

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2

2016 OCT 17 AM 7:00

U.S. Environmental Protection Agency

In the Matter of

Tower Exterminating, Corp. aka Tower  
& Son Exterminating Corp. and  
Wilson J. Torres Rivera

Respondents,

Proceeding Under the Federal Insecticide,  
Fungicide, and Rodenticide Act (FIFRA), as  
amended, and the Clean Air Act (CAA),  
as amended

Honorable Helen Ferrara  
Presiding Officer

Docket No. FIFRA-02-2016-5306

**MOTION FOR ORDER OF DEFAULT ON PENALTIES**

Complainant hereby moves the Presiding Officer, pursuant to 40 C.F.R. §§ 22.16(a) and 22.17(b), for an order of default assessing penalties against Respondents for the violations alleged in the Complaint. Specifically, Complainant seeks a penalty against each Respondent in the following amounts:

Respondent Tower & Son Exterminating Corp (“Tower”): \$59,500 for the violations of FIFRA § 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), alleged in Counts 1-90 of the Complaint, and \$119, 622 for the violations of the Clean Air Act and its implementing regulations at 40 C.F.R. Part 82 alleged in Counts 91 and 92; and

Wilson J. Torres Rivera (“Torres”): \$59,500 for the violations of FIFRA § 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), alleged in Counts 1-90 of the Complaint.

In brief, both Tower and Torres (hereinafter collectively called "Respondents") conduct a commercial pesticide control business from an establishment located in Bayamon, Puerto Rico 00960. On March 1, 2016, Complainant caused to be served, by certified mail, return-receipt requested, upon each of the Respondents at the business' mailing address (as well as upon their counsel, Peter Diaz, who represented them during the pre-filing negotiation period with EPA) a copy of the Complaint, alleging violations of FIFRA and of the CAA. Enclosed with the Complaints were copies of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination of Suspension of Permits ("Consolidated Rules"), found at 40 C.F.R. Part 22. To date, neither Respondent has filed an Answer.

On December 15, 2016, pursuant to 40 C.F.R. §22.16 and in the manner provided by 40 C.F.R. §22.5(b)(2), Complainant filed a Motion for Default Judgment for Liability seeking an Order finding Respondents Tower and Torres liable for the violations alleged in the Complaint. Complainant sent the Motion for Default Judgment for Liability, along with all supporting documentation, by certified mail, return-receipt requested, to each of the Respondents at the business' mailing address. The green cards were signed by the company officer Daisy Nieves and were returned to EPA. Respondents never replied to the Complainant's Motion for Default for Liability. An Order for Default on Liability ("Order") was then issued by this Court on August 10, 2017 with the following findings:

- that the Complaint was properly served on the Respondents;
- that the Respondents failed to answer the Complaint within 30 days;
- that Respondents Torres and Tower are each separately liable for ninety (90) violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), use of a pesticide in a manner inconsistent with its labeling, as set out in Counts 1 through 90 of the Complaint; and
- that Respondent Tower is liable for two violations of the Clean Air Act and its implementing regulations at 40 C.F.R. Part 82, namely the failure to report and to keep

records of required information regarding the purchase and use of methyl bromide, as set out in Counts 91 and 92 in the Complaint.

The Order further stated that “there is an expectation that a Motion for Default Judgment on Liability and Order granting same contemplates a second Motion for Penalty.” Accordingly, Complainant respectfully submits the current motion for civil penalties.

Any response by these Respondents to Complainant’s present motion must be filed within fifteen (15) days after service of such motion, in accordance with 40 CFR § 22.16(b) (Response to Motions). A failure to respond by any party within the designated period constitutes a waiver of any objection to the motion.

Date October 18, 2018  
New York, NY

Respectfully submitted,



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Bruce Aber  
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Waste & Toxic Substances Branch  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866  
(212) 637-3224 (phone)



**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the Motion for Order of Default on Penalties, dated October 18, 2018, along with the following supporting papers (Memorandum in Support, Exhibits including two Declarations, and Proposed Order), were sent this day in the following manner to the addresses listed below:

**Original and Copy Hand-Carried to the Regional Hearing Clerk**

Karen Maples  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Copy Hand-Carried to the EPA Region 2 Regional Judicial Officer

Helen Ferrara  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

**Copy by Certified Mail/Return Receipt Requested and Regular Mail to:**

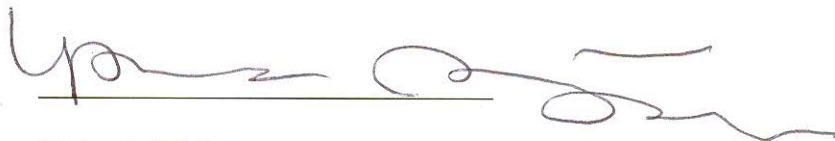
Wilson J. Torres Rivera  
c/o Tower & Son Exterminating Corp.  
PO Box 1045  
Bayamon, PR 00960

Wilson J. Torres Rivera, President  
Tower & Son Exterminating Corp  
P.O. Box 1045  
Bayamón, Puerto Rico 00960

In addition, I certify that a PDF version of the foregoing Complainant's Motion for Default Judgment for Penalty, along with Memorandum in Support, Exhibits including two Declarations, and a Proposed Order, were electronically sent to the following email address:

[Ferrara.helen@epa.gov](mailto:Ferrara.helen@epa.gov)

Dated: October 18, 2018  
New York, New York



Yolanda Majette  
Office of Regional Counsel  
Waste & Toxic Substances Branch Secretary