



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

U.S. ENVIRONMENTAL
PROTECTION AGENCY
2010 APR 26 PM 2:17
REGIONAL HEARING
ALBANY

IN THE MATTER OF)
)
FELIX AYALA and SILVETTE AYALA) DOCKET NO. CWA-02-2009-3451
d/b/a CANTERA EL ROBLE)
)
)
RESPONDENTS)

ORDER SEEKING CLARIFICATION AND DIRECTING SETTLEMENT CONFERENCE

As you previously have been notified, I have been designated by the April 19, 2010 Order of the Chief Administrative Law Judge to preside in the above captioned matter.^{1/} This proceeding arises under the authority of Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice"), 40 C.F.R. §§ 22.1-22.32. The parties are advised to familiarize themselves with both the applicable statute(s) and the Rules of Practice.

On February 12, 2009, the United States Environmental Protection Agency ("EPA" or "Complainant") filed a Complaint against Felix Ayala and Silvette Ayala d/b/a Cantera El Roble ("Respondents"), alleging that Respondents violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, through the mining activities at their facility in Toa Baja, Puerto Rico. For the alleged violations, EPA seeks a civil administrative penalty of \$50,020. Respondents filed an Answer to the Complaint ("Answer")

^{1/} The Chief Administrative Law Judge issued this Order after neither Complainant nor Respondents responded to an inquiry from this office regarding the Alternate Dispute Resolution ("ADR") process offered by this office.

on March 23, 2010.^{2/} In the Answer, Respondents deny the allegations but do not request a hearing.

Under Rule 22.15(b) of the Rules of Practice, 40 C.F.R. § 22.15(b), the answer must state whether a hearing is requested. However, subsection (c) of Section 22.15 further provides that if the respondent does not request a hearing, a hearing may be held by the Administrative Law Judge if issues appropriate for adjudication are raised in the answer. See *In re Green Thumb Nursery, Inc.*, FIFRA Appeal No. 95-4a, 6 E.A.D. 782, 786-94 (EAB, Mar. 6, 1997).

In view of Respondents' failure to request a hearing, Respondent is directed to clarify its position as to whether a hearing before an Administrative Law Judge is requested. Such clarification statement by Respondents shall be filed on or before **May 12, 2010**.

EPA policy, found in the Rules of Practice at Section 22.18(b), 40 C.F.R. § 22.18(b), encourages settlement of a proceeding without the necessity of a formal hearing. The benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding.

Although the record indicates that the parties have been in contact with each other, there has been no settlement. The parties are directed to hold a settlement conference on this matter on or before **May 19, 2010**, to attempt to reach an amicable resolution of this matter. See Section 22.4(c)(8) of the Rules of Practice, 40

^{2/} Rule 22.15(a) of the Rules of Practice requires a respondent to file an answer with the Regional Hearing Clerk within 30 days after service of the complaint. 40 C.F.R. § 22.15(a). In the present proceeding, Respondents failed to file an answer within the time prescribed. Consequently, EPA submitted a Motion for Entry of Default to the Regional Judicial Officer on September 29, 2009. On March 17, 2010, EPA filed a Motion to Set Aside, in which EPA related that "Respondent Silvette Ayala requested a conference with Complainant, and both parties met on March 4, 2010." Motion to Set Aside at 2. At this meeting, EPA agreed to file a Motion to Set Aside its Request for Entry of Default if Respondents filed an answer within two weeks. Motion to Set Aside at 2. Respondents submitted an Answer to Complaint dated March 16, 2010 (it was not filed with the Regional Hearing Clerk until March 23, 2010, however), and EPA subsequently filed its Motion to Set Aside. The Regional Judicial Officer granted the Motion to Set Aside on March 29, 2010. This matter was then referred to the Office of Administrative Law Judges.

C.F.R. § 22.4(c)(8). EPA shall file a status report regarding such conference and the status of settlement on or before **May 28, 2010**.

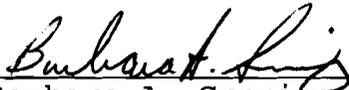
The original and one copy of all pleadings, statements and documents (with any attachments) required or permitted to be filed in this Order (including a ratified Consent Agreement and Final Order) shall be filed with the Regional Hearing Clerk, and copies (with any attachments) shall be sent to the undersigned and all other parties. The parties are advised that E-mail correspondence with the Administrative Law Judge is not authorized. See Section 22.5(a) of the Rules of Practice, 40 C.F.R. § 22.5(a).

The statements and information required by this Order to be sent to the Presiding Judge, as well as any other further pleadings, if sent by mail, shall be addressed as follows:

The Honorable Barbara A. Gunning
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Hand-delivered packages transported by Federal Express or another delivery service that x-rays their packages as part of their routine security procedures, may be delivered directly to the Offices of the Administrative Law Judges at 1099 14th Street, NW, Suite 350, Washington, DC 20005.

Telephone contact may be made with my legal staff assistant, Mary Angeles at (202) 564-6281. The facsimile number is (202) 565-0044.



Barbara A. Gunning
Administrative Law Judge

Dated: April 26, 2010
Washington, DC

**In the Matter of *Felix Ayala and Silvette Ayala d/b/a Cantera El Roble*, Respondents.
Docket No. CWA-02-2009-3451**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Seeking Clarification and Directing Settlement Conference**, dated April 26, 2010, was sent this day in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Karen Maples
Regional Hearing Clerk
US EPA, Region II
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by Pouch Mail to:

Carolina Jordán Garcia, Esq.
Assistant Regional Counsel (3LC26)
ORC, U.S. EPA / Caribbean Field Div.
Centro Europa Building, Suite 417
1492 Ponce de Leon Ave.
San Juan, PR 00907-4127

Copy by Regular Mail to:

Lcda. Janelle Falcon Verdejo
Legal Counsel
License No. 16906
Calle 18 N19 Toa Alta Heights
Toa Alta, PR 00953

**Dated: April 26, 2010
Washington, D.C.**