

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. Environmental
Protection Agency-Region 2
2018 JUN -9 AM 11:16

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In the Matter of :
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 Edwin Andújar Bermúdez dba :
 Truly Nolen Pest Control De Caguas : Honorable Helen Ferrara,
 : Presiding Officer
 :
 Respondent, : Docket No. FIFRA-02-2017-5302
 :
 Proceeding Under the Federal Insecticide, :
 Fungicide, and Rodenticide Act, as :
 Amended, and the Clean Air Act, as :
 Amended :
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MOTION FOR EXTENSION OF TIME AND SCHEDULING ORDER

Background

By Order dated September 14, 2017, your Honor granted Complainant’s Motion for Default Judgment on Liability in the above-captioned matter and ordered Complainant to file and serve against Respondent, Edwin Andújar Bermúdez dba Truly Nolen Pest Control De Caguas, on or before October 30, 2017, a Motion for Default Judgment on Penalty (“Motion on Penalty”), together with supporting documentation which will provide factual grounds for the proposed penalty, in accordance with 40 C.F.R. §§ 22.5 and 22.16.

On September 28, 2017, the undersigned filed a Motion for Extension of Time, from October 30, 2017 until April 30, 2018, to file a Motion for Penalty due to the unprecedented island-wide damage to the Commonwealth of Puerto Rico caused by Hurricanes Irma and Maria. On October 5, 2017 the motion for extension of time, until April 30, 2018, was granted.

On April 19, 2018, the undersigned filed a Second Motion for Extension of Time, for four months, from April 30, 2018 until August 28, 2018, to file a Motion for Penalty due to the continuing impact of the widespread destruction and damage caused by Hurricanes Irma and Maria still being felt on the island of Puerto Rico; many people remained without power or a steady supply of power, and there was a lack of function and steady telecommunications affecting various businesses. Additionally, inquiries by EPA appeared to show that Respondent's regular business operations may not have been fully reestablished. Finally, there was some confusion as to whether Respondent was represented by counsel. This second motion for extension of time, until August 28, 2018, was granted on April 23, 2018.

Current Motion for Extension of Time

Complainant now moves, with consent of counsel for Respondent, Peter Diaz, Esq, pursuant to 40 C.F.R. § 22.16(a), for a five-month (one-hundred and fifty (150) days) extension of time, from August 28, 2018 until January 28, 2019, to file the Motion for Penalty. Since the last Request for an extension of time, Mr. Diaz, who had represented Respondent prior to the filing of the Complaint in this matter, resumed representation of the Respondent and has indicated an interest in conducting settlement negotiations to resolve this matter. In furtherance of such a resolution, Mr. Diaz agreed in mid-June 2018 to provide his client's financial

information to EPA for review and, on July 17, 2018, indicated that he had collected such information and would be submitting it shortly. As the documents have not yet been received by EPA, additional time is sought for review of such financial documents when they are provided and to pursue settlement of this case.

Motion for Scheduling Order

To facilitate and advance settlement, Complainant, again with consent of counsel for Respondent, also respectfully moves for the issuance of a scheduling order. Complainant requests that the scheduling order include, at minimum, the following: regular status updates; date Respondent's financial documents are to be provided to EPA; date by which EPA is to complete its review of Respondent's financial documents; and date by which the Parties must reach (and report) an agreement in principle or a determination that further settlement discussion would not be fruitful.

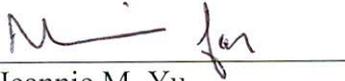
The undersigned is hopeful that a scheduling order and additional time for filing a motion for penalty will lead towards continued negotiations and settlement of this case or a clear indication that settlement is not possible and the filing of the Motion for Penalty. In either situation, the case will proceed forward. As such, a scheduling order and the third extension of time to file the Motion for Penalty is warranted and in the interests of both parties and the Court.

Based on the foregoing, Complainant's counsel asserts that good cause exists for granting this motion for an extension of five months, or one-hundred and twenty (150) days, until January

28, 2019, to file the appropriate dispositive default Motion for Penalty and for a scheduling order.

Dated: August 9, 2018
New York, New York

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Motion for Extension, dated August 8, 2018, in the matter of Edwin Andújar Bermúdez dba Truly Nolen Pest Control De Caguas, Docket No. FIFRA 02-2016-5302, was sent this day in the following manner to the addresses listed below:

Original and Copy by Hand-Delivery to Regional Hearing Clerk

Karen Maples
Regional Hearing Clerk
USEPA, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by Hand-Delivery and E-Mail to the Presiding Officer

Helen Ferrara
Regional Judicial Officer
USEPA, Region 2
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New York, NY 10007-1866
Ferrara.helen@epa.gov

Copy by Certified Mail/Return Receipt Requested and Regular Mail and E-Mail to Peter Diaz, Attorney for Edwin Andújar Bermúdez dba Truly Nolen Pest Control de Caguas:

Peter Diaz Santiago, Esq.
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Dated: August 9, 2018


Yolanda Majette, Secretary