

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

IN RE:)
)
FACETS,) Docket No. IF-R-V-11-87
)
CLEVELAND, OHIO)
)
Respondent.)
_____)

REPORT AND RECOMMENDATION OF THE
REGIONAL JUDICIAL OFFICER ON
COMPLAINANT'S MOTION FOR DEFAULT

On February 2, 1987, an administrative complaint was filed in this matter and issued to Respondent pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. Section 1361 et seq.

The Complaint alleged that Respondent violated Section 7(c) of FIFRA, 7 U.S.C. Section 136e(c)(1), and the regulations promulgated at 40 C.F.R. Part 167.5, by its failure to file an annual report for calendar year 1985 on or before April 14, 1986.

The Complaint proposed a civil penalty of \$320 for the violation.

The Complaint was served upon Bill Davis, President of Respondent, Facets. An endorsed certified mail return receipt indicated that the Complaint was received by Respondent on February 6, 1987.

40 C.F.R. Section 22.05(b)(1)(ii) provides that service of pleading and documents upon a corporation or upon a partnership or unincorporated association which is subject to suit under a common name shall be made by personal service or certified mail,

directed to an officer, partner, managing or general agent, or to any other person authorized by appointment or by Federal or State law to receive service of process.

40 C.F.R. Section 22.15 provides that Respondent's Answer to the Complaint shall be filed with the Regional Hearing Clerk no later than twenty days after the service of the Complaint (February 27, 1987).

To date, Respondent has not answered the Complaint.

On May 12, 1988, Complainant filed a Motion for Default with the Regional Hearing Clerk, and served a copy on Respondent. Pursuant to 40 C.F.R. Section 22.17(a), a party's response to a default motion must be filed within twenty (20) after service of the motion. To date, Respondent has failed to respond to Complainant's Motion for Default.

In view of the time period which had elapsed between filing of the Complaint and filing of the Motion for Default, Respondent was given a final opportunity to respond. Respondent was ordered to show cause why it should not be held in default and answer the Complaint by June 8, 1988. To date, Respondent has failed to respond to the Order.

40 C.F.R. Section 22.17(a) provides that a party may be held in default after motion upon failure to file a timely answer to the Complaint.

40 C.F.R. Section 22.17(a) further provides that default by the Respondent constitutes, for purposes of the pending action, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing. The penalty proposed in the

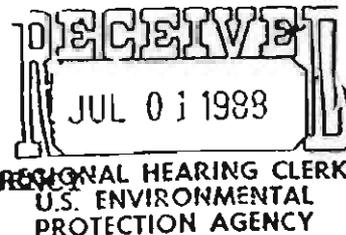
Complaint also becomes due and payable by Respondent without further proceedings sixty (60) days after a final Order is issued upon default.

Respondent has been provided with ample opportunity to answer the Complaint in the captioned action, and has failed to do so. Accordingly, I recommend that Respondent should be held in default pursuant to 40 C.F.R. Section 22.17.

Under the provisions of 40 C.F.R. Section 22.17(b) when the Regional Administrator or Presiding Officer finds that a default has occurred, he shall issue a default Order against the defaulting party. Pursuant to 40 C.F.R. Section 22.04(b) and under the provisions of Chapter 1-A., of the EPA Region V Delegation Manual, I have been delegated the authority to act in the stead of the Regional Administrator as Presiding Officer for all purposes in proceedings subject to Part 22, prior to the assignment of an Administrative Law Judge, with the exception that the authority to issue final orders has not been delegated. Since a default Order is in effect a final initial decision on the administrative complaint under Part 22, the Order should be issued by the Regional Administrator. Accordingly, I recommend that you sign the attached Order.


Regina M. Kossek
Acting Regional Judicial
Officer
U.S. Environmental Protection
Agency

Dated: June 30, 1988



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGIONAL HEARING CLERK
REGION V U.S. ENVIRONMENTAL PROTECTION AGENCY

IN RE:)
)
FACETS,) Docket No. IF-R-V-11-87
)
CLEVELAND, OHIO)
)
Respondent.)
_____)

DEFAULT ORDER

I have read the attached Report and Recommendation of the Regional Judicial Officer in the above-captioned action and I concur in and adopt its findings and recommendations.

Pursuant to 40 C.F.R. Section 22.17(c), I make the following findings of fact:

1. A Complaint was filed against the Respondent in the above-captioned case on February 2, 1987.
2. The Respondent was properly served with the Complaint on February 6, 1987.
3. The Respondent has failed to file an answer to the Complaint with the Regional Hearing Clerk within twenty days.
4. An Order to Show Cause why the Respondent should not be held in default and answer the Complaint was filed on May 26, 1988.
5. Respondent has failed to respond to the Order to Show Cause.
6. The Respondent is in default.
7. Pursuant to 40 C.F.R. Section 22.17(a), this default

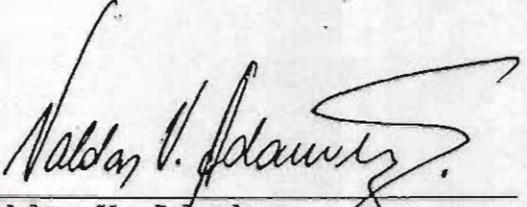
acts as an admission to all facts alleged in the complaint and Respondent has waived its right to a hearing.

8. Pursuant to 40 C.F.R. Section 22.17, upon default, any civil 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.

THEREFORE, IT IS ORDERED, that pursuant to 40 C.F.R. Section 22.17(a), the \$320.00 proposed in the Complaint is due and payable within sixty (60) days of the date of this Order.

Payment shall be by cashier's or certified check payable to the Treasurer, United States Environmental Protection Agency, Region V, P.O. Box 70753, Chicago, Illinois 60673.

Dated: June 30th, 1988


Valdas V. Adamkus
Regional Administrator
U.S. Environmental Protection Agency, Region V

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

IN THE MATTER OF)
)
FACETS,) Docket No. IF-R-V-11-87
)
CLEVELAND, OHIO)
)
Respondent.)
_____)

CERTIFICATE OF SERVICE

I certify that on the 1 day of July, 1988, an original and one copy of a DEFAULT ORDER was hand delivered to:

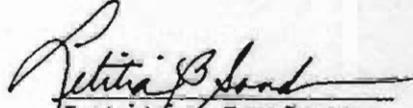
Regina King
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency
230 South Dearborn
Chicago, Illinois 60604

and one was hand delivered to:

Deidre M. Tanaka
Assistant Regional Counsel
U.S. Environmental Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604

and one copy was sent by first class certified mail, return receipt requested to:

Bill Davis
President
FACETS
1776 Columbus Road, N.W.
Cleveland, Ohio 44113


Letitia Sanders