	ENVIRONMENTAL APPEALS BOANVIRONMENTAL PROTECTION A WASHINGTON, D.C.		YCY I	1 4	@ 2008	70
In re:)		lerk, Environ NITIALS	menta	Appeals Bo	ard
Iris Reyes)					
Las Delicias Community) CWA Appeal N	lo. 08	8-07			
Docket No. SDWA-02-2003-8265). .)					

ORDER ELECTING TO REVIEW SUA SPONTE

On September 29, 2008, Regional Judicial Officer Helen S. Ferrara ("Presiding Officer") issued a Default Order and Initial Decision in this matter (which was served on September 30, 2008). See In re Reyes, Dkt. No. SDWA-02-2003-8265 (RJO Sept. 29, 2008) ("Default Order"). The Presiding Officer found the "Respondent, Las Delicias Community, by way of one of its community members and representative, Iris Reyes," liable for violating section 1414(g) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300g-3(g), and the Surface Water Treatment Rule, promulgated under the SDWA. Id. at 1. The Presiding Officer found the Respondent in default for failing to answer or respond to the civil administrative complaint filed by the Director of the Caribbean Environmental Protection Division for U.S. EPA Region 2 ("Region"). The Presiding Officer ordered the Respondent to pay a civil administrative penalty of \$500.00. Id. at 15.

In her Default Order, the Presiding Officer discussed whether service of process was proper because the certified return receipts for service of both the complaint and the motion for entry of default were not signed by Iris Reyes, but instead were signed by Lydia Collazo. The Presiding Officer observed that, pursuant to 40 C.F.R. § 22.5(b)(1), certified mail with return

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

Environmental Appeals Judge

By:

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 Facsimilie 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: / / / / - 08

Annette Duncan Secretary