

In the Matter of Alleged  
Violations of Article 33 of  
the Environmental Conservation  
Law (ECL) and Parts 320  
through 329 of Title 6 of the  
official Compilation of Codes,  
rules and Regulations of the  
State of New York

**Ruling Denying  
Staff's Motion for a  
Default Judgement**

by:

DEC # CO1-20060801-11

**Sentry Exterminating Company,  
and Moises Lorenzana,**

RESPONDENTS.

January 12, 2007

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On August 21, 2006, Staff of the Department of Environmental Conservation (DEC Staff) served a notice of hearing and complaint by certified mail which named Moises Lorenzana and Sentry Exterminating Company as respondents. In the affidavit of service, DEC Staff counsel states that she effected service "upon the above Respondent by placing a true and correct copy of said Notice of Hearing and Complaint in a secure wrapper, addressed to said person(s) at: Sentry Exterminating Company, 1906 Willis Avenue, North Merrick, New York 11566." As noted above, the complaint appears to name two respondents (the caption was changed to Moises Lorenzana d/b/a Sentry Exterminating in the papers filed on the instant motion, without explanation), however, only one certified mail receipt is provided and it is impossible to determine which of the two respondents named in the complaint was served with the complaint. DEC Staff has failed to meet the requirement that it show proof of service of the notice of hearing and complaint upon the respondent Moises Lorenzana (6 NYCRR 622.15(b)(1)). Accordingly, DEC Staff's motion for default judgment and order is denied.

Several other problems arise in DEC Staff's papers. Two of the causes of action in the complaint (the second and third) fail to state a complete cause of action. Even if these two causes of action were complete, the \$126,750 penalty sought does not appear to be supported by Staff's papers. DEC Staff alleges ten causes of action, each apparently indicating a single violation. In her affirmation, DEC Staff counsel indicates that DEC Staff is not aware of any prior violations by this respondent. DEC Staff's complaint references ECL 71-2907 which provides a maximum civil penalty of \$5,000 for the first violation and \$10,000 for each subsequent offense. Thus, even if the two inadequately pleaded

causes of action were proved, the maximum penalty appears to be only \$95,000. While DEC Staff attorney's affirmation states that the civil penalty sought of \$126,750 was calculated taking into consideration DEC's Civil Penalty Policy and Pesticide Enforcement Guidance Memorandum, no calculations or explanation of how this amount was derived is included in DEC Staff's papers.

\_\_\_\_\_/s/\_\_\_\_\_  
P. Nicholas Garlick  
Administrative Law Judge

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