



Office of Regional Counsel/Caribbean Team  
Centro Europa Building  
1492 Ponce de León Avenue  
Suite 417  
San Juan, Puerto Rico 00907-4127

FAX TRANSMISSION

To: Ms. Eureka Durr Fax: (202) 233-0121  
Clerk of the Board  
Environmental Appeals Board  
US EPA

RECEIVED  
U.S. EPA  
NOV 15 PM 11:20  
ENVIRONMENTAL APPEALS BOARD

Page 1 of 28 pages

Date: December 15, 2008

---

From: Lourdes del Carmen Rodriguez  
Assistant Regional Counsel

Phone: (787) 977-5819  
Fax : (787) 729-7748  
rodriguez.lourdes@epa.gov

Comments:

Complainant's Brief to Order Electing to Review Sua Sponte, CWA-APPEAL-No. 08-07  
The original with copies is being sent today by Federal Express.

BEFORE THE ENVIROMENTAL APPEALS BOARD  
UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

RECEIVED  
EPA  
DEC 15 PM 4 20  
ENVIRONMENTAL APPEALS BOARD

IN RE:

CWA APPEAL No. 08-07

Iris Reyes  
Las Delicias Community

Docket No. SDWA-02-2003-8265

COMPLAINANT'S BRIEF

TO ORDER ELECTING TO REVIEW *SUA SPONTE*

Attorney for Complainant  
Lourdes del Carmen Rodríguez  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
Office of Regional Counsel-CT  
Centro Europa Building, Suite 417  
1492 Ponce de León Ave.  
San Juan, Puerto Rico 00907  
Phone: (787) 977-5819  
Fax: (787) 729-7748

Respondents  
Iris Reyes  
Lydia Collazo  
Las Delicias Community  
HC 01 Buzón 5715  
Ciales, Puerto Rico 00638-9622

**TABLE OF CONTENTS**

I.	PROCEDURAL BACKGROUND	1
II.	FACTUAL BACKGROUND	2
III.	DISCUSSION OF ISSUE SUBJECT TO REVIEW SUA SPONTE <i>Whether Las Delicias Community Is An Unincorporated Association Subject To Suit Under A Common Name</i>	4
IV.	CONCLUSION	8

**TABLE OF AUTHORITIES****I. STATUTE**

<b>Safe Drinking Water Act, 42 U.S.C. § 300f-300j-26</b>	
Section 1401, 42.U.S.C. § 300-f(4) (5)	2, 3
Section 1401(12), 42 U.S.C. § 300-f (12)	3
Section 1401(13) (A), 42 U.S.C. § 300-f(13) (A)	3
Section 1401(12), 42 U.S.C. § 300-f (12)	5
Section 1414 (g) (3) (B), 42 U.S.C. § 300-g-3(g) (3(B)	5

**II. RULES AND REGULATIONS**

<b>Consolidated Rules of Practice, 40 C.F.R. Part 22</b>	
Section 22.30(b)	1
Section 22.3	5
Section 22.5(b) (1) (ii) (A)	2, 4, 5, 6
<b>Surface Water Treatment Rule, 40 C.F.R. Part 141,</b>	
Subpart H, National Primary Drinking Water Regulations	2, 8
Section 141.2	3
<b>Rules of Civil Procedure of Puerto Rico,</b>	
32 L.P.R.A., Ap. III	
Rule 4.4	6
Rule 4.4(3)	6
Rule 15.3	7

**COMPLAINANT'S EXHIBITS**

- I. Declaration of Cristina I. Maldonado, in Support of Complainant's Brief to Order Electing to Review Sua Sponte
- II. Non-PRASA Report, dated June 7, 1999, prepared By Eduardo Salgado
- III. Non-PRASA report dated May 6, 1999, prepared By Eduardo Salgado

BEFORE THE ENVIROMENTAL APPEALS BOARD  
UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

IN RE:

Iris Reyes  
Las Delicias Community

Docket No. SDWA-02-2003-8265

CWA APPEAL No. 08-07

COMPLAINANT'S BRIEF PURSUANT

TO ORDER ELECTING TO REVIEW *SUA SPONTE*

Now Comes the Complainant, the United States Environmental Protection Agency ("EPA") Region 2, by and through the undersigned counsel, and respectfully submits Complainant's Brief in compliance with the Environmental Appeals Board ("EAB" or "Board") November 14, 2008, Order Electing to Review *Sua Sponte*, the Default Order and Initial Decision issued by the Regional Judicial Officer Helen S. Ferrara ("Presiding Officer") in the above matter.

I. PROCEDURAL BACKGROUND

On November 14, 2008, the Board, pursuant to 40 C.F.R. § 22.30(b), elected to review one specific component of the Default Order and Initial Decision ("Default Order") issued by the Presiding Officer in the above matter. The Board noted that

2

the Presiding Officer had provided a detailed analysis of the facts of the case, including service of the complaint and motion for default but found that the question of whether Las Delicias is an unincorporated community subject to suit under a common name required further review. The Board noted that the Presiding Judge in the Default Order had failed to address these predicates to the applicability of 40 C.F.R. § 22.5(b)(1)(ii)(A).

## II. FACTUAL BACKGROUND

On July 11, 2003, the Region issued to Las Delicias Community ("Respondent") a Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing, Docket No. SDWA-02-2003-8265 ("Complaint") pursuant to the provisions of the Safe Drinking Water Act ("SDWA") assessing a civil penalty of \$500. The Complaint alleged that Las Delicias Community had failed to comply with the provisions of the SDWA and the Surface Water Treatment Rule ("SWTR"), 40 C.F.R. Part 141, Subpart H, National Primary Drinking Water Regulations.

Las Delicias Community owns and/or operates a public water system (known as Las Delicias Public Water System) located in State Road 533, in the Municipality of Ciales, Puerto Rico. As owner/operator of the public water system, Las Delicias Community is a "supplier of water" within the meaning of Section 1401 of the SDWA, 42 U.S.C. § 300-f (4) and (5), which states:

"...(4)(A) In general.-the term 'public water system'

3

means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has as least fifteen connections or regularly serves at least twenty-five individuals...

...

(5) The term 'supplier of water' means any person who owns or operates a public water system."

Under 40 C.F.R. § 141.2, a "community water system" means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

Pursuant to Section 1401(12) and (13) (A) of the SDWA, 42 U.S.C. §300f-(12) and 13(A), and 40 C.F.R. §141.2, a "person" is defined, among others, as an individual, corporation or association.

Throughout the years, and at least since 1999, a group of people, of approximately 48 individuals, who make up Las Delicias Community, take their water from the community public water system, which, during the time in question and up to the present, they operate. The community group has maintained open communication with Region 2 representatives throughout the years. The enforcement officer handling this case is Ms. Cristina Maldonado, who holds the position of Environmental Scientist, in EPA's Caribbean Environmental Protection Division, Municipal Water Branch, in San Juan, Puerto Rico. Ms. Maldonado has followed up in her compliance assistance efforts with the



4

community and to the best of her knowledge the people who make up the Las Delicias Community, and who operate the community public water system, are not incorporated and the group is known by the common name of "Las Delicias Community". See Exhibit 1, *Declaration of Cristina I. Maldonado, in Support of Complainant's Brief to Order Electing to Review Sua Sponte*, with attachments.

### III. DISCUSSION OF ISSUE SUBJECT TO REVIEW SUA SPONTE

#### *Whether Las Delicias Community Is An Unincorporated Association Subject To Suit Under A Common Name*

As discussed above, Las Delicias Community is the "common name" used by the group of individuals who operate a community public water system in a rural area of the Municipality of Ciales, Puerto Rico, also known as the "Las Delicias Community Public Water System." EPA's record reveals that the small community group is not incorporated under the laws of the Commonwealth of Puerto Rico<sup>1</sup>.

For the following reasons, those individuals that go under the common name of Las Delicias Community, are subject as such to suit under applicable law, in this case, the SDWA and its implementing regulations, set forth at 40 C.F.R. Part 141, Subpart H, as required by 40 C.F.R. § 22.5(b)(1)(ii)(A) of the Consolidated Rules of Practice ("CROP").

First, as noted above, the SDWA defines a "person" as, among

---

<sup>1</sup> See Non PRASA Status Report, dated June 7, 1999, prepared by Eduardo Salgado of CEPD, Exhibit 2 and Non-PRASA Report dated May 6, 1999, prepared by Mr. Salgado, Exhibit 3. Both documents describe a visit to the

5

others, an individual, corporation or association. See SDWA Section 1401(12), 42 U.S.C. §300f-(12). Under Section 1414(g)(3)(B) of the SDWA, 42 U.S.C. §300g-3(g)(3)(B) (which is the section pursuant to which EPA brought the action in this matter), an administrative or judicial enforcement action may be initiated against "any person."

Second, the CROP addresses filing, service and form of all filed documents and business confidentiality matters. As to service of the complaint, it requires that complainant serve on "...respondent, or a representative authorized to receive service..."

Where the respondent is an "unincorporated association which is subject to suit under a common name" service may be to a person authorized by appointment or by Federal or State law to receive service of process. Section 22.5(b)(1)(ii)(A).

Under the CROP, a "respondent" is the person against whom an administrative complaint is issued, see 40 CFR § 22.3 (definition of "Respondent"), and may be considered the equivalent of a "defendant" in a judicial trial.<sup>2</sup> The CROP defines a "person" as:

"any individual, partnership, association, corporation, and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government." Section 22.3(a) of the CROP (Emphasis provided)

---

community and provide information that the community is not incorporated.

<sup>2</sup> "EPA Administrative Enforcement Actions: An Introduction to the Consolidated Rules of Practice", Joseph J. Lisa, 24 tem. J. Sci. Tech & Envtl. L. 1, Spring 2005.

6

There is no question as to whether the group can be named a respondent in an administrative case which follows the CROP because it is an organized group of unincorporated persons. Las Delicias, as we have discussed above, consists of a rural community of approximately 48 individuals, who take their water from a community public water system under their control. This group has several things in common, they live in the same rural area and they all receive their water from the same public water supply which bears the community's common name: "Las Delicias".

The question now is whether we can name the respondent under its common name, and if so, whom shall we serve notice on under the CROP.

The CROP requires that complainant shall notice of all documents on "...respondent, or a representative authorized to receive service..." Where the respondent is an "unincorporated association which is subject to suit under a common name" service may be to a person authorized by appointment or by Federal or State law to receive service of process. Section 22.5(b)(1)(ii)(A).

Rule 4.4 of the Rules of Civil Procedure of the Commonwealth of Puerto Rico ("RCP PR"), 32 L.P.R.A. Ap. III R.4.4, describes the process for personal service of a civil action. Under Rule 4.4(3), for a corporation, company, partnership, association or any other artificial person, service shall be done by delivering

7

a copy of the summons and the complaint to an "officer, managing or general agent, or to any other agent authorized by appointment or designated by law to receive service of process." Rule 15.3. of the RCP PR, Defendants under a common name-, states:

"Whenever two (2) or more persons do business under a common name, regardless of whether or not said name contains the names of said persons, they may be sued under the common name and service upon one of them shall be sufficient."  
32 L.P.R.A. Ap. III R 15.3

In the present case, Las Delicias Community is subject to suit under its common name, and service was duly performed to a person authorized under the laws of the Commonwealth of Puerto Rico.

In order to understand how this name came about, we have to briefly discuss the community water systems in Puerto Rico.

We can safely argue that it is common knowledge, that one of the most important health issues countries still face, even in the 21<sup>st</sup> century, is adequate drinking water supply for rural communities and developing countries.

Las Delicias Community Public Water System is one of approximately 250-280 public water systems or as they are commonly referred to, "Non-PRASA systems<sup>3</sup>" in the Commonwealth of Puerto Rico. These communities, which are not hooked up to PRASA filtration systems, derive their drinking water from surface sources like ponds, creeks and rivers, and could be exposed to

---

<sup>3</sup> They are known as Non-PRASA, because they are not connected to the government water supplier, Puerto Rico Aqueduct and Sewer Authority, known as "PRASA."

8

waterborne diseases due to lack of proper water disinfection.

Since 1999, EPA has tried to bring Las Delicias Community into compliance with the SWTR. However, as the record shows, they have constantly failed to comply with the filtration requirements specified in 40 C.F.R. Part 141 Subpart H. EPA's main concern is the risk to the users of the system to *Giardia lamblia* and waterborne diseases and pathogens. As the Presiding Officer mentions in her Order, Respondent's failure to comply with the SDWA (failing to comply with the filtration and disinfection requirements) has subjected a population of approximately 48 individuals to serious health risks over a significant time.


#### IV. CONCLUSION

Complainant hereby submits its Brief in response to the Board's Order to Review Sua Sponte. Complainant has fully addressed the specific issue subject to the Board's review and respectfully requests that the Board confirm the Presiding Officer's Decision in the above case.

9

Respectfully submitted, in San Juan, Puerto Rico, December

15, 2008.



Lourdes del Carmen Rodríguez  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
Office of Regional Counsel-CT  
Centro Europa Building, Suite 417  
1492 Ponce de León Ave.  
San Juan, Puerto Rico 00907  
Phone: (787) 977-5819  
Fax: (787) 729-7748

10

BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

IN RE:

CWA APPEAL No. 08-07

Iris Reyes  
Las Delicias Community

Docket No. SDWA-02-2003-8265

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed a copy of the foregoing "Complainant's Brief Pursuant to Order to Review Sua Sponte" to the following persons, at the addresses listed below and in the following manner:

Original and (5) copies for filing

By Federal Express:

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board  
1341 g Street, N.W., Suite 600  
Washington, D.C., 20005

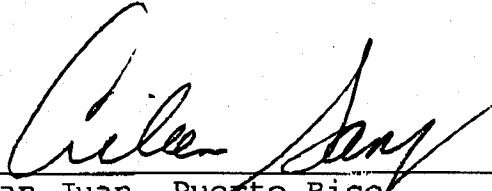
A copy by Federal Express:

Helen S. Ferrara  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway - 16<sup>th</sup> Floor  
New York, New York, 10007

Copy by Certified Mail/  
Return Receipt Requested to:

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

Date: 12/15/08



San Juan, Puerto Rico  
Office of Regional Counsel-CT  
U.S. Environmental Protection  
Agency, Region 2  
Centro Europa Bldg. 417  
1492 Ponce de León Avenue  
San Juan, Puerto Rico 00907  
(787) 977-5819



BEFORE THE ENVIROMENTAL APPEALS BOARD  
UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

IN RE:

CWA APPEAL No. 08-07

Iris Reyes  
Las Delicias Community

Docket No. SDWA-02-2003-8265

DECLARATION OF CRISTINA I. MALDONADO  
IN SUPPORT OF COMPLAINANT'S BRIEF  
TO ORDER ELECTING TO REVIEW *SUA SPONTE*

I, CRISTINA I. MALDONADO, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I hold the position of Environmental Scientist, in the United States Environmental Protection Agency (EPA) Region 2, Caribbean Environmental Protection Division, Municipal Water Branch, in San Juan, Puerto Rico, since December 1996.
2. My responsibilities as Environmental Scientist include, but are not limited to: compliance of laws and regulations under the Safe Drinking Water Act (SDWA), which include among others, sampling, inspections, enforcement actions and visits to rural water supply systems.
3. As part of my responsibilities, I have performed

- compliance inspections, and worked directly with the community members of the rural water supply systems in Puerto Rico, also known as the "Non-PRASA" communities.
4. In several occasions during the past years, as part of my duties, I have visited on numerous occasions and, am well-acquainted with, the Las Delicias Community Public Water System.
  5. Las Delicias community is located in the Municipality of Ciales. Las Delicias Community Public Water System serves an estimated population of approximately 48 individuals.
  6. A review of my files, (which includes two letters sent by several members of the community, and which I have attached to this statement as Attachments 1 and 2) and to the best of my knowledge, the people who make up this community, include at least the following, with other members of their household:

Iris Reyes

Luis Rosario

Lydia Collazo

Carmen Figueroa

Orlando Rivera Estela

Dianida Torres Candelario

Joselyn Rivera Torres

Maria Estela

Carmen Estela Morales

Angel Padilla

Angel R. Estela

Diego Estela Morales

Teodoro Figueroa

Jose Romero Rivera

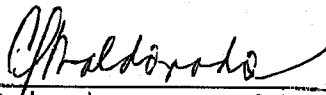
Miguel Romero Rivera

Aida Rivera

Vicente Santana

7. To the best of my knowledge, the members of the community are an unincorporated association that goes by the common name of "Las Delicias Community".
8. I make this Declaration in support of "Complainant's Brief to Order Electing to Review *Sua Sponte*" Region based on my own personal knowledge as stated above.
9. I declare under the penalty of perjury that the foregoing is true and correct.

Given in San Juan, Puerto Rico, on December 11, 2008.

  
\_\_\_\_\_  
Cristina I. Maldonado  
Environmental Scientist  
USEPA, Region 2  
CEPD-MWB

Acord. Los Dolores, Cienfuegos

C.S.

(NS# 220030)

17 de Mayo de 1999

29 JUN -4 PM 5:20  
U.S. CUSTOMS AND BORDER PROTECTION

Se Angel Eduardo Salgado M.S.

Se Salgado:

Los personas que componen el grupo de la ciudad, del distrito, de Dolores son las siguientes.

- Carmen Figueroa - 3
- Teodoro Figueroa 1
- Colonel Rocco Estela 5
- Carmen Estela 3
- Rafael Estela 2
- Miguel Romero 6
- Israel Figueroa 2
- Jose Luis Riera (yayo) 1
- Angel, Luis Romero (Hijo de Rocio) 3
- Leticia Carazo (Hija de Rocio) 5

V. HC-01 Box 5715 Cienfuegos, P.O. 02438-9022

Se Salgado:

Yo te he enviado los documentos, usted puede enviar una carta a este correo en un sobre manila, a mi nombre y yo de los extranjeros yo usted puede incluir en la carta que voy a enviar a todos, para que así cada uno de ellos en su opinion, muchos gracias que muy agradecido

Des M. Rocio Torres

15/01/2005

A quien pueda entender

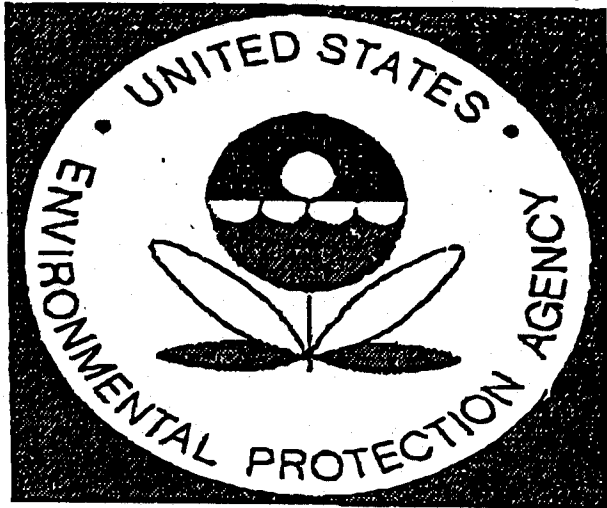
La Comunidad los delincios  
no estamos de acuerdo que  
se nos quite la toma de  
agua ya que nosotros  
mismo los lechones y no  
es justo que se nos quite.  
Si estamos de acuerdo que  
aquello panga la toma  
de agua pero que no diga  
lo de la Comunidad ya que  
tenemos animales y para  
limpiar que de la panga  
en otra tubería. Así si  
lo aceptamos, con esa condición  
muchos gracias.

Atf.

La Comunidad los delincios

1. Juan N. Reyes Lucero
2. Carmen Figueroa
3. Orlando Rivera Estela
4. DANIELA Torres Cantelario
5. Josefina Rivera Torres
6. María de los Angeles Estela
7. Carmen Efra Morales
8. Jorge Tadullo

9. Miguel Paband Ebb
- 10 - San Estela Torres
11. Roberto Ruvano
- 12 - Jose M. Romero Ruvano
- 13 - Miguel Romero Ruvano
14. Aida E. Riviera
- 15 - Vicente Santana
- 16 - Lydia Colazo



Caribbean Environmental  
Protection Division

Environmental  
Management  
Branch

Centro Europa Building, Suite 417  
1492 Ponce de León Avenue  
San Juan, PR 00907-4127

**FAX**

Page 1 of 2 pages

Date: June 7, 1995

**PLEASE DELIVER IMMEDIATELY**

To: Rosa Bigioni

Fax #: (212) 637-3953

Dept./Agency: DECA - Water Compliance Branch

Comments:

Saludos. Te envío este listado de  
señor de familia de la Comunidad Los Delicias  
de Ciales que me enviara la encargada del  
sistema, Sta. Oria N. Reyes.

From: Eduardo Selig

Phone: (787) 729-6951, X- 280

Fax: (787) 729-7747

If this transmission is not clear and/or incomplete, please call (787) 729-6951, extension 0.

\*\*\*\*\* -JOURNAL - \*\*\*\*\* DATE JUN-07-1999 \*\*\*\*\* TIME 15:19 \*\*\*\*\*

DATE/TIME = JUN-07 15:17

JOURNAL NO. = 10

COMM. RESULT = OK

PAGES = 02

DURATION = 00:01:30

MODE = XMT

STATION NAME =

TELEPHONE NO. = T 912126373953

RECEIVED ID = 212 637 3953

RESOLUTION = STANDARD



*Love*

**CERTIFIED**

Z 429 524 291

**MAIL**

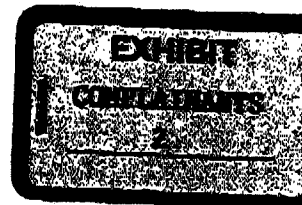
RECEIVED  
REQUESTED

*Iris M. Reyes Torres*

*Apt 1300*

*Caja P.R. 00638-1320*

*Centro Europa Building, Suite 417  
1492 Ponce de Leon Ave., Stop 22  
San Juan, P.R. 00907-4127*

**NON PRASA STATUS REPORT**

**System:** Acueducto Las Delicias

**PWS ID#:** 220032

**Municipality:** Ciales

**Inspector:** Eduardo Salgado

On May 6, 1999, I visited the Acued. Las Delicias system to follow-up on the community efforts to comply with AO-287F, which expired on June 30, 1997. I talked to Mrs. Iris N. Reyes Torres, the person in charge of the system.

The community is not organized and it's not incorporated. The aqueduct draws water from a creek, has no distribution tank and applies no treatment at all. It serves some 12 households.

The Cialitos PRASA system (4" pipe) runs through state road 149 up to km. 34.5, at the intersection with road 533. This PRASA system is in the immediate vicinity of Las Delicias community. Since this is a relatively small community there is a great likelihood that PRASA can serve them all. This community should be included in the SEP being worked out to connect Non-PRASA systems to PRASA.

I asked Mrs. Reyes to prepare a list with the names of the homeowners of this community. She stated that the community would be willing to connect to PRASA if they don't have to pay the connection costs.

**EST@06/07/99**



Secretaría Auxiliar para Salud Ambiental  
Programa de Agua Potable



INFORME DE CAMBIO  
Sistemas Non-PRASA

OK  
12/27

Nombre del sistema y/o comunidad

Acued. Los Delicias

PWS I.D.#

220032

Dueño o Encargado

Fris N. Reyes Torres

Dirección física

Po. Cialitos - Casa Blanca, Carr. 149 Intersección Carr. 533

Dirección postal

Po. Cialitos HC-D1 Box 5715, Ciales, P.R. 00638

Teléfono

828-4248

Operador del sistema

N/A

Teléfono

Dirección postal

Esta incorporada la comunidad?

si  no

Población: 48 personas

Número de familias 12

Fuente de abasto:  manantial

pozo  superficial quebrada

Construyeron un tanque nuevo?

si  no  No tienen tanque

capacidad N/A galones

Están aplicando tratamiento al agua?

si  no

Que tipo de tratamiento?

cloro  filtración Ninguno

Comentario:

En una época tuvieron un hipoclorador que inyectaba  
cloro en la línea y seguía directo a la distribución.  
No tienen tanque de distribución. El hipoclorador  
fue abandonado. Le pedí lista de residentes. Este sistema  
puede ser conectado a PRASA Cialitos como parte  
del SEP que está trabajando en esto. La línea PRASA  
llega muy cerca  
de la comunidad.

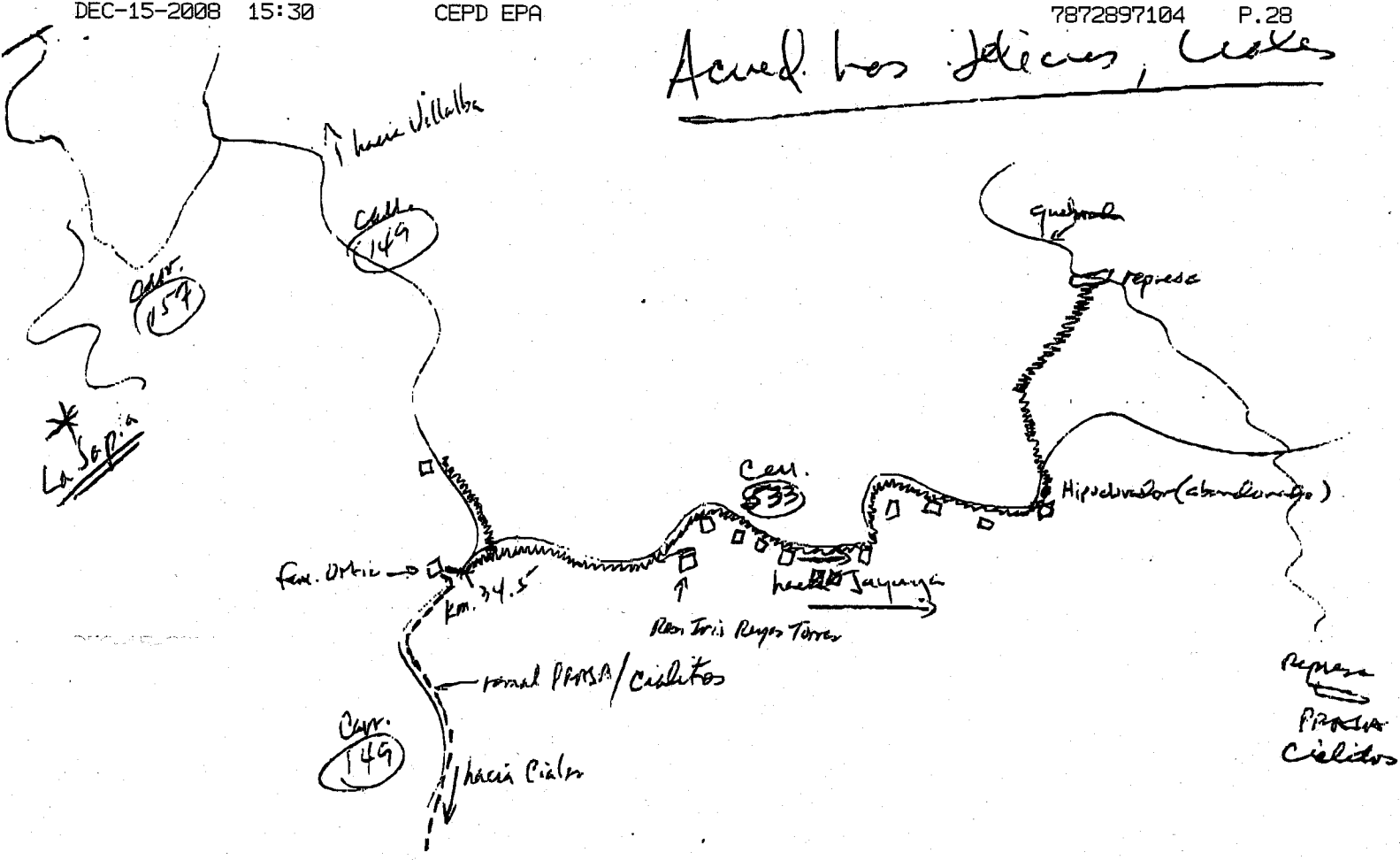
Informado por: ERN

Agencia: CEPD

Fecha: Mayo 6, 1995

Ojo -> ver  
detrás

# Acuéd. los Delicias, Cotes



- ~~-----~~ Acued-comunal Los Delicias
- Acued. PARRA Cielitos
- Residencias de la Com. Los Delicias (12)