

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2**

In the Matter of

Edwin Andújar Bermúdez dba  
Truly Nolen Pest Control De Caguas

Respondent,

Proceeding Under the Federal Insecticide,  
Fungicide, and Rodenticide Act, as  
amended, and the Clean Air Act, as amended :

Honorable Helen Ferrara  
Presiding Officer

Docket No. FIFRA-02-2016-5306

**MOTION FOR DEFAULT JUDGMENT ON LIABILITY**

Complainant, pursuant to 40 C.F.R. §§ 22.16(a) and 22.17(b), hereby moves the Presiding Officer for an order finding the Respondent in default and liable for the violations alleged in the Complaint. Specifically, Complainant requests that this Court find that Respondent is in default for failing to file an Answer to the Complaint and that: (1) Edwin Andújar Bermúdez (hereinafter “Respondent” or “Andújar”) is liable for violations of the requirements of the Federal Insecticide, Fungicide & Rodenticide Act (“FIFRA”) alleged in Counts 1 through 55 (FIFRA violations) of the Complaint; and for violations of the requirements of the Clean Air Act (“CAA”) set out in Counts 56 and 57 (CAA violations) of the Complaint. Complainant’s motion is fully supported by the attached Complaint, Memorandum in Support, the Declaration of Jeannie M. Yu, and the accompanying exhibits.

In brief, Andújar, as Truly Nolen Pest Control de Caguas, conducts a commercial pesticide control business from an establishment located at Urb. Miraflores, 16-15 Calle 29, Bayamón, Puerto Rico 00957-3707 and with a mailing address at Post Office (P.O.) Box 7155, Caguas, Puerto Rico 00726. On March 1, 2016, Complainant caused to be served, by certified mail and return-receipt requested, upon the Respondent at his business' physical and mailing addresses (as well as upon his counsel, Peter Diaz, who represented him during the pre-filing negotiation period with EPA) a copy of the Complaint, alleging violations of the 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. Additionally, on April 28, 2016, Complainant sent to attorney Diaz, by certified mail and return-receipt requested and email, a letter memorializing the non-response of his clients and enclosing copies of the Complaint and the Consolidated Rules. Furthermore, on May 17, 2016, Complainant sent, by certified mail and return-receipt requested, to the Respondent a copy of the Complaint and the Consolidated Rules, along with a letter alerting him that the deadline to file an Answer had passed and of EPA's intention to seek a default order.

An Answer to the Complaint was due on or about April 6, 2016. To date, the Respondent has not filed an Answer to the Complaint nor has his presumptive counsel done so upon the Respondent's behalf.

Any response by the Respondent 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: March 23, 2017  
New York, New York

Respectfully submitted,



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Jeannie M. Yu  
Assistant Regional Counsel  
Waste & Toxic Substances Branch  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the Motion for Default Judgment for Liability, dated March 23, 2017, along with the following supporting papers (Memorandum in Support, Declaration and Order) was 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 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:**

Edwin Andújar Bermúdez dba  
Truly Nolen Pest Control De Caguas  
P. O. Box 7155  
Caguas, Puerto Rico 00726

Edwin Andújar Bermúdez dba  
Truly Nolen Pest Control De Caguas  
Urb. Miraflores, 16-15 Calle 29  
Bayamón, Puerto Rico 00957-3707

Dated: March 23, 2017  
New York, New York



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



alleged in the Complaint and to have waived his right to contest such factual allegations. 40 C.F.R. § 22.17(a). The factual elements alleged against the Respondent in the Complaint provide a proper foundation to establish liability for violations of the requirements alleged in the Complaint. Specifically, I find that Edwin Andújar Bermúdez is liable for fifty-five (55) violations of Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), of the Federal Insecticide, Fungicide & Rodenticide Act, use of a pesticide in a manner inconsistent with its labeling, as set out in Counts 1 through 55 of the Complaint. I further find Edwin Andújar Bermúdez liable for two violations of the Clean Air Act and its implementing regulations at 40 CFR Part 82, failure to report and to keep records of required information regarding the purchase and use of methyl bromide, as set out in Counts 56 and 57 of the Complaint.

So ORDERED.

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Helen Ferrara  
Regional Judicial Officer

Dated: \_\_\_\_\_  
New York, New York

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2

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In the Matter of	:	
	:	
Edwin Andújar Bermúdez dba	:	
Truly Nolen Pest Control De Caguas	:	<u>Honorable Helen Ferrara</u>
	:	Presiding Officer
	:	
Respondent,	:	Docket No. FIFRA-02-2016-5306
	:	
Proceeding Under the Federal Insecticide,	:	
Fungicide, and Rodenticide Act, as	:	
amended, and the Clean Air Act, as amended :	:	

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DECLARATION

I, Jeannie M. Yu, Assistant Regional Counsel, Office of Regional Counsel (“ORC”), U.S. Environmental Protection Agency, Region 2 (“EPA”), declare that the following is offered in support of the motion for a default order on liability in the above-captioned proceeding and is true and correct to the best of my knowledge, information and belief:

1. At my direction, on October 8, 2015, an ORC Secretary, Yolanda Majette, sent a pre-filing letter to Edwin Andújar Bermúdez dba Truly Nolen Pest Control De Caguas (“Respondent” or “Andújar”) at both the physical street address of the business (Urb. Miraflores, 16-15 Calle 29, Bayamón, Puerto Rico 00957-3707 (“Bayamón address”)) and at the business’ post office box mailing address (P.O. Box 7155, Caguas, Puerto Rico 00726 (“P.O. Box address”)). Respondent received the letter at both mailing addresses.
2. A meeting between the parties and a period of pre-filing negotiations preceded the filing of the civil administrative Complaint in this matter. During that time, Andújar was represented by counsel Peter Diaz (“Diaz”), located at 420 Avenida Ponce de Leon, Suite 1001, San Juan, Puerto Rico 00918.
3. On March 1, 2016, at my direction, Ms. Majette filed the “Complaint, Compliance Order, and Notice of Opportunity for Hearing” (“Complaint”), including a Certificate of Service, in this matter, together with a copy of the Consolidated Rules of Practice (“the Rules”) upon the Regional Hearing Clerk and caused the Complaint and the Rules to be mailed to the Respondent by certified mail, return receipt requested to the P.O. Box address and the

Bayamón address. (See Memorandum of Law, Exhibit 1 (Complaint). A copy of the certificate of service is page 22 of the Complaint in Exhibit 1. See Memorandum of Law, Section II A., paragraphs 1 & 2, pages 8-9.

4. A U.S. Postal domestic return receipt for the Complaint and the Rules mailed to the Bayamón address was signed and dated March 5, 2016 by Jesenia Andújar, on behalf of the Respondent, and returned to EPA. See Memorandum of Law, Section II A., paragraph 3, page 9 and Exhibit 2.
5. A U.S. Postal domestic return receipt for the Complaint and the Rules mailed to the P.O. Box address was signed and dated March 7, 2016, personally by Andújar, and returned to EPA. See Memorandum of Law, Section II A., paragraph 4, page 9 and Exhibit 3.
6. The Complaint advised Respondent of his right to a Hearing and explained that, in order to avoid being found in default upon motion by Complainant, a written Answer, which may include a request for a Hearing, had to be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, 290 Broadway (16<sup>th</sup> Floor), New York, NY 10007-1866, within thirty (30) calendar days of receipt of the Complaint. In addition, the Complaint stated the following:

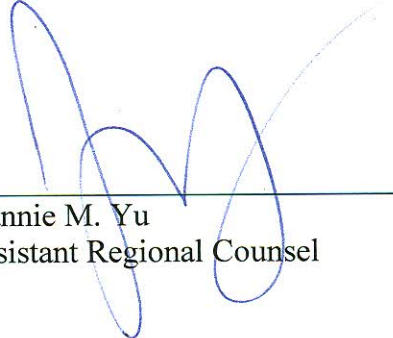
Respondent's Answer to the Complaint must clearly and directly Admit, Deny, or Explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent had any knowledge. 40 C.F.R. Section 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in their Answer, the allegation is deemed denied. 40 C.F.R. Section 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding); and (3) whether Respondent requests a hearing. 40 C.F.R. Section 22.15(b).

7. A courtesy copy of the Complaint was e-mailed to Mr. Diaz, on March 1, 2016, to the email address that Diaz had previously used in correspondence with EPA counsel. The email address is [pdiazfederalcases@gmail.com](mailto:pdiazfederalcases@gmail.com) See Memorandum of Law, Section II B., paragraph 1, page 10 and Exhibits 5 & 6.
8. At my direction, on April 28, 2016, Ms. Majette sent, by certified mail return receipt, a letter to Mr. Diaz informing him that his client, Andújar, had accepted service of the Complaint on March 7, 2016; that no Answer to the Complaint had been filed that the Answer was due on or about April 6, 2016; that his client may be found in default upon motion; and about the legal effects of such default. The letter also requested confirmation in writing within five business days as to whether Mr. Diaz was currently retained as counsel for the Respondent. The letter further specified that if EPA did not receive such written confirmation, the Agency would conclude that Mr. Diaz no longer represented the Respondent. Mr. Diaz was served on May 2, 2016 with this letter. A green card was signed by Yashira Mendez on behalf of Diaz. See Memorandum of Law, Section II C, paragraphs 1 - 3, pages 11 & 12.



9. At my direction, on May 17, 2016, Ms. Majette sent, by certified mail return receipt, a letter to Andújar at the P.O. Box address and the Bayamon address. EPA's May 17, 2016 letter alerted the Respondent to the following: (i) that the deadline for filing an Answer to the Complaint had passed; (ii) that EPA believed that he was no longer represented by Diaz; and (iii) that EPA issued a similar letter to Diaz. Further the letter stated that EPA intended to seek a default order against the Respondent; set forth the legal effects of such default order; and requested that the Respondent contact me or EPA attorney Carolina Jordan Garcia if he intended to file an Answer to EPA's Complaint. A copy of this letter was also sent to Mr. Diaz. See Memorandum of Law, Section II D., paragraphs 1 - 3, pages 12-13.
10. The U.S. Postal domestic return receipt for the May 17, 2016 letter to the post office box address was signed by Ana Figueroa for the Respondent, dated May 20, 2016, and returned to EPA. See Memorandum of Law, Section II D., paragraph 2, page 13.
11. The U.S. Postal domestic return receipts for the May 17, 2016 letter to the post office box address was personally signed by Andújar, dated May 20, 2016, and returned to EPA. See Memorandum of Law, Section II D., paragraph 2, page 13.
12. At my direction, Ms. Majette emailed and mailed copies of EPA's May 17, 2016 letter to Mr. Diaz. See Memorandum of Law, Section II D., paragraph 3, page 13.
13. To date, I have not received a response from the Respondents or Mr. Diaz to any of the letters or emails which, at my direction, ORC Secretary Yolanda Majette sent to Respondent and Mr. Diaz. Moreover, Respondents or Mr. Diaz have not requested an extension of time to Answer the Complaint and I have not been served with an Answer to the Complaint.
14. In response to my inquiries, Karen Maples, Regional Hearing Clerk, U.S. EPA Region 2, informed me that no Answer in response to the Complaint in this matter has been filed by or on behalf of either Respondent as of March 21, 2017. (An E-Mail is annexed as Attachment to this Declaration).

Dated: March 23, 2017  
New York, NY.



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Jeannie M. Yu  
Assistant Regional Counsel

## Yu, Jeannie

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**From:** Maples, Karen  
**Sent:** Tuesday, March 21, 2017 3:21 PM  
**To:** Yu, Jeannie  
**Subject:** RE: Edwin Andújar Bermúdez dba Truly Nolen Pest Control De Caguas Docket No. FIFRA-02-2016-5306

Hi Jeannie,

Nothing has been filed.

Karen

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**From:** Yu, Jeannie  
**Sent:** Tuesday, March 21, 2017 12:44 PM  
**To:** Maples, Karen <Maples.Karen@epa.gov>  
**Subject:** RE: Edwin Andújar Bermúdez dba Truly Nolen Pest Control De Caguas Docket No. FIFRA-02-2016-5306

Has an Answer been filed yet since the last email you sent me?

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**From:** Maples, Karen  
**Sent:** Tuesday, January 31, 2017 8:08 AM  
**To:** Yu, Jeannie <Yu.Jeannie@epa.gov>  
**Subject:** RE: Edwin Andújar Bermúdez dba Truly Nolen Pest Control De Caguas Docket No. FIFRA-02-2016-5306

No answer received.

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**From:** Yu, Jeannie  
**Sent:** Friday, January 27, 2017 11:35 AM  
**To:** Maples, Karen <Maples.Karen@epa.gov>  
**Subject:** Edwin Andújar Bermúdez dba Truly Nolen Pest Control De Caguas Docket No. FIFRA-02-2016-5306

Karen,

Has an Answer been filed in this case?

Thank you.

Jeannie M. Yu  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007  
(212) 637-3205