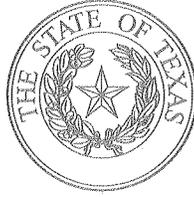


# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

September 13, 2012

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

Re: SOAH Docket No. 582-11-9593; TCEQ Docket No. 2010-0801-MLM-E; In Re:  
Executive Director of the Texas Commission on Environmental Quality v.  
Benjamin Sanjuan d/b/a Deer Trail Mobile Home Park; RN101237923

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 documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than October 3, 2012. Any replies to exceptions or briefs must be filed in the same manner no later than October 15, 2012.

This matter has been designated **TCEQ Docket No. 2010-0801-MLM-E; SOAH Docket No. 582-11-9593**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in black ink, appearing to read "Travis Vickery".

Travis Vickery  
Administrative Law Judge

TEV/mle  
Enclosures  
cc: Mailing List

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**AUSTIN OFFICE**  
300 West 15th Street Suite 502  
Austin, Texas 78701  
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**SERVICE LIST**

**AGENCY:** Environmental Quality, Texas Commission on (TCEQ)  
**STYLE/CASE:** BENJAMIN SANJUAN / DEER TRAIL MOBILE HOME PARK  
**SOAH DOCKET NUMBER:** 582-11-9593  
**REFERRING AGENCY CASE:** 2010-0801-MLM-E

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE**  
**ALJ TRAVIS VICKERY**

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**REPRESENTATIVE / ADDRESS**

**PARTIES**

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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HOUSTON, TX 77037

D/B/A DEER TRAIL MOBILE HOME PARK

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D/B/A DEER TRAIL MOBILE HOME PARK

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**SOAH DOCKET NO. 582-11-9593  
TCEQ DOCKET NO. 2010-0801-MLM-E**

**EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,  
Petitioner**

**VS.**

**BENJAMIN SANJUAN D/B/A DEER  
TRAIL MOBILE HOME PARK;  
RN101237923,  
Respondent**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) seeks to assess administrative penalties against Benjamin Sanjuan d/b/a Deer Trail Mobile Home Park (Respondent) for numerous violations of the Texas Water Code (Water Code), the Commission's rules regarding wastewater treatment facilities, and permit conditions. Respondent contested some of the violations, but did not argue that the penalty was improperly calculated under the TCEQ's penalty policy. Respondent argued that he lacks the ability to pay the penalty, but failed to provide adequate financial documentation of his alleged inability to pay. The Administrative Law Judge (ALJ) finds that the ED met his burden of proof and recommends that Respondent be assessed a penalty of \$92,734.00.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

Jurisdiction and notice were not disputed. These issues are addressed in the findings of fact and conclusions of law in the proposed order without further discussion here.

The hearing on the merits convened on May 22, 2012, before ALJ Travis Vickery at the State Office of Administrative Hearing's (SOAH) facilities in Austin, Texas. Staff attorney Tammy Mitchell represented the ED. Respondent represented himself. The record was left open until July 23, 2012. The procedural history of this case is detailed in the findings of fact.

## II. DISCUSSION

### A. Evidence and Argument

#### 1. Background

In November 2009, Respondent owned and operated a wastewater treatment plant located in the 9800 block of Deer Trail Drive, approximately one mile northwest of the intersection of Farm-to-Market Road 149 and Interstate Highway 45, in Houston, Harris County, Texas (Facility). The Facility, which served approximately 20 mobile homes, included a sewage treatment facility and sewage collection system. Respondent held Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0012919001 (Permit). The Permit was transferred to Respondent from the former owner on July 16, 2009. The Permit contained numerous conditions and requirements as discussed below.<sup>1</sup>

#### 2. The ED's evidence

On November 30, 2009, and January 14 and 20 and March 25, 2010, Nwachukwu Sam Okonkwo, a TCEQ Houston Regional Office investigator, conducted a complaint investigation and continuing compliance investigations of the Facility.<sup>2</sup> Mr. Okonkwo testified at hearing. He provided a complete description of his training and education, the type of permit held by Respondent, Permit conditions and requirements, and the Commission's standard investigative procedures, which were adhered to during Mr. Okonkwo's investigation of the Facility and follow-up procedures. Mr. Okonkwo also provided detailed testimony of his investigations concerning the Facility.

During Mr. Okonkwo's investigations of the Facility, he observed a number of violations of the Water Code, the Texas Administrative Code, and the conditions and requirements of the

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<sup>1</sup> ED Ex. 2 at 29.

<sup>2</sup> ED Ex. 3 at 2.

Permit. As a result of his investigations, Mr. Okonkwo issued investigative reports documenting the following violations:

1. Respondent was operating the Facility and failed to employ a licensed operator to supervise the Facility, which is a violation of 30 Tex. Admin. Code § 30.350(d) and the Permit, Other Requirements No. 1;
2. Respondent failed to submit noncompliance notifications to the Commission for unauthorized discharges. Specifically, no report was submitted for raw sewage observed flowing throughout the mobile home park, which is a violation of 30 Tex. Admin. Code § 305.125(9) and Permit Monitoring and Reporting Requirement No. 7(a);
3. Respondent failed to make available operational and reporting records for review at the time of the investigation, which is a violation of 30 Tex. Admin. Code § 319.7(c) and Permit Monitoring and Reporting Requirement No. 3(b);
4. Respondent failed to submit monthly discharge monitoring reports (DMRs) for the reporting periods ending July 31, August 31, September 30, October 31, November 30, and December 31, 2009 and January 31 and February 28, 2010, which is a violation of 30 Tex. Admin. Code § 319.7(c) and Permit Monitoring and Reporting Requirement No. 1;
5. Respondent failed to properly maintain the wastewater treatment plant and lift station. The interior walls and baffles were warped and had holes between the basins, the structural frames supporting the catwalks had severe corrosion, the ladder attached to the wall of the plant was not properly secured, and the lift station pump in the south lift station was not operational, all of which are violations of 30 Tex. Admin. Code § 305.125(5) and Permit Operational Requirement No. 1;
6. Respondent failed to provide a legible staff gauge, which is a violation of 30 Tex. Admin. Code § 305.125(1) and Permit Operational Requirement No. 1;
7. Respondent failed to prevent the unauthorized discharge of wastewater. Specifically, on November 30, 2009, and January 20, 2010, raw sewage was observed on the ground in the Deer Trail Mobile Home Park coming from loose pipes near the lift station, which is a violation of Water Code § 26.121(a)(1) and Permit Condition No. 2(g);
8. Respondent failed to obtain the required wastewater occupational license. Specifically, Respondent was operating a wastewater treatment facility and instructing a non-licensed person to operate the Facility without an

operator's license, which is a violation of 30 Tex. Admin. Code § 30.5(a) and Water Code § 26.0301(c). Respondent was issued a field citation for this violation on January 20, 2010;

9. Respondent failed to properly operate and maintain the chlorine contact basin. The chlorine contact chamber contained two feet of sludge in a 3-foot water depth, which is a violation of 30 Tex. Admin. Code § 305.125(5) and Permit Operational Requirement No. 1;
10. Respondent failed to comply with permitted effluent limits. A grab sample collected during the investigation was noncompliant for chlorine residual and total suspended solids (TSS), which is a violation of Water Code § 26.121(c), 30 Tex. Admin. Code § 305.125(1), and Permit Effluent Limitations and Monitoring Requirement Nos. 1 and 2; and
11. Respondent failed to prevent the unauthorized discharge of solids into the receiving stream. Sludge was observed in the receiving stream 20 feet below the Facility's outfall, which is a violation of Water Code § 26.121(a)(1) and Permit Condition No. 2.d.<sup>3</sup>

Mr. Okonkwo testified that most investigations are completed within a day or two. Due to the number and serious nature of the violations at the Facility, however, he made repeat visits to the Facility, along with another TCEQ investigator.

On March 4, 2010, Respondent transferred ownership of the Facility to a new owner.

On March 25, 2010, Mr. Okonkwo conducted a fourth investigation of the Facility. During that inspection, he noted that Respondent had failed to address any of the alleged violations documented as a result of Mr. Okonkwo's November 30, 2009, and January 14 and 20, 2010 visits. That is, all violations Mr. Okonkwo observed in his first three visits still existed on his fourth visit, after Respondent had transferred ownership of the Facility to a new owner.<sup>4</sup>

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<sup>3</sup> ED Ex. 2 at 2, 4, 5, 7, 9, 26; ED Ex. 3; ED Ex. 4 at 2, 7; ED Ex. 5; ED Ex. 11. Mr. Okonkwo observed other potential violations, which the ED elected not to pursue in this proceeding. This list of alleged violations excludes those dropped by the ED.

<sup>4</sup> ED Ex. 3 at 2.

The ED sent Respondent a Notice of Enforcement regarding the violations on May 24, 2010.<sup>5</sup>

The ED also offered the testimony of Steve Villatoro, an Enforcement Coordinator at the Commission. Mr. Villatoro explained his background, training, and the policies and procedures adopted by the Commission for use in formulating an appropriate administrative penalty in enforcement cases. Specifically, Mr. Villatoro testified that although another Enforcement Coordinator conducted the calculations in this case, he reviewed the calculations and opined that the Commission's Penalty Policy was accurately applied to the facts of this case. Mr. Villatoro testified that an administrative penalty in the amount of \$92,734.00 was appropriate. The ED is not seeking corrective action in this matter because Respondent no longer owns the Facility.<sup>6</sup>

### **3. Respondent's evidence**

Respondent only contested a few of the violations with specific evidence, but generally argues that this was his first experience owning a wastewater treatment facility. He stated that the Facility was in very poor condition when ownership was transferred into his name and a number of violations with the TCEQ were already pending. Respondent testified that the previous owner was supposed to operate the Facility as a licensed operator, but failed to do so. Respondent also alleged that he thought he had an operator for the Facility at the time of Mr. Okonkwo's inspections.<sup>7</sup>

Respondent suggested that some of the standing water that appears over a lift station in Mr. Okonkwo's photos was rainwater only. Mr. Okonkwo explained that a lift station is a collection system for wastewater, which it collects and pumps into the treatment plant. Although

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<sup>5</sup> ED Ex. 3 at 35-36, 37-41, 43-45; ED Ex. 4 at 11, 13. Mr. Okonkwo explained that a notice of enforcement was sent to Respondent instead of a notice of violation because at least one of the violations was a Class A violation (failure to obtain an operators licence under 30 Tex. Admin. Code § 30.5(a)) and there were repeat Class B violations. *See*, ED Ex. 3 at 39; ED Ex. 4 at 11, 13.

<sup>6</sup> ED Ex. 6, 7, 8, 9, 10. The total penalty amount is actually \$92,944, but Respondent was credited with \$210 he paid for a field citation.

<sup>7</sup> Respondent Ex. 4.

Mr. Okonkwo observed a number of violations at the lift stations, he flatly denied Respondent's contention that the standing water he observed was only rainwater. Mr. Okonkwo testified that he clearly observed raw sewage and water flow from a lift station into standing water and that this condition is clearly visible in photos he took of the Facility on March 25, 2010, when he last visited the Facility for this case.<sup>8</sup>

Respondent testified that despite Mr. Okonkwo's investigative report, which stated otherwise, a ladder was not left unsecured to a clarifier. He claimed it was chained in place. Mr. Okonkwo, however, denied this, stating that had the ladder been chained or otherwise properly secured he would not have listed this as a violation.

Respondent testified that he has repaired many of the issues Mr. Okonkwo identified in his reports. Respondent stated that he did not have receipts, because the materials he used to make repairs were purchased from resale shops. He did not hire contractors for the work because they were too expensive. Instead, he did most of the repairs himself using day laborers. Respondent replaced 95 percent of the main sewage line with six-inch pipe. He also testified that he replaced the wastewater plant and the two lift stations now have two pumps each with steel covers, locks, and alarms.<sup>9</sup>

Respondent stated that he was unaware of some of the ED's letters, because he was going through a divorce during this time period. He testified that he had moved out of his home, and was living in a vehicle for some time and was unaware of the Notice of Enforcement. Respondent did not, however, provide the ED with an updated address.

Respondent did not contest the ED's calculation of the administrative penalty in this case. He offered no expert or factual testimony and asked no questions of Mr. Villatoro.

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<sup>8</sup> ED Ex. 3 at 21; ED Ex.12.

<sup>9</sup> Respondent Ex. 4.

Finally, Respondent contends that he lacks the resources necessary to pay the recommended administrative penalty. He explained that he has three children to support and that he has moved into his mother's home due to financial constraints.

#### **4. Evidence of Respondent's inability to pay the administrative penalty**

In response to Respondent's claim of inability to pay, the ED offered the testimony of Donna Chaffin, a Financial Analyst at the Commission. Ms. Chaffin testified that she has attempted on numerous occasions to obtain adequate financial information from Respondent that would allow her to determine his ability to pay. Although Respondent has produced some tax and account information, it has been fragmentary, contradictory, and qualitatively and quantitatively inadequate to determine his financial condition. At the time of the hearing, Ms. Chaffin had requested information from Respondent on at least six different occasions, and yet she still lacked even the most basic financial information. For example, Ms. Chaffin testified that she is missing tax information, and has not received complete bank statements, employment information, business financial statements, credit card statements, schedule of debts, or leases for property Respondent owns. Respondent offered no specific information at hearing to contest Ms. Chaffin's assessment that she lacked information sufficient to conduct an analysis.

At the close of the hearing, the ALJ left the record open until July 23, 2012, so that Respondent could work with the ED and Ms. Chaffin to achieve a reasonably accurate understanding of Respondent's financial condition. On July 23, 2012, the ED filed a status report stating that the Respondent had again failed to cooperate with the ED in the production of financial information.<sup>10</sup>

#### **B. ALJ's Analysis**

Although the ED alleged a large number of violations in this matter, the ALJ's analysis is fairly straightforward. The ED bears the burden of proof in this proceeding on the violations and

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<sup>10</sup> The ALJ takes administrative notice of all filings in this case.

the calculation of the administrative penalty. The ED overwhelmingly met that burden through documents, photographs, and testimony. In response, Respondent provided little factual and no expert testimony. Much of his testimony was either consistent with or did not rebut the ED's evidence. To the extent Respondent's evidence actually challenged the ED's, the reliability and volume of the ED's evidence clearly rebutted Respondent's. In responding to Respondent's testimony, Mr. Okonkwo was absolutely credible and all fact disputes raised by Respondent resolved in the ED's favor. Based on the evidence, the ALJ concludes that the ED met his burden on all alleged violations and has established that the requested penalty was calculated in accordance with the Commission's Penalty Policy.

Mr. Okonkwo's reports, photographs, and testimony were very thorough. Mr. Okonkwo reviewed the Commission's investigative and reporting procedures at length and established his expertise as an investigator familiar with the Commission's rules, the Water Code, and Permit conditions. Mr. Okonkwo also explained why the conditions he observed at the Facility were violations of the Commission's rules, the Water Code, and the Permit. Most important, however, Mr. Okonkwo explained how each violation either could or actually did result in the harm intended to be prevented by the conditions and provisions in the Commission's rules, the Water Code, and the Permit.

Through his testimony, Respondent essentially admitted to the violations with few exceptions. His primary defense was that, at the time he acquired the Permit, he had little idea of the responsibilities and legal requirements associated with acquiring and running a sewage treatment and storage facility. He also testified that he made some repairs to the Facility. Mr. Okonkwo pointed out, however, that those repairs were supposed to be conducted by a licensed contractor or operator – not Respondent, who lacked a license.

At no time during Mr. Okonkwo's inspections did the Facility have a licensed operator. The Permit, chapter 30 of the Texas Administrative Code, and chapter 26 of the Water Code require a Facility's operator, anyone who conducts process control activities at a sewage treatment facility, and anyone who supervises maintenance of a sewage treatment system to have

a Class D Wastewater License.<sup>11</sup> During one of his visits, Mr. Okonkwo asked Respondent and Mr. Martin, the Facility's maintenance person, whether they had licenses to operate the Facility. Both admitted they did not. And yet, Respondent testified that he told Mr. Okonkwo he was directing activities at the Facility. Mr. Martin also told Mr. Okonkwo that Respondent had instructed him to drop chlorine tablets into the clarifier weir, which Mr. Okonkwo identified as a process control activity. As a result, at least one of them was required to hold a license.

Respondent's failure to retain a licensed operator was a significant failure that could have been remedied. As early as his first visit, Mr. Okonkwo explained to Respondent the need for a licensed operator, explained how he could come into compliance by hiring a licensed operator, and issued the Respondent a field citation for this failure.<sup>12</sup> At hearing, Mr. Okonkwo explained how the absence of a licensed operator's oversight resulted in the volume and degree of the violations. This also explains why, despite Respondent's efforts, Mr. Okonkwo saw no effective improvements to the Facility during his final inspection on March 25, 2010.

Finally, even if Respondent had addressed or repaired all of the violations observed by Mr. Okonkwo, those violations were nevertheless extant at the time of Mr. Okonkwo's first and last visits to the Facility. The ALJ finds the ED established the violations as alleged in the Executive Director's Second Amended Report and Petition (EDSARP).

As for the administrative penalty, Respondent is correct that \$92,734.00 is a substantial sum. However, Respondent offered no objection or rebuttal to Mr. Villatoro's testimony that the penalty sought was calculated in accordance with the Commission's penalty policy. As stated above, the ALJ finds that the penalty has been correctly calculated.

Finally, the ALJ and the ED have offered Respondent numerous opportunities to provide satisfactory evidence that he is financially unable to pay the administrative penalty. The TCEQ's rules set out the process to address an alleged inability to pay a penalty:

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<sup>11</sup> ED Ex. 2 at 26; Other Requirements No. 1, ED Ex. 11.

<sup>12</sup> ED Ex. 4 at 2, 7; ED Ex. 11.

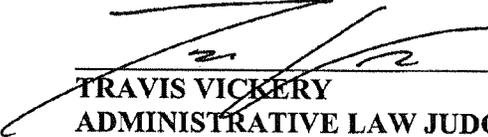
- (a) If any respondent . . . asserts an inability to pay the penalty . . . that party shall have the burden of establishing that a lesser penalty is justified under that party's financial circumstances.
- (b) A party asserting a claim under this section must produce all financial records that would be potentially relevant to that issue . . . . The failure of the party raising such a claim to provide all potentially relevant financial records . . . shall constitute a waiver of the claim.<sup>13</sup>

Respondent has the burden of proof regarding his financial inability to pay the recommended administrative penalty. Although he testified that he lacks the ability to pay, in the absence of an expert testifying on behalf of the Respondent, the ALJ necessarily looks to the ED's financial analyst as the best evidence of Respondent's financial condition. Ms. Chaffin testified that Respondent's financial information was too fragmentary and inconsistent to make a determination that he could not pay the penalty. This could have been remedied, but Respondent repeatedly failed to cooperate with the ED in determining his alleged inability to pay the penalty. Based on the evidence and the ED's July 23, 2012 status report, the ALJ determines Respondent failed to establish an inability to pay the administrative penalty and has waived this claim.

### III. CONCLUSION

In conclusion, the ALJ recommends that the Commission assess a \$92,734.00 administrative penalty against Respondent as requested in the EDSARP.

**SIGNED September 13, 2012**

  
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**TRAVIS VICKERY**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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<sup>13</sup> 30 Tex. Admin. Code § 70.8.

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**



**AN ORDER Assessing Administrative Penalties Against  
Benjamin Sanjuan d/b/a Deer Trail Mobile Home Park  
TCEQ DOCKET NO. 2010-0801-MLM-E  
SOAH DOCKET NO. 582-11-9593**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Second Amended Report and Petition (EDSARP) recommending that the Commission enter an enforcement order assessing administrative penalties against Benjamin Sanjuan d/b/a Deer Trail Mobile Home Park (Respondent). Travis Vickery, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on May 22, 2012, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent, the Commission's Executive Director (ED), and the Office of Public Interest Counsel.

After considering the ALJ's Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law.

**I. FINDINGS OF FACT**

1. In November 2009, Respondent owned and operated a wastewater treatment plant located in the 9800 block of Deer Trail Drive, approximately one mile northwest of the intersection of Farm-to-Market Road 149 and Interstate Highway 45 in Houston, Harris County, Texas (Facility).
2. The Facility served approximately 20 mobile homes (Mobile Home Park) and included a sewage treatment facility and sewage collection system.

3. Respondent held Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0012919001 (Permit).
4. The Facility's former owner transferred the Permit to Respondent on July 16, 2009.
5. Respondent transferred the Permit to a new owner on March 4, 2010.
6. On November 30, 2009, and January 14 and 20, and March 25, 2010, a TCEQ Houston Regional Office investigator, conducted a complaint investigation and continuing compliance investigations of the Facility. During the investigations, the investigator documented that Respondent committed eleven violations of the Commission's rules involving wastewater treatment facilities, the Texas Water Code, and the Permit.
7. On January 20, 2010, Respondent received notice that he had violated 30 Tex. Admin. Code § 30.5(a), as further described in the Findings of Fact below.
8. On May 24, 2010, the ED sent Respondent a Notice of Enforcement regarding all of the violations observed during the investigations of the Facility conducted on November 30, 2009, and January 14 and 20, and March 25, 2010.
9. On June 17, 2011, the ED filed the Executive Director's Preliminary Report and Petition (EDPRP).
10. Respondent received the EDPRP on July 13, 2011.
11. On July 13, 2011, Respondent requested a contested case hearing on the allegations in the EDPRP.
12. On August 26, 2011, this case was referred to SOAH for a hearing.
13. On September 6, 2011, the Commission's Chief Clerk issued notice of the preliminary hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.
14. On October 6, 2011, the ALJ conducted a preliminary hearing and issued Order No. 1, which admitted documents to establish jurisdiction.
15. On November 21, 2011, the ED filed the Executive Director's First Amended Report and Petition (EDFARP).

16. On January 27, 2012, the ED filed the Executive Director's Second Amended Report and Petition (EDSARP), alleging that Respondent violated Tex. Water Code §§ 26.121(a)(1), and (c), and 26.0301(c); 30 Tex. Admin. Code §§ 30.5(a) and 30.350(d); 305.125(1), (5) and (9); and 319.7(c); and Permit Condition Nos. 2.d. and 2.g., Operational Requirements No. 1, Effluent Limitations and Monitoring Requirements Nos. 1 and 2, Monitoring and Reporting Requirements Nos. 1, 3.b., and 7.a., and Other Requirements No. 1.
17. The hearing on the merits was conducted on May 22, 2012, in Austin, Texas, by ALJ Travis Vickery.
18. Respondent was represented at the hearing by Benjamin Sanjuan. The ED was represented by Tammy Mitchell, attorney in the TCEQ's Litigation Division. The Office of Public Interest Counsel did not enter an appearance. The record closed on July 23, 2012.
19. Neither Respondent, nor Wayne Martin, the Facility's maintenance employee, held a Class D Wastewater License during the period that Respondent held the Permit.
20. During the November 30, 2009, and January 14 and 20, and March 25, 2010 investigations, a TCEQ Regional Investigator documented the following violations at the Facility:
  - Respondent performed process control activities and supervised the maintenance of a sewage collection system;
  - Respondent was operating the Facility and failed to employ a licensed operator;
  - Respondent failed to submit noncompliance notifications to the Commission for unauthorized discharges. Specifically, no report was submitted for raw sewage observed flowing throughout the Mobile Home Park;
  - Respondent failed to make available operational and reporting records for review at the time of the investigation;
  - Respondent failed to submit monthly discharge monitoring reports for the reporting periods ending July 31, August 31, September 30, October 31, November 30, and December 31, 2009, and January 31 and February 28, 2010;
  - Respondent failed to properly maintain the wastewater treatment plant and lift station. The interior walls and baffles were warped and had holes between the basins, the structural frames supporting the catwalks had severe corrosion, the ladder attached to the wall of the plant was not properly secured, and the lift station pump in the south lift station was not operational;
  - Respondent failed to provide a legible staff gauge;

- Respondent failed to prevent the unauthorized discharge of wastewater. Specifically, on several occasions, raw sewage was observed on the ground in the Mobile Home Park coming from loose pipes near the lift station;
  - Respondent failed to obtain the required wastewater occupation license. Specifically, Respondent was operating a wastewater treatment facility and instructing a non-licensed person to operate the Facility without an operator's license;
  - Respondent failed to properly operate and maintain the chlorine contact basin. The chlorine contact chamber contained two feet of sludge in a three-foot water depth;
  - Respondent failed to comply with permitted effluent limits. A grab sample collected during the investigation was noncompliant for chlorine residual and total suspended solids; and
  - Respondent failed to prevent the unauthorized discharge of solids into the receiving stream. Sludge was observed in the receiving stream 20 feet below the Facility's outfall.
21. The financial information produced by Respondent is fragmentary, contradictory, and qualitatively and quantitatively inadequate to determine Respondent's financial condition.
  22. Although Respondent changed his address he failed to provide the ED with an updated address.

## **II. CONCLUSIONS OF LAW**

1. Respondent is subject to the Commission's jurisdiction and enforcement authority, pursuant to Tex. Water Code §§ 7.002, 5.013, and Tex. Water Code ch. 37.
2. As required by Tex. Water Code § 7.055 and 30 Tex. Admin. Code §§ 1.11 and 70.104, Respondent was notified of the EDPRP, EDFARP, EDSARP and of the opportunity to request a hearing on the alleged violations, or the penalties and the corrective actions proposed therein.
3. As required by Tex. Gov't. Code §§ 2001.051(1) and 2001.052; Tex. Water Code §§ 7.056, 7.058; 1 Tex. Admin. Code § 155.401; and 30 Tex. Admin. Code §§ 1.11, 1.12, 39.25, 70.104, and 80.6, Respondent was notified of the hearing on the alleged violations and the proposed penalties.
4. 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 Texas Government Code ch. 2003.

5. As a result of Respondent's process control activities and supervision of the maintenance of a sewage collection system at the Facility he was required to be licensed under Tex. Water Code § 26.0301.
6. Based on the above Findings of Fact, Respondent violated Tex. Water Code §§ 26.121(a)(1), and (c), and 26.0301(c); 30 Tex. Admin. Code §§ 30.5(a) and 30.350(d); 305.125(1), (5) and (9); and 319.7(c); and Permit Condition Nos. 2.d. and 2.g., Operational Requirements No. 1, Effluent Limitations and Monitoring Requirements Nos. 1 and 2, Monitoring and Reporting Requirements Nos. 1, 3.b., and 7.a., and Other Requirements No. 1.
7. Under Tex. Water Code § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code within the Commission's jurisdiction or any rule, order, or permit adopted or issued thereunder.
8. Under Tex. Water Code § 7.052, a penalty may not exceed \$10,000 per violation, per day, for the violations at issue in this case, with the exception of Respondent's violation of 30 Tex. Admin. Code § 30.5(a), for which a penalty may not exceed \$2,500 for each day of each violation.
9. In determining the amount of an administrative penalty, Tex. Water Code § 7.053 requires the Commission to consider several factors including:
  - The violation's impact or potential impact on public health and safety, natural resources and their uses, and other persons;
  - The nature, circumstances, extent, duration, and gravity of the prohibited act;
  - The history and extent of previous violations by the violator;
  - The violator's degree of culpability, good faith, and economic benefit gained through the violation;
  - The amount necessary to deter future violations; and
  - Any other matters that justice may require.
10. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
11. Based on consideration of the above Findings of Fact, the factors set out in Tex. Water Code § 7.053, and the Commission's Penalty Policy, the ED correctly calculated the penalties for the alleged violations, and a total administrative penalty of \$92,734 is justified and should be assessed against Respondent.

12. Respondent failed to establish an inability to pay the administrative penalty and has waived this claim under 30 Tex. Admin. Code § 70.8.

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

1. Benjamin Sanjuan d/b/a Deer Trail Mobile Home Park is assessed an administrative penalty in the amount of \$92,734 for violation of Tex. Water Code §§ 26.121(a)(1), and (c), and 26.0301(c); 30 Tex. Admin. Code §§ 30.5(a) and 30.350(d); 305.125(1), (5) and (9); and 319.7(c); and Permit Condition Nos. 2.d. and 2.g., Operational Requirements No. 1, Effluent Limitations and Monitoring Requirements Nos. 1 and 2, Monitoring and Reporting Requirements Nos. 1, 3.b., and 7.a., and Other Requirements No. 1.
2. Within 30 days after the effective date of this Order, Respondent shall pay \$92,734 as an administrative penalty.
3. The payment of this administrative penalty completely resolves 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 that are not raised here.
4. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality." The administrative penalty payment shall be sent with the notation "Re: Benjamin Sanjuan d/b/a Deer Trail Mobile Home Park, Docket No. 2010-0801-MLM-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-30882
5. 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 Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Commission Order.
6. 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.

7. The effective date of this Order is the date the Order is final, as provided by 30 Tex. Admin. Code § 80.273 and Tex. Gov't. Code § 2001.144.
8. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
9. 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**

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**Bryan W. Shaw, Ph.D., Chairman  
For the Commission**