

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

MUNICIPALITY OF TOA ALTA
P. O. Box 82
Toa Alta, Puerto Rico 00954-0082

RESPONDENT

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

**PROCEEDING TO ASSESS A
CLASS II CIVIL PENALTY**

**DOCKET NUMBER
CWA-02-2009-3459**

REGIONAL HEARING
CLERK

2009 NOV 13 PM 1:50

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

MOTION FOR ENTRY OF DEFAULT OR EXCLUSION OF EVIDENCE

To the Honorable Court:

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

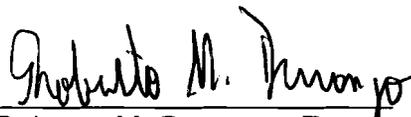
1. Pursuant to the Order Setting Prehearing Procedures, dated July 6, 2009 (Prehearing Order), and the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §22.1 *et seq.*, (Rules of Practice) the Parties were directed to simultaneously file their initial prehearing exchanges, including any direct and/or rebuttal evidence to the Presiding Judge, the Regional Hearing Clerk, and to the other Party by Thursday, September 3, 2009.
2. That Complainant filed its Initial Prehearing Exchange on August 27, 2009.
3. That as of the date of this motion, November 10, 2009, over two months have elapsed and Respondent has failed to comply with the Prehearing Order requirements, as it has not filed its Initial Prehearing Exchange.

4. Complainant requests that this Honorable Court enter an Order of Default against Respondent Pursuant to Section 22.17 of the Rules of Practice, which states that “[a] **party may be found in default, after motion. . . . upon failure to comply with the information exchange requirements of [the Prehearing Order].**” 40 C.F.R. §22.17 (second emphasis added).

5. Complainant requests, in the alternative, that this Honorable Court enter an Order to Exclude Evidence, pursuant to Section 22.19(a) of the Rules of Practice, which states that “*except in accordance with Section 22.22(a), any document not included in the prehearing exchange shall not be admitted into evidence, and any witnesses whose name and testimony summary are not included in the prehearing exchange shall not be allowed to testify.*” 40 C.F.R. § 22.22(a) (second emphasis added).

WHEREFORE, Complainant respectfully requests that this Honorable Court enter a Default Order against Respondent, pursuant to the Prehearing Order and the Rules of Practice. In the alternative, Complainant respectfully requests that this Honorable Court strike all evidence Respondent submits hereafter and not allow any witnesses to testify on behalf of Respondent.

Respectfully submitted in San Juan, Puerto Rico, on this 9th day of November, 2009.



Roberto M. Durango, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that on this day I have caused to be sent the foregoing **Motion for Entry of Default or Exclusion of Evidence**, dated November 9, 2009, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original by **Federal Express** to:

Judge William B. Moran
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Franklin Court Building
1099 14th Street, N.W. Suite 350
Washington, D.C. 20460
Ph: 202.564.6255 / Fax (202) 565-0044

Original and copy by **Federal Express** 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** to:

Attorney for Respondent:

Hans Valiente, Esq.
Counsel, Municipality of Toa Alta
Lcdo. Ricardo Robles Caraballo & Asociados
PO Box 2130
Bayamón, Puerto Rico 00960

