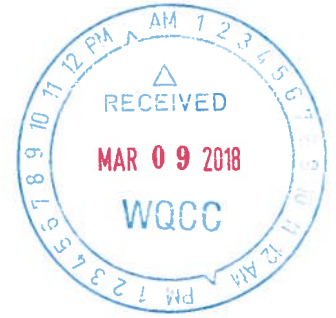


STATE OF NEW MEXICO  
WATER QUALITY CONTROL COMMISSION



NEW MEXICO ENVIRONMENT  
DEPARTMENT,

Complainant,

No. WQCC 17-09(A)

v.

CHAMPS INVESTMENTS D.B.A.  
LA VISTA MOBILE HOME PARK,

Respondent.

**NEW MEXICO ENVIRONMENT DEPARTMENT'S PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

Pursuant to the Hearing Officer's *Request for Submission of Findings of Fact, Conclusions of Law, and Proposed Form of Order*, filed on February 22, 2018, the New Mexico Environment Department ("NMED") submits the following proposed findings of fact and conclusions of law.

**FINDINGS OF FACT**

1. NMED is an agency of the executive branch within the government of the State of New Mexico.
2. NMED is a constituent agency of the New Mexico Water Quality Control Commission ("WQCC").
3. La Vista Del Canyon Mobile Home Park (the "MHP") is located at 711 S. Canyon Road, Alamogordo, New Mexico 88310. Hrg. Trans. p.11, 23-24.
4. The depth to ground water beneath the MHP is approximately two-hundred and fifty (250) feet. Hrg. Trans. p.83, 17-20.
5. Respondents, Moses Anserlian, Alice Apelian, and Champs Investments III, LLC are the owners and operators of the MHP, which contains approximately twenty-five (25) mobile home spaces/connections used for residential purposes. Hrg. Trans. p.11, 18-20; p. 12, 7-9.

6. On June 12, 2012, NMED sent Respondents a letter stating that Respondents were discharging wastewater from the MHP without a discharge permit in violation of 20.6.2.3104 NMAC, that Respondents were required to apply for and obtain a valid discharge permit under 20.6.2.3.3106 NMAC, and that Respondents could appeal the determination that a discharge permit was required within 30 days of receipt of the letter under 20.6.2.3112.B NMAC.

7. Respondents failed to appeal the determination within 30 days, they never obtained a valid discharge permit, and they continued to discharge. *See* NMED Exhibit. 3.

8. On October 15, 2015, NMED received a complaint from an owner of property located adjacent to the MHP regarding a horrible smell emanating from the sewage, that it was breeding mosquitos, and that the sewage discharge on the ground had been an on-going concern for two years prior to that. Hrg. Trans. pp.29-30, 23-3; p.39, 11-17; p12, 16-23; p.13, 6-10.

9. Sewage contains pathogens and total Kjeldahl nitrogen, consisting of ammonia nitrogen and organic nitrogen. ACO p.12, para. 48.

10. NMED conducted inspections of the MHP on the 16<sup>th</sup> and 26<sup>th</sup> of October 2015, and issued Respondents a Notice of Violation (“NOV”), providing that Respondents did not have a groundwater discharge permit, and that waste water was observed surfacing and pooling on the property as well as the neighboring property. The NOV also stated that the tanks had been pumped at least twice, but that sewage continued to surface. *See* NMED Exhibit. 4.

11. Respondents did not orally notify the Chief of the GWQB within twenty-four (24) hours of learning of the sewage discharges. *See* NMED Exhibits 3, 4, and 5.

12. Respondents did not submit written notification to the Department within one week of the sewage discharges. *Id.*

13. On October 27, 2015, Respondents told NMED that they were in discussions with the City of Alamogordo to connect the MHP to the City’s sewer system, but, as of the date of this

filing, the MHP remains unconnected to the City, and Respondents have not: 1) received a loan to pay for the connection; 2) applied to the City for a connection; 3) received *proper* easements; or 4) contracted with anyone to perform the work. Hrg. Trans. pp.60-65.

14. On February 8, 2016, NMED issued a second NOV to Respondents for discharging without a discharge permit in violation of 20.6.2.3104 NMAC. The NOV required Respondents to complete and submit a discharge permit application to NMED by March 3, 2016. NMED Exhibit 5.

15. Respondents did not file a corrective action report with the Department within fifteen (15) days after learning of the discharge. *Id.*

16. Respondents failed to contact NMED by March 3, 2016. Hrg. Trans. p.18, 15-17.

17. Respondents did not take action to contain and remove or otherwise mitigate the damage caused by the sewage discharges as soon as possible after learning of the discharges. *See* NMED Exhibits 3, 4, and 5.

18. On August 1, 2016, Respondents submitted an incomplete application to NMED, and on August 5, 2016, NMED requested that Respondents complete the application. Hrg. Trans. pp.19-26.

19. Respondents never completed the application. Hrg. Trans. *Id.*

20. On September 27, 2017, NMED issued an Administrative Compliance Order (“ACO”) to Respondents for:

1) discharging without a permit in violation of 20.6.2.3104 NMAC;

2) failure to obtain a discharge permit in violation of 20.6.2.3106 and 20.6.2.3114 NMAC;

3) failure to report and notify NMED of discharges in violation of 20.6.2.1203.A(1) and (2) NMAC; and

4) failure to take corrective action of the discharges in violation of 20.6.2.1203.A(5) NMAC. *See* ACO WQCC 17-09(A), pp.15-16.

21. The ACO assessed \$28,500.00 in civil penalties for the above-listed violations pursuant to the Ground Water Quality Bureau's ("GWQB") civil penalty policy. *Id.* at p.17.

22. On October 27, 2017, Respondents filed a letter requesting a hearing. The letter adhered to none of the specific Answer requirements under 20.1.3 NMAC. *See* Answer WQCC 17-09(A).

23. The hearing was scheduled and conducted on January 9, 2018 before the WQCC at approximately 10:55am in the New Mexico Public Education Department, Mabry Hall, located at 300 Don Gaspar Avenue in Santa Fe, New Mexico. Hrg. Trans. p.1, 17-22.

#### **CONCLUSIONS OF LAW**

24. Pursuant to NMSA 1978, § 74-6-10(A)(1), NMED properly issued a compliance order requiring compliance and assessing a civil penalty, because NMED determined that Respondents violated and continue to violate the Regulations adopted pursuant to the Water Quality Act ("WQA").

25. Respondents are a "person" as defined by the WQA, § 74-6-2(I), and the Regulations, 20.6.2.7.JJ NMAC.

26. Pathogens and total Kjeldahl nitrogen, consisting of ammonia nitrogen and organic nitrogen are water contaminants within the meaning of 20.6.2.7.AAA NMAC, and could create water pollution within the meaning of 20.6.2.7.CCC NMAC.

27. 20.6.2.3104 NMAC prohibits Respondents from discharging effluent or leachate directly or indirectly into ground water without a discharge permit issued by NMED, which Respondents have done, continuously, since at least 2012.

28. 20.6.2.3106.A NMAC requires Respondents to submit a discharge plan to NMED for approval within 120 days of receipt of a written notice that a discharge permit is required, which Respondents failed to do.

29. 20.6.2.3106 NMAC provides the procedures by which Respondents should have submitted an application for a discharge permit, which Respondents failed to follow.

30. 20.6.2.3114.F and Table 2 NMAC require the MHP to pay a \$100.00 filing fee at the time of the submittal of the application to NMED.

31. 20.6.2.1203.A(1) and (2) NMAC requires Respondents to, upon discharge of the sewage in such quantity as may, with reasonable probability, injure or be detrimental to human health, animal or plant life, or property, or unreasonably interfere with the public welfare of the use of property to:

(a) orally notify the GWQB no later than 24 hours after learning of the discharge;

(b) submit written notification to the GWQB no later than one week;

(c) take corrective action as soon as possible to contain and remove or mitigate the damage caused by the discharge; and

(d) file a corrective action report with the GWQB no later than 15 days after learning of the discharge.

32. Respondents failed to comply with all the above.

Respectfully Submitted,

/s/ Jason T. Wallace

Jason T. Wallace

Assistant General Counsel

New Mexico Environment Department

Telephone: (505) 222-9508

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Proposed Form of Order was mailed postage prepaid, March 9, 2018, via Certified Mail, Return Receipt Requested, to the following:

**Moses Anserlian, President**  
**Alice Apelian, CEO**  
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/s/ Jason T. Wallace  
Jason T. Wallace  
Office of General Counsel  
New Mexico Environment Department