

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)
)
National Safety Associates, Inc.,) IF&R Docket No. 04-8615-C
)
Respondent)

ACCELERATED DECISION

This is a proceeding under the Federal Insecticide, Fungicide and Rodenticide Act, as amended ("FIFRA"), Section 14(a)(1), 7 U.S.C. 136 1 (a)(1), for an alleged violation of the Act. 1/

A complaint was issued against Respondent National Safety Associates, Inc., on June 18, 1986, alleging that Respondent held for sale the un-registered pesticidal product, NSA BACTERIOSTATIC WATER TREATMENT UNIT, in violation of FIFRA, Section 12(a)(1)(A), 7 U.S.C. 136j(a)(1)(A). A penalty of \$2200 was proposed. For its response to the complaint, Respondent submitted a letter dated July 7, 1986, conceding that it may be in "technical violation" of the registration rule. Respondent explained how this came about and was of the opinion that a reduced penalty would be appropriate. Respondent, nevertheless, submitted a check for \$2200, the full amount of the penalty proposed.

1/ FIFRA, Section 14(a)(1), provides as follows:

Any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

The EPA has now moved for an accelerated decision, asserting that Respondent's actions and statements serve as admissions of alleged violation. In support of its motion, the EPA states that Respondent is presently attempting to effect registration of its products, but that the EPA will not be able to draft a settlement document acceptable to Respondent because Respondent continues to hold its unregistered products for sale.

The EPA's motion is unopposed. Respondent's letter and payment of a penalty, while not in the precise form required for an answer (see 40 CFR 22.15) are a sufficient response to the complaint to show that there is no genuine issue of material fact and that the EPA is entitled to judgement as a matter of law. Nor does Respondent's payment of the penalty moot this proceeding. As the EPA points out in its motion, Respondent still holds the unregistered product for sale. Apart from possible criminal penalties for knowing violations (see 7 U.S.C. 136 1(b)), a person's history of compliance with the Act is a factor to be also taken into account in determining the appropriate civil penalty for any further violations. See FIFRA Civil Penalty Guidelines, 39 Fed. Reg. 27712 (July 31, 1974).

Findings of Fact

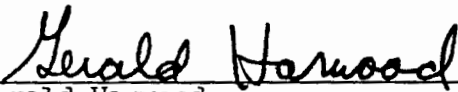
1. National Safety Associates, Inc., hereinafter referred to as the Respondent, is located in Memphis, Tennessee.
2. The Respondent is a "person" as defined by Section 2(s) of FIFRA [7 U.S.C. § 136(s)] and as such is subject to FIFRA and the regulations promulgated thereunder.
3. On November 27, 1985, the Respondent held for sale or distribution the product "NSA BACTERIOSTATIC WATER TREATMENT UNIT", Model "NSA50C", serial number "C54893" (sample number TN100115).

4. Said product is a pesticide within the meaning of Section 2(u) of FIFRA [7 U.S.C. § 136(u)].
5. Respondent is a "producer", as defined in Section 2(w) of FIFRA [7 U.S.C. § 136(w)] and 40 CFR Part 167.1(d), of said product.
6. Said product was not registered as required by Section 3(a) of FIFRA [7 U.S.C. § 136a(a)] which is unlawful under Section 12(a)(1)(A) of FIFRA [7 U.S.C. § 136j(a)(1)(A)].

Although labeling for Respondent's "NSA BACTERIOSTATIC WATER TREATMENT UNIT" was accepted by the U.S. Environmental Protection Agency on November 1, 1980, under EPA Reg. No. 44751-1, the sampled unit is not the registered unit. The Model 50C sampled unit is a counter-top, faucet-attachment unit; whereas, the registered unit is an under-sink unit.

Conclusion

It is concluded that Respondent has violated FIFRA by holding for sale or distribution an unregistered product as found herein. Since Respondent has already paid the proposed penalty, an order assessing the penalty is unnecessary and will not be issued. 2/



Gerald Harwood
Chief Administrative Law Judge

DATED: January 6, 1987
Washington, D.C.

2/ This accelerated decision disposes of all issues in the case and constitutes the initial decision of the Administrative Law Judge. 40 CFR 22.20(b). Unless an appeal is taken pursuant to Section 22.30 of the rules of practice or the Administrator elects to review this decision on his/her own motion, the accelerated decision shall become the final order of the Administrator (see 40 CFR 22.27(c)).