



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

Decision Published At Website - <http://www.epa.gov/aljhomep/orders.htm>

IN THE MATTER OF)
)
CHEM LAB PRODUCTS, INC.,) DOCKET NO. FIFRA-9-2000-0007
)
)
RESPONDENT)

**ORDER GRANTING COMPLAINANT'S MOTION FOR
ACCELERATED DECISION AS TO LIABILITY**

This proceeding under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA" or "Act"), 7 U.S.C. § 136 et. seq., was commenced on July 7, 2000, by the filing of a complaint by the Senior Associate, Cross Media Division United States Environmental Protection Agency, Region 9 (Complainant), charging Respondent, Chem Lab Products, Inc. ("Respondent" or "Chem Lab"), with violations of the Act. Specifically, the Complaint, in each of 24 Counts, alleged that Respondent sold and distributed "Shock Quick," an unregistered pesticide, on separate occasions between June 23, 1998 and September 23, 1998, to various Orchard Supply Hardware stores in California, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).^{1/}

^{1/} Section 12(a)(1)(A) of FIFRA provides in pertinent part that "it shall be unlawful for any person in any State to distribute or sell to any person, any pesticide that is not registered under section 136a of this title or whose registration has been canceled or suspended...." Section 2(u)
(continued...)

For these alleged violations, it was proposed to assess Chem Lab a penalty of \$5,500 for each count for a total of \$132,000.

Chem Lab answered under date of August 7, 2000, admitting the sales of "Shock Quick" alleged in the complaint, admitting that "Shock Quick" is a pesticide and that it was not registered with EPA at the time of the sales. Chem Lab, however, contested the amount of the penalty as inappropriate and requested a hearing.

On October 19, 2000, Complainant filed a Motion for Accelerated Decision as to liability pursuant to Section 22.20 of the Consolidated Rules of Practice, 40 C.F.R. Part 22, asserting that there is no genuine issue of material fact with respect to Chem Lab's liability in this matter. Complainant emphasizes that Chem Lab has admitted the facts alleged in the

^{1/} (...continued)
of FIFRA defines pesticide as follows:
The term 'pesticide' means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest,
(2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer, except that the term "pesticide" shall not include any article that is a "new animal drug" within the meaning of section 321(w) of Title 21,....

The regulatory definition (40 C.F.R. § 152.3) is essentially identical.

complaint and points out that the label for "Shock Quick" contains the claims "Shock" [from the name] and "Clarifies Pool Water." Additionally, Complainant says that the label indicates that "Shock Quick" contains the pesticidal active ingredient "isocyanurates."^{2/} Respondent has not responded to the motion.

EPA correctly points out that the standard for granting accelerated decision is akin to that of a summary judgment motion under Rule 56 of the Federal Rules of Civil Procedure ("FRCP"), and states, in accordance with the Consolidated Rules, 40 C.F.R. Part 22.20(a), that an accelerated decision may be granted "if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law, as to all or any part of the proceeding."

Because Respondent has admitted the facts alleged in the complaint and it has not responded in any way to Complainant's motion for accelerated decision, it is concluded that no dispute of material fact as to liability exists. Therefore,

^{2/} A label attached to Chem Lab's application, dated May 18, 1998, for the registration of "Shock Quick", which presumably is the same as the label on the product identified in the complaint, indicates that the product contains "Organic Chlorinated isocyanurates mixture" and that it clarifies [pool water] by removing organic matter and swimmer waste.

Complainant's motion for an accelerated decision as to liability will be granted.

Order

Complainant's motion is granted and Chem Lab Products, Inc. is found to have violated FIFRA § 12(a)(1)(A) by the 24 identified sales of an unregistered pesticide referred to in the complaint. The amount of the penalty remains at issue and will be determined after further proceedings including a hearing, if necessary.^{3/}

Dated this 26TH day of January 2001.

Original signed by undersigned

Spencer T. Nissen
Administrative Law Judge

^{3/} The order, dated October 31, 2000, suspending the requirement that the parties file prehearing exchanges, is lifted and the parties shall file prehearing exchange information on or before February 23, 2001. The parties need not address items in the prehearing order relating to whether "Shock Quick" is a pesticide and Complainant need not address Item 3 of the order directed to it.