



UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY
 REGION 9
 San Francisco, California



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|-------------------------|---|-----------------------|
| IN THE MATTER OF: |) | |
| |) | |
| TASTY WATER CORPORATION |) | |
| |) | |
| |) | |
| RESPONDENTS |) | DOCKET NO. |
| |) | FIFRA-09-0660-C-89-25 |
| |) | |
| |) | |

INITIAL DECISION AND DEFAULT ORDER

By Motion for Default Order dated March 13, 1992, Complainant, the Director of the Air and Toxics Division of the United States Environmental Protection Agency, Region 9, moved for an Order assessing a civil penalty in the amount of one thousand seven hundred and sixty dollars (\$1760) against Respondent, Tasty Water Corporation.

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties ("Consolidated Rules") at 40 C.F.R. Part 22 and based upon the record in this matter and the following Findings of Fact, Conclusions of Law, and Determination of Civil Penalty Amount, Complainant's Motion for Default Order is hereby GRANTED.

I. FINDINGS OF FACT

Pursuant to 40 C.F.R. §22.17(c) and based on the entire record, I make the following findings of fact:

1. Tasty Water Corporation is a California corporation.
2. Tasty Water Corporation is the named Respondent in this administrative enforcement action.
3. On or about July 18, 1989, the Complaint in this action was served on Respondent.
4. Respondent has failed to file an Answer to the Complaint within twenty (20) days of service of the Complaint on Respondent.
5. Respondent operates a place of business located at

16053 Kaplan Avenue, City of Industry, California.

6. Respondent's place of business is registered with the United States Environmental Protection Agency (EPA) under Section 7(a) of FIFRA as a Pesticide Producing Establishment.

7. Respondent's place of business was assigned EPA Establishment Registration Number 03559-CA-001.

8. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), requires "[a]ny producer operating an establishment registered under" Section 7 of FIFRA to submit a Pesticide Report annually to the Administrator of EPA.

9. Respondent failed to file a Pesticide Report by February 1, 1989, for the calendar year 1988.

10. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), makes it unlawful to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

11. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), makes it unlawful for any registrant to fail to file reports required by FIFRA, 7 U.S.C. § 136 et seq.

12. Respondent's projected sales for 1989 were five hundred thousand dollars.

13. On March 13, 1992 Complainant filed a Motion for Default Order.

14. The Motion was served on the Respondent by regular mail on March 16, 1992.

15. Respondent had twenty days from the date of service to reply.

16. As of this date the Respondent has failed to reply to the Motion.

II. CONCLUSIONS OF LAW

Pursuant to 40 C.F.R. §22.17(c), and based on the entire record, I make the following conclusions of law:

17. The Complaint in this action was lawfully and properly served upon the Respondent, in accordance with 40 C.F.R. §22.05(b)(1) of the Consolidated Rules.

18. The Consolidated Rules required the Respondent to file an Answer to the Complaint within twenty (20) days of the service of the Complaint on Respondent. 40 C.F.R. §22.15(a).

19. Respondent's failure to file a timely Answer to the Complaint constitutes an admission of all of the factual allegations in the Complaint, and a waiver of Respondent's right to a hearing on such factual issues. 40 C.F.R. §§22.15(d) and 22.17(a).

20. Respondent is a "person" as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

21. By reason of the facts found as set out above, the Respondent violated Section 12(a)(2)(L) and 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) and (a)(2)(N), by failing to file a timely Pesticide Report.

22. Respondent is a Category III establishment under the Civil Penalty Matrix in the Enforcement Response Policy for FIFRA Section 7(c) Pesticide Producing Establishment Reporting Requirement, dated February 10, 1986.

23. When the Regional Administrator finds that a default has occurred, he shall issue a Default Order against the defaulting party, and the default order shall constitute the Initial Decision. 40 C.F.R. §22.17(b).

24. This authority of the Regional Administrator has been delegated to the Regional Judicial Officer pursuant to 40 C.F.R. §22.04(a)(3).

25. Respondent's failure to file a timely Answer to the Complaint is grounds for the entry of a Default Order against the Respondent assessing a civil penalty for the violation described above.

III. DETERMINATION OF CIVIL PENALTY AMOUNT

I have determined pursuant to 40 C.F.R. §22.17(a) and (c) that one thousand seven hundred and sixty dollars (\$1760), the penalty amount proposed in the Complaint, is the appropriate civil penalty to be assessed against the Respondent.

Under the Consolidated Rules, the amount of the proposed civil penalty "shall be determined in accordance with any criteria set forth in the Act relating to the proper amount of a civil penalty and with any civil penalty guidelines issued under the Act." 40 C.F.R. §22.14(c).

Administrative civil penalties under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), are to be assessed and collected pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, which provides that EPA shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation.

The proposed civil penalty sought in the Complaint was determined by applying the Civil Penalty Matrix in the Enforcement Response Policy for FIFRA Section 7(c) Pesticide Producing Establishment Reporting Requirement dated February 10, 1986. The size of the Respondent's business was determined to be Category III, based on projected annual sales of five hundred thousand dollars. The Respondent was advised in the letter dated July 18, 1989 transmitting the Complaint that EPA had placed the Respondent's business in Category III for purposes of penalty assessment. The violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), was determined to be level C, "Notably Late Reporting or Nonreporting Violation." The base penalty for a violation at Category III and level "C" is one thousand seven hundred and sixty dollars.

The civil penalty in the Matrix takes into consideration the gravity of the violation and no other consideration was given to that element by the Complainant.

Representations with respect to the Respondent's ability to continue in business are matters of defense to be raised by the Respondent. Since the Respondent has not appeared in this action and has failed to produce any facts that indicate an inability to continue in business, the Complainant has not given consideration to this factor and it would be inappropriate to mitigate the penalty for this factor.

There are no other factors apparent that would warrant a penalty adjustment.

Accordingly, the appropriate civil penalty is one thousand seven hundred and sixty dollars (\$1760).

IV. DEFAULT ORDER

Pursuant to the Consolidated Rules at 40 C.F.R. Part 22, including 40 C.F.R. §22.17, Complainant's Motion for Default Order is hereby GRANTED. Respondent is hereby ORDERED to comply with all of the terms of this Default Order:

A. Respondent is hereby assessed a civil penalty in the amount of one thousand seven hundred and sixty dollars (\$1760) and ordered to pay the civil penalty as directed in this Default Order.

B. Pursuant to 40 C.F.R. §22.27(c), this Default Order shall become final within forty-five (45) days after service upon the parties unless it is appealed to the EPA Administrator or the Administrator elects, sua sponte, to review it.

C. Respondent shall, within sixty days after the date this Order becomes final, forward a cashier's or certified check, payable to the order of the "Treasurer of the United States of America," in the amount of one thousand seven hundred and sixty dollars (\$1760). Respondent shall mail the check by certified mail, return receipt requested, to the following address:

U.S. EPA - Region 9
Regional Hearing Clerk
P.O. Box 360863M
Pittsburgh, PA 15251

In addition, Respondent shall mail a copy of the check, by first class mail, to the following person:

Regional Hearing Clerk (RC-1)
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

D. In the event of failure by Respondent to make payment within sixty days of the date this Order becomes final, the matter may be referred to a United States Attorney for recovery by

appropriate action in United States District Court pursuant to Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5).

E. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty if it is not paid within sixty (60) calendar days after this Default Order becomes final. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. §102.13(c).

In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 4 C.F.R. §102.13(e).

IT IS SO ORDERED.

Date: 5/20/92

Steven W. Anderson

U.S. EPA - Region 9

_____/s/_____

Regional Judicial Officer

Last Updated: October 18, 1999