

FILED

2011 JUN 30 PM 2:00

U.S. EPA REGION IX
REGIONAL HEARING CLERK

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:

**Jose P. Jazmin and Betty Jazmin,
Trustees of the Jazmin Family Trust,**

Respondents.

Docket No. UIC-09-2010-0006

ORDER TRANSFERRING CASE TO REGIONAL JUDICIAL OFFICER

The Complaint and Proposed Administrative Order with Administrative Civil Penalty ("Complaint") initiating this proceeding was filed on September 13, 2010, pursuant to Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Rules"), which govern this proceeding. The Complaint notified Respondents of the opportunity to request a hearing on Complainant's proposed Final Order and stated, "Such hearing shall not be subject to Section 554 or 556 of the Administrative Procedure Act, 5 U.S.C. §§ 554 and 556, but shall provide a reasonable opportunity to be heard and to present evidence." The Complaint noted further that "Subpart I of the Consolidated Rules of Practice, 40 C.F.R. Part 22, governs and sets forth the procedures of such hearing."

On October 18, 2010, Respondents filed an Answer to the Complaint, generally denying each allegation in the Complaint and asserting several affirmative defenses. Respondents also filed a Request of Jazmin Family Trust for Hearing and Discovery, which stated that Respondents "request a reasonable opportunity to be heard and to present evidence and conduct discovery by the Presiding Officer following pursuant [sic] to Subpart I of the [Rules]." The case was sent to the Office of Administrative Law Judges.

Upon the parties' request, per Order dated January 26, 2011, the undersigned initiated Alternative Dispute Resolution ("ADR") and appointed a neutral Administrative Law Judge ("ALJ") to preside over ADR. On June 6, 2011, the neutral ALJ terminated ADR, and the undersigned was designated to preside over this matter on June 7, 2011. A Prehearing Order was issued on June 14, 2011.

Section 1423(c)(3)(A) of the Safe Drinking Water Act provides, in pertinent part:

An order under this subsection shall be issued by the Administrator after opportunity . . . for a hearing. Before issuing the order, the Administrator shall give . . . written notice . . . and the opportunity to request . . . a hearing on the

order. *Such hearing shall not be subject to section 554 or 556 of Title 5 [the Administrative Procedure Act], but shall provide a reasonable opportunity to be heard and to present evidence.*

42 U.S.C. § 300h-2(c)(3)(A) (emphasis added).

Additionally, Rule 22.50(a)(2) provides that Subpart I of the Rules, 40 C.F.R. §§ 22.50-52, applies to all proceedings for “[t]he assessment of a penalty under sections 1414(g)(3)(B) and 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300g-3(g)(3)(B) and 300h-2(c))” 40 C.F.R. § 22.50(a)(2). Further, Rule 22.51 states: “The Presiding Officer shall be a Regional Judicial Officer. The Presiding Officer shall conduct the hearing, and rule on all motions until an initial decision has become final or has been appealed.”

Accordingly, the Prehearing Order issued June 14, 2011, is hereby **WITHDRAWN**, and this matter is **TRANSFERRED** to the Regional Judicial Officer for adjudication.¹



Susan L. Biro
Chief Administrative Law Judge

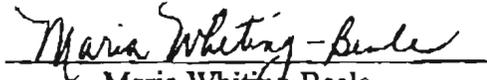
Dated: June 29, 2011
Washington, D.C.

¹ The parties' attention is directed to Subpart I of 40 C.F.R. Part 22, particularly Rule 22.50(b) (“Relationship to other provisions” in Part 22) and Rule 22.52 (“Discovery under § 22.19(e) shall not be authorized, except for discovery of information concerning respondent’s economic benefit from alleged violations and information concerning respondent’s ability to pay a penalty.”). 40 C.F.R. §§ 22.50(b), 22.52.

In the Matter of Jose P. Jazmin and Betty Jazman Trustees of the Jazmin Family Trust, Respondents
Docket No. UIC-09-2010-0006

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Transferring Case To Regional Judicial Officer**, dated June 29, 2011, was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale
Staff Assistant

Dated: June 29, 2011

Original And One Copy By Pouch Mail And Facsimile To:

Bryan Goodwin
Regional Hearing Clerk
U.S. EPA
Mail Code WST-1
75 Hawthorne Street
San Francisco, CA 94105

Copy By Pouch Mail And Facsimile To:

Brett Moffatt, Esquire
Assistant Regional Counsel
U.S. EPA
75 Hawthorne Street, ORC-2
San Francisco, CA 94105

Copy By Regular Mail And Facsimile To:

Jeffrey W. Allen, Esquire
VAN DE PPE;, LEVY & ALLEN, LLP
1600 South Main Plaza, Suite 325
Walnut Creek, CA 94596



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ADMINISTRATIVE LAW JUDGES
MAIL CODE 1900L
1200 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20460-2001

TELEPHONE 202:564-6255
FACSIMILE: 202-565-0044

FAX TRANSMITTAL PAGE

Date: 6/29/11 Pages (incl. transmittal page): 4

From: JUDGE SUSAN L. BIRO

To: Bryan Goodwin, Regional Hearing Clerk

Fax: 415-947-3530

Telephone:

To: Brett Moffatt, Esquire

Fax: 415-947-3570

Telephone:

To Jeffrey W. Allen, Esquire

Fax: 925-934-6060

Telephone:

To:

Fax:

Telephone:

Hard Copy To Be Mailed: Yes No

Any Questions Or Problems May Be Directed To

Telephone: _____

REMARKS: _____

