

DEFAULT ORDER ^{1/}

This is a proceeding under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, Section 14(a)(1), 7 U.S.C. 136 1(a)(1) for assessment of a civil penalty for alleged violations of the Act. ^{2/}

Complaint was issued against Respondent Central Florida Groomer Supply, Inc., also d/b/a C.F.G.S., on October 7, 1984, charging Respondent with offering for sale the products "F & T Shampoo With Treatment" and "Flea-medicate Sulfa Tar Shampoo With Non-Toxic Flealiminate[®]," when said products were 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)). A penalty of \$1,650.00 was proposed.

An Answer was filed in which Respondent, pro se, explained in detail the action which had taken place by Complainant, and by the Florida Department of Agricultural and Consumer Services, with the final statement being, "I believe their [sic] is an honest misunderstanding in the civil actions against Central Florida Grooming Supply, Inc."

Thereafter, status reports indicated that the parties had agreed in principle to a settlement pending the submission by Respondent of additional financial documents, which were never received.

^{1/} This Default Order shall constitute the Initial Decision in this proceeding. 40 CFR 22.17(b).

^{2/} 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.

On May 30, 1985, the following Order To Show Cause was issued:

"Status Report of Complainant dated May 22, 1985, indicates that Complainant's efforts to negotiate a settlement in this matter have been to no avail due to the fact that Respondent has failed to provide the necessary documentation to resolve the matter.

"Respondent is ordered to cooperate in these settlement negotiations or show cause why a default order in the full amount of the proposed penalty should not be issued. If there is a dispute as to the facts in this matter, which does not appear to be the case, a hearing will be scheduled to resolve all issues. Respondent shall also address this issue.

"Responses to this Order shall be filed no later than June 19, 1985.

"It is so ordered."

This Order was mailed to Complainant and Respondent by certified mail, return receipt requested. While Respondent acknowledged receipt thereof on June 3, 1985, it did not file a response thereto.

Finding Of Facts

1. Central Florida Groomer Supply, Inc., also d/b/a C.F.G.S., maintains its principal place of business in Altamonte Springs, Florida.
2. Respondent is a "person" as defined in Section 2(s) of FIFRA (7 U.S.C. §136(s)) and as such is subject to FIFRA and the regulations promulgated thereunder.

3. "F & T Shampoo With Treatment" and "Fleamedicate Sulfa Tar Shampoo With Non-Toxic Flealiminate" are pesticides within the meaning of Section 2(u) of FIFRA (7 U.S.C. 136(u)).

4. Said pesticidal products were offered for sale and distributed to Albertson's, Lakeland, Florida on December 5, 1983.

5. Said pesticides were not registered as required by Section 3(a) of FIFRA which is unlawful under Section 12(a)(1)(A) of FIFRA.

Conclusion


While Respondent answered the allegations of the Complaint in an attempt to mitigate any proposed penalties, and apparently Complainant was amenable to such negotiations, Respondent has failed, for reasons only known to it, to cooperate in these negotiations and, in fact, has failed to respond to the Order To Show Cause issued by this Court, the result of which places Respondent in default in this proceeding. Therefore, Respondent is found to be in violation of FIFRA as alleged in the Complaint and the full amount of the civil penalty, \$1,650.00, is hereby assessed.

ORDER ^{3/}

Pursuant to the Federal Insecticide, Fungicide and Rodenticide Act, Section 14(a)(1), 7 U.S.C. 136 1(a)(1), a civil penalty of \$1,650.00 is assessed against Central Florida Groomer Supply, Inc., also d/b/a C.F.G.S. for violation of the Act found herein.

^{3/} Unless an appeal is taken pursuant to the rules of practice, 40 C.F.R. 22.30, or the Administrator elects to review this decision on his own motion, the Initial Decision shall become the final order of the Administrator. See 40 C.F.R. 22.27(c).

Payment of the full amount of the civil penalty assessed shall be made within sixty (60) days of the service of the Final Order upon Respondent by forwarding to the Regional Hearing Clerk, P. O. Box 100142, Atlanta, GA 30384, a cashier's check or certified check payable to the Treasurer, United States of America.


Edward B. Finch
Chief Administrative Law Judge

Dated: August 13, 1985
Washington, D. C.

3/ Unless an appeal is taken pursuant to the rules of practice, 40 C.F.R. 22.30, or the Administrator elects to review this decision on his own motion, the Initial Decision shall become the final order of the Administrator. See 40 C.F.R. 22.27(c).

CERTIFICATE OF SERVICE

I hereby certify that the original of this Default Order was hand-delivered to the Hearing Clerk, U. S. EPA, Headquarters, and three copies were mailed by certified mail, return receipt requested, to the Regional Hearing Clerk, U. S. EPA, Region IV, for distribution pursuant to 40 CFR 22.27(a).


Leanne B. Boisvert
Legal Staff Assistant

Dated:

August 13, 1985