter on December 31st of each year. The report including that reading shall be filed no later than January 31st of each year.

3. February 1, 2020 EAA records show that a *2019 Annual Groundwater Use Report* for W100-469 was not on file with the EAA, and an end-of-year meter reading was not submitted through the Meter Matters App, therefore, Respondent is in violation of EAA rules.

4. The Respondent has provided no evidence that the report was timely submitted to the EAA.

5. Section 1.37(a) of the EAA Act authorizes the EAA to assess administrative penalties against persons who violate the EAA Act, rules adopted by the EAA, or orders issued by the Board "in an amount of not less than \$100 or more than \$1,000 for each violation and for each day of a continuing violation."

6. Section 1.37(f) of the EAA Act provides that if a person alleged by the EAA to have committed a violation fails to timely request an informal review, "the authority shall assess the penalty."

7. The Respondent has no prior or open violations that would affect the recommendation of a penalty amount.

8. An administrative penalty of \$200 is proposed by the General Manager for this violation.

ORDERING PROVISIONS

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

1. that the above-styled and numbered Administrative Penalty of \$200 for failure to file a 2019 Annual Use Report is hereby **ASSESSED**; and

2. that the Administrative Penalty of \$200 shall be paid by the Respondent within 30 days of the issuance of this default 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 October, 2020.

LUANA BUCKNER
Chairman, Board of Directors

ATTEST:

ENRIQUE VALDIVIA

Secretary, Board of Directors

APPROVED AS TO FORM:

DARCY ALAN FROWNFELTER

General Counsel