

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
)	
Mole-Med, Inc.)	Docket No. 5-IFRA-98-12
Aurora, Indiana)	
)	
Respondent)	

ORDER GRANTING MOTION FOR DEFAULT JUDGMENT

1. The United States Environmental Protection Agency (EPA), initiated this civil administrative proceeding for the assessment of a penalty pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. Section 1361(a).

Findings of Fact

2. Complainant is, by lawful delegation, the Chief, Pesticides and Toxics Branch, United States Environmental Protection Agency, Region 5.

3. Respondent is Mole-Med, Incorporated, which is and was at all times relevant to the Complaint, a corporation organized under the laws of the State of Kentucky with a place of business located at 515 Main Street, Aurora, Indiana.

4. Pursuant to Section 7(a) of FIFRA, 7 U.S.C. Section 136e(a), and 40 C.F.R. Section 167.20, Respondent registered its establishment, located at P.O. Box 333, Aurora, Indiana, on or about October 14, 1994. Respondent's EPA Establishment Number for this facility is 64439-IN-002.

5. Pursuant to Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the regulations codified at 40 C.F.R. § 167 Subpart E, any producer operating a registered establishment must report to U.S. EPA the types and amounts of each pesticidal product that it is currently producing, which it produced during the past year, and which it sold or distributed during the past year.

6. Pursuant to 40 C.F.R. § 167.85, a producer is responsible for obtaining, completing, and reporting this information each year, even if it has not produced any pesticidal product for the reporting year.

7. Pursuant to 40 C.F.R. § 167.85(d), this report must be submitted to U.S. EPA on or before March 1 of the year following the calendar year which is the subject of the report.

8. The report required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167, Subpart E, must be submitted to U.S. EPA on EPA Form 3540-16, entitled "Pesticides Report for Pesticide-Producing Establishments" (Annual Pesticides Report), which is supplied by U.S. EPA. See 40 C.F.R. § 167.85(c).

9. On August 21, 1998, Complainant filed a Complaint and Notice of Opportunity for Hearing alleging in two counts that Respondent violated Section 7(c)(1) of FIFRA, 15 U.S.C. § 136e(c)(1), and the regulations promulgated at 40 C.F.R.

Part 167, Subpart E.

10. In Count I, Complainant alleged that Respondent violated Section 7(c)(1) of FIFRA, 7 U.S.C. § 136c(c)(1), by failing to submit to U.S. EPA on or before March 1, 1997, the Annual Pesticides Report for calendar year 1996. Complainant sought a civil penalty of \$5,500 pursuant for this violation.

11. In Count II, Complainant alleged that Respondent violated Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), by failing to submit to U.S. EPA on or before March 1, 1998, the Annual Pesticides Report for calendar year 1997. Complainant sought a civil penalty of \$5,500 for this violation.

12. The Complaint specified that, in order for Respondent to avoid being found in default, Respondent must file a written answer within 20 days of service of the Complaint.

13. The Complaint was mailed to Respondent via certified mail and the return receipt indicates that Respondent was served on August 24, 1998.

14. On September 9, 1998, Respondent, through counsel, filed an Answer and Request for Hearing with the Regional Hearing Clerk.

15. On September 24, 1998, Complainant filed a Motion to Strike Respondent's Answer and Request for Hearing with the Regional Hearing Clerk.

16. On November 13, 1998, the Presiding Officer in this case issued an Order Granting Motion to Strike Answer. This Order provided Respondent with an additional twenty (20) days in which to file an Answer.

17. As of the date of this Default Order, Respondent has not filed an Answer.

CONCLUSIONS OF LAW

18. Respondent was a "person" as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), at all times relevant to the Complaint.

19. Respondent was a "producer" as that term is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3, at all times relevant to the Complaint.

20. Respondent operated an "establishment" as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3 at all times relevant to the Complaint.

21. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c), and the regulations codified at 40 C.F.R. § 167, Subpart E, require any producer operating a registered establishment to report to U.S. EPA the types and amounts of each pesticidal product that he is currently producing, which he produced during the past year, and which he sold or distributed during the past year. 40 C.F.R. § 167.85(b).

22. A producer is responsible for obtaining, completing, and submitting this report each year, even if it has not produced any pesticidal product for the reporting year. 40 C.F.R. § 167.85(d).

23. This report must be submitted to U.S. EPA on or before March 1, of the year following the calendar year which is the subject of the report. 40 C.F.R. § 167.85(d).

24. The report required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167, Subpart E, must be submitted to U.S. EPA on the "Pesticides Report for Pesticide-Producing Establishments" (EPA Form 3540-16), which is supplied by U.S. EPA. 40 C.F.R. § 167.85(c).

25. Respondent's failure to submit the Annual Pesticides Report for the 1996 calendar year on or before March 1, 1997, constitutes a violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1) and 40 C.F.R. § 167, Subpart E. Such failure is unlawful pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

26. Respondent's failure to submit the Annual Pesticides Report for the 1997 calendar year on or before March 1, 1998, constitutes a violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1) and 40 C.F.R. § 167, Subpart E. Such failure is unlawful pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

27. Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), authorizes a civil penalty of up to \$5,000 for each violation of FIFRA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and regulations promulgated pursuant thereto at 40 C.F.R. § 19.4, see 61 Fed. Reg. 69360-69366 (Dec. 31, 1996), 62 Fed. Reg. 13514-13517 (March 20, 1997), and 62 Fed. Reg. 35038-35041 (June 27, 1997), this amount was increased to \$5,500.

27. Section 22.17(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (Consolidated Rules of Practice), 40 C.F.R. § 22.17(a), provides that "a party may be found in default (1) after motion, upon failure to file a timely answer to the complaint...."

28. Section 22.15(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.15(a), provides that an answer to a complaint for the assessment of a civil penalty must be filed with the Regional Hearing Clerk within twenty (20) days after service of the complaint.

29. Section 22.17(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.17(a), provides that for purposes of the pending action, default by a respondent constitutes

an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing on such factual allegations. If the complaint is for the assessment of a civil penalty, the penalty

proposed in the complaint shall become due and payable by respondent without further proceedings sixty (60) days after a final order issued upon default.

40 C.F.R. § 22.17(a).

30. Respondent is in default for purposes of the pending action for failing to file a timely answer to the allegations raised in the Complaint. For purposes of the pending action, all facts alleged in the Complaint are admitted and Respondent has waived its right to a hearing on such factual allegations. The \$11,000.00 penalty proposed in the Complaint shall become due and payable by Respondent without further proceedings sixty (60) calendar days after a final default order is issued.

ORDER

Based on the foregoing, and pursuant to Section 14(a) of the 7 U.S.C. § 1361(a), it is hereby ordered that:

31. Respondent shall pay the United States of America a civil penalty in the sum of ELEVEN THOUSAND DOLLARS (\$11,000.00). Payment shall be made by certified or cashier's check payable to "Treasurer of the United States of America" within 60 calendar days after a final order is filed with the Regional Hearing Clerk. Such payment shall be remitted directly to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

A copy of the payment shall be mailed to the Regional Hearing Clerk (Mail Code R-19J), Secretary, Pesticides & Toxics Enforcement Section (Mail Code DT-8J) and, Bobb A. Beauchamp (Mail Code C-14J). The address for each of the above is:

U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590.


A transmittal letter identifying the name and docket number must accompany both the remittance and the copies of the check.

32. On any amount overdue under Paragraph 31 above, interest shall accrue on the debt at the rate established by the Secretary of the Department of Treasury, pursuant to 31 U.S.C. § 3717, and published in the Federal Register quarterly. A late payment handling charge of fifteen dollars (\$15.00) will be assessed after thirty (30) days, with an additional charge of \$15.00 for each subsequent 30-day period over which an unpaid balance remains. In addition, a six percent (6%) per annum penalty will be assessed on any principal amount not paid within ninety days (90) of the date that a fully executed copy of this Default Order is filed with the Regional Hearing Clerk.

33. Respondent's failure to comply with the provisions of Paragraph 31 may result in the referral of this matter to the U.S. Department of Justice for collection. The validity, amount and appropriateness of the penalty is not subject to review in a collection proceeding, as stated at 7 U.S.C. § 1361(a)(5).

Order

Accordingly, for the above-stated reasons, Complainant's Motion for Default Judgment is GRANTED.



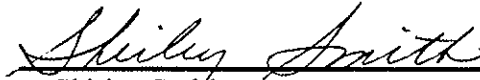
Stephen J. McGuire
Administrative Law Judge

Date: March 26, 1999
Washington, D.C.

NAME OF RESPONDENT: Mole-Med, Inc., Aurora, Indiana
DOCKET NUMBER: 5-IFFRA-98-12

CERTIFICATE OF SERVICE

I hereby certify that the original of this ORDER GRANTING GRANTING MOTION FOR DEFAULT JUDGEMENT were sent to the counsel for the complainant and counsel for the respondent on March 29, 1999.



Shirley Smith
Legal Staff Assistant
To Judge Stephen J. McGuire

Sonja Brooks
Regional Hearing Clerk
Region 5 - EPA
77 West Jackson Blvd
Chicago, IL 60604-3590

Bobb Beauchamp, Esq.
Office of Regional Counsel
Assistant Regional Counsel
Region 5 - EPA
77 West Jackson Blvd
Chicago, IL 60604-3590

James L. Cobb, Esq.
213 East Fourth Street
P. O. Box 1078
Covington, KY 41012-1078