

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Félix Ayala and Silvette Ayala
d/b/a Cantera El Roble
State Road 827, Km 2.0
Piñas Ward
Toa Alta, PR 00953

Proceeding to Assess Class II Civil
Penalty Under Section 309(g)

DOCKET NUMBER
CWA-02-2009-3451

RESPONDENTS

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2010 MAR 17 PM 1:52
REGIONAL HEARING
CLERK

MOTION TO SET ASIDE

Counsel for the Complainant, the United States Environmental Protection Agency ("EPA"), respectfully submits the following Motion in Response to the Order to Supplement the Record:

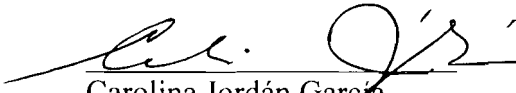
1. On September 29, 2009, EPA filed its Motion for Entry of Default, requesting this Honorable Court to issue a default order against Respondents for their failure to file the Answer to the Complaint within thirty (30) days after service of the same.
2. On December 2, 2009, this Honorable Court issued an Order to Supplement the Record in which additional information to clarify the issue of proper service of the Complaint was requested.
3. On January 14, 2010, Complainant filed its Motion in Compliance with Order, in which it submitted the demanded documents and a Sworn Statement prepared by Enforcement Officer Héctor Ortiz.
4. Said Motion in Compliance with Order restated Complainant's petition for this Court to issue a default Order against Respondents, and assess a penalty of fifty thousand and twenty dollars (\$50,020.00), as proposed in the Complaint.

5. As stated in the Certificate of Service of the Motion in Compliance with Order, a copy of the Motion was served to Respondents, to the following address: RR 3 Box 10827, Toa Alta, Puerto Rico, 00953. On June 23, 2009, Carmen M. Ayala, Respondent Félix Ayala's wife, had offered this address to Enforcement Officer Héctor Ortiz as their correct address.
6. However, the mailed document was returned to Complainant and on January 28, 2010, Enforcement Officer Héctor Ortiz delivered the document by hand to Mariam Ayala (daughter and sister of Félix Ayala and Silvette Ayala) at Respondent Félix Ayala's residence.
7. Enforcement Officer Héctor Ortiz explained to Mariam Ayala and Carmen M. Ayala, the content of the document and the possible consequences of Respondents' failure to answer the Complaint.
8. Finally, Respondent Silvette Ayala requested a conference with Complainant, and both parties met on March 4, 2010.
9. On the March 4, 2010 conference, Complainant agreed to file a Motion to Set Aside its Request for Entry of Default, if Respondents made a commitment to file their Answer to the Complaint within a two weeks timeframe.
10. Since Counsel for Respondents filed their Answer to the Complaint today, it is hereby requested that this Honorable Court set aside Complainant's Motion for Entry of Default, in order to give Respondents the benefit of a response, with the intention to give this case the most sensible and prompt solution.

Certificate of Service

I hereby certify that a true copy of this Motion for Entry of Default was served to: Janelle Falcón, Esq., Toa Alta Heights, 18 St., N19, Toa Alta, Puerto Rico, 00953.

Respectfully submitted, in San Juan, Puerto Rico, this 16th day of March, 2010.



Carolina Jordán García
Assistant Regional Counsel
U.S. EPA, Region 2
1492 Ponce de Leon Ave. 417
San Juan, PR 00901-4127
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**P.O. Box 10827
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CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed a copy of the foregoing "Motion to Set Aside" to the following persons, at the addresses listed below and in the following manner:

Original and copy for filing

Fed Ex:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway – 16th Floor
New York, New York, 10007

Copy by Fed Ex:

Helen Ferrara
Presiding Officer
U.S. Environmental Protection Agency, Region 2
290 Broadway – 16th Floor
New York, New York, 10007

Copy by Certified Mail /

Return Receipt Requested:

Janelle Falcón, Esq.
Toa Alta Heights
N-19 18 St.
Toa Alta, Puerto Rico 00953

Date: 3/16/09


San Juan, Puerto Rico
Office of Regional Counsel - CT