

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2010 APR 16 PM 2:11
REGIONAL HEARING
CLERK

In the Matter of:

MUNICIPALITY OF LAS PIEDRAS
P. O. Box 68
Las Piedras, Puerto Rico 00771

RESPONDENT

Proceeding pursuant to Section 309(g)(2)(B) of
the Clean Water Act, 33 U.S.C. § 1319(g)

**PROCEEDING TO ASSESS
CLASS II CIVIL PENALTY**

**DOCKET NUMBER
CWA-02-2009-3456**

MOTION REQUESTING ENTRY OF DEFAULT ORDER

To the Honorable Court:

COMES NOW the Complainant to the instant action and very respectfully avers
and prays as follows:

1. Pursuant to this Honorable Court's Order on Respondent's Motion for Extension, dated March 17, 2010 (the March 17 Order), Respondent was granted a final thirty (30) day extension, until March 24, 2010, to file its prehearing exchange. Further, this Honorable Court clearly established that if Respondent's full prehearing exchange was not received by March 24, 2010, Respondent would be in default.

2. That on March 30, 2010, Complainant received an Answer to Order on Respondent's Motion for Extension, submitted by Mr. Roberto Soto Carreras, on March 23, 2010, indicating that the Municipality "decided to hire attorney German Gonzalez as new legal representative", and that the Municipality was "scheduling to submit proper documentation and answer [this Honorable Court's] request [on] April 5, 2010."

3. That as of the date of this Motion, over three weeks have elapsed from the March 17 Order and Mr. German Gonzalez has failed to file a Notice of Appearance as Counsel, or otherwise appear before this Honorable Court in this matter.

4. That as of the date of this Motion, Respondent continues to be in default as established by this Honorable Court's March 17 Order.

5. Pursuant to Section 22.17(a) of the Rules of Practice "[a] party may be found in default . . . upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer[.]" 40 C.F.R. § 22.17(a) (emphasis added). See, *In the Matter of Sargent Enterprises, Inc.*, CAA-03-2009-0189, at *3.

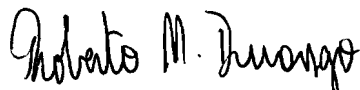
6. That in the instant matter, Respondent has repeatedly failed to comply with both the information exchange requirements of § 22.19(a) and with this Honorable Court's Prehearing Order, Order to Show Cause, and March 17 Order.

7. Pursuant to Section 22.17(c) of the Rules of Practice "[w]hen the Presiding Officer finds that default has occurred, [she] shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued." 40 C.F.R. § 22.17(c). See, *In the Matter of Sargent Enterprises, Inc.*, CAA-03-2009-0189, at *3.

8. That in the instant matter, the record does not show good cause as to why a default order should not be issued. Moreover, this Honorable Court's March 17 Order clearly establishes that if Respondent's full prehearing exchange was not received by March 24, 2010, Respondent would be in default.

WHEREFORE it is respectfully requested that this Honorable Court find Respondent to be in default as to all parts of the proceeding, pursuant to the March 17 Order and 40 C.F.R. § 22.17; enter a Default Order against Respondent for its failure properly to Comply with the Prehearing Order, for its failure to show good cause in the Order to Show Cause, and for its failure to Comply with the March 17 Order; assess a civil administrative penalty in the amount of \$47,738; and for such other relief as this Honorable Court deems reasonable, just, and proper.

Respectfully submitted in San Juan, Puerto Rico, on this 15th day of April, 2010.



Roberto M. Durango, Esq.
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Caribbean Team
Office of Regional Counsel
U.S. Environmental Protection Agency,
Region 2
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CERTIFICATE OF SERVICE

I hereby certify that on this day I have caused to be sent the foregoing **Motion Requesting Entry of Default Order**, dated April 15, 2010, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original by **Overnight and Fax** to:

Judge Barbara A. Gunning
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Franklin Court Building
1099 14th Street, N.W., Suite 350
Washington, D.C. 20460
Ph: 202.564.6291 / Fax (202) 565-0044.

Original and copy by **Overnight** to:

Karen Maples
Regional Hearing Clerk
U.S. EPA, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by **Certified Mail, Return Receipt Requested** to:

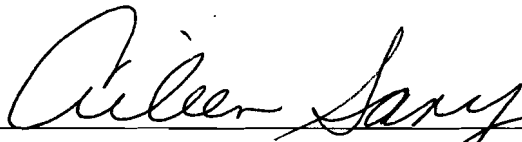
Edgar González, Esq. and/or
German González
Legal Representative
Municipality of Las Piedras
P.O. Box 2802
Guaynabo, PR 00970
Ph: (787) 775-8765;

Mr. Roberto Soto Carreras
Essayon Design & Manag. Sol.
PO Box 2689
Juncos, PR 00777

Miguel A. Lopez Rivera, Mayor
Municipality of Las Piedras
P. O. Box 68
Las Piedras, Puerto Rico 00771

4/15/10

Date



Aileen Sanchez, Office of Regional Counsel