

receipt requested is a valid method for serving the complaint. Default Order at 7. The Presiding Officer also observed that the Consolidated Rules of Practice provide further as follows:

Where respondent is * * * an unincorporated association which is subject to suit under a common name, complainant shall serve on an officer, partner, a managing or general agent, or any other person authorized by appointment or by Federal or state law to receive service of process.

Id. (quoting 40 C.F.R. § 22.5(b)(1)(ii)(A)). The Presiding Officer provided a detailed analysis of the facts regarding service of both the complaint and motion for default, including supplemental information the Region provided. *Id.* at 6-11. Among other things, the supplemental information the Region provided included a copy of a letter the Region received from Las Delicias Community members, including Ms. Reyes and Ms. Collazo. *Id.* at 8-9. That letter referred to the complaint and this enforcement action. *Id.*

The Presiding Officer held that it “appears reasonable that Ms. Collazo be presumed, as a community []member receiving mail, including both the Complaint and the subsequent Motion for Entry of Default, at Ms. Reyes’ address, to be authorized to receive service on behalf of the Las Delicias Community.” *Id.* at 9. The Presiding Office also found that the letter sent by Ms. Reyes and Ms. Collazo (and others) “established that Respondent, through its named representative, had actual notice of the Complaint.” *Id.* The Presiding Officer’s Default Order, however, does not discuss the predicate issue of whether Las Delicias Community is “an unincorporated association which is subject to suit under a common name” as required for 40 C.F.R. § 22.5(b)(1)(ii)(A) to be applicable. The Region’s complaint, the Region’s motion for

default, and the Region's motion to supplement the record also do not discuss whether Las Delicias Community is subject to suit under a common name.

Pursuant to 40 C.F.R. § 22.30(a), the parties had thirty days to appeal the Presiding Officer's decision. The Environmental Appeals Board did not receive an appeal from either party. Accordingly, we must determine whether to exercise our discretion to initiate review of the case. *See* 40 C.F.R. § 22.30(b) (Board may review an initial decision on its own initiative).

After conducting a preliminary examination of the Default Order and Initial Decision and related materials, we find that the question whether Las Delicias Community is "an unincorporated association which is subject to suit under a common name" requires further review. We therefore elect, pursuant to 40 C.F.R. § 22.30(b), to review that narrow component of the Presiding Officer's decision. The Region is hereby ordered to file a brief addressing whether Las Delicias Community is an unincorporated association and whether applicable law subjects Las Delicias Community to suit under a common name. The Region's brief shall be filed on or before Monday, December 15, 2008. Any response to the Region's brief shall be filed on or before Monday January 5, 2009.

So ordered.

Dated:

November 14, 2008

ENVIRONMENTAL APPEALS BOARD

By:

Anna L. Wolgast

Anna L. Wolgast

Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Electing to Review *Sua Sponte* in the matter of Iris Reyes, Las Delicias Community, CWA Appeal No. 08-07, were sent to the following persons in the manner indicated:

By First Class U.S. Mail:

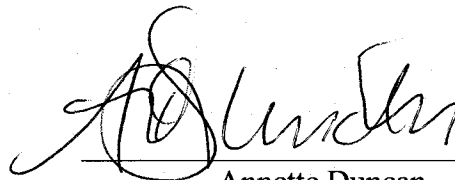
Iris Reyes
Las Delicias Community
HC 01 Buzon 5715
Ciales, Puerto Rico 00638-9622

By Facsimile and EPA Pouch Mail:

Lourdes del Carmen Rodriguez
Office of Regional Counsel
U.S. EPA, Region 2
Caribbean Field Division
Centro Europa Bldg., Suite 417
1492 Ponce de Leon Avenue
San Juan, Puerto Rico 00907-4127
Fax: (787) 729-7748

Karen Maples
Regional Hearing Clerk
U.S. EPA, Region 2
290 Broadway – 16th Floor
New York, NY 10007-1866
Fax: (212) 637-3202

Dated: 1/14/08



Annette Duncan
Secretary