

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:

Energy Answers Arecibo, LLC

PSD Appeal No 14-04

MOTION OF RECUSAL OF THE PANEL OR RECONSIDERATION

TO THE HONORABLE BOARD MEMBERS:

COMES NOW, Leonardo Ramos-Hernandez, the petitioner above captioned, filing PRO SE, respectfully ALLEGE, EXPOUND AND PRAY:

The petitioner hereby asserts his right to a competent tribunal expressed in the International Covenant of Civil and Political Rights a treaty ratified by Congress in 1993 enforceable via the Due Process Clause of the Fifth Amendment as a fundamental right 1. A pinnacle of competence is the ability of reading the plain language of the law and administrative provisions.

The panel is making an unprecedented assertion of having discretion to abstain from exercising its jurisdiction under no known judicial doctrine. In order to pursue this assertion the Board equates jurisdiction to discretion to provide relief. This is plain error, proper for reconsideration, but not grounds for recusal. What is grounds for recusal is the incompetence displayed by the panel for insisting to read the word "and" as "or".

The panel bases its power of discretion as to its jurisdiction on the provision 40 CFR 124.19(i) which reads in the relevant part "upon issuance of final permit AND exhaustion of administrative remedies".

Exhaustion of administrative remedies is a recursive affair that permits a second wave of petitions to be filed upon issuance of a final permit. The board provided a redacted version of the provision reading the "AND" as "OR" thus excluding the words "exhaustion of administrative remedies". The petitioner called the error and the Board asserted interpretative powers. The problem with the Board's position is that the word "AND" cannot be interpreted as "OR". An attempt to do such is a blunt display of incompetence to read the plain English language.

Wherefore I respectfully request the recusal of the Environmental Appeals Panel or reconsideration of the plain error above raised permitting proper briefing before exercising abstention.

In Barranquitas Puerto Rico this 7th of July 2014

/s/ Leonardo Ramos-Hernandez
Leonardo Ramos-Hernandez
HC 4 Box 2925
Barranquitas PR 00794

1 The Board did assert abstention precedent on In Re Avenal Power Center, LLC August 18th 2011 but is misplaced as the Avenal Board did exercise jurisdiction allowing for proper briefing of the Avenal petitions unlike the case at bar where the Board pretends to shortcircuit the process and avoid briefing by denying jurisdiction. The Avenal Board actually defeats the Board position as it forces the Board to permit proper briefing before exercise abstention.

CERTIFICATE OF SERVICE

I CERTIFY that on this date I have notified this MOTION OF RECUSAL OF THE PANEL OR RECONSIDERATION

Via email as follows:

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In Barranquitas Puerto Rico this 7th of July 2014

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