

DECISION AND ORDER

This matter arises under 7 U.S.C. Section 136, et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (hereafter "the Act") and regulations issued pursuant to authority contained therein, 40 C.F.R. Section 168.01 et seq. In this civil action, the Environmental Protection Agency, the complainant herein, seeks assessment of civil penalties against the respondent pursuant to 7 U.S.C. 136 1(a), Section 14(a)(1) of the Act, for certain alleged violations of the Act.

The complaint charges that the respondent failed to file, for the year 1982, a report required by Section 7 of the Act (7 U.S.C. 136e(c) (1)) and 40 CFR 167.5 to be filed annually with the Administrator of the U. S. Environmental Protection Agency regarding amounts and types of pesticides produced at and sold by the respondent's establishment in Arlington, Texas. A civil penalty of \$3,200.00 is proposed by the complainant for violation of Section 12 of the Act, 7 U.S.C. 136 j(a) (2)(L)), which makes violations of Section 7 of the Act by a producer of pesticides unlawful.

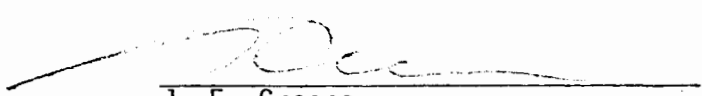
The facts are not in dispute. The sole issue is whether the proposed penalty is appropriate in the circumstances. The respondent urges that the violation is "technical" only, that the penalty should be waived, or, if assessed, should be minimal, and that, in similar cases where the same violation was charged, the penalty was waived or has been very small. The complainant takes the view that the pesticide reporting system is crucial to the agency's administration of the Act, that effective law enforcement depends upon the assessment of a substantial penalty for failure to comply with the Act's requirements, that the penalty proposed in the complaint was arrived at "in accordance with regular agency procedures," and that, in any event, the proposed penalty is less than the \$5,000.00 maximum permitted by the Act (Section 14(a)(1), 7 U.S.C. 136 1 (a)(1)). Respondent's counsel, in urging reduction of the proposed penalty, stated that the failure to file the 1982 pesticide report was an oversight possibly caused by the recent merger of Chemix Corporation into the respondent, and that the entire production of the Arlington facility was provided to the Agency on the annual pesticide report filed by Chemix under Establishment Number 07998-TX-01. Further, counsel stated, since there was no production for the respondent under its 00334-TX number, the operating personnel may have thought no report had to be filed. (After the report became due, the facility received a letter from the Agency which explained the necessity of filing a report even if production was zero for 1982).

In considering the appropriate penalty to be assessed for the violation shown here, it is the particular circumstances which must be examined. Amounts assessed against other respondents in connection with a series of complaints starting in October, 1981, for "failure to file" violations (Government Exhibit 10) range widely, suggesting that the circumstances of those assessments may have varied also. The penalty assessed for a second violation, for example, would ordinarily be substantially higher than for a first violation. In any case those assessments are not helpful to the disposition of this matter because the circumstances leading to those assessments are not in this record.

Here the record discloses no previous violations of the Act in the many years that the respondent has been in the pesticide business, and, accordingly, taking into account the respondent's size ("Category V", gross sales in excess of \$1,000,000.00) and other relevant considerations, it is determined that \$1,000.00 is an appropriate assessment for this first failure to file a Section 7(c)(1) pesticide report.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent Hysan Corporation is subject to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136; 7 U.S.C. 136w; 7 U.S.C. 136e(a).
2. Respondent Hysan Corporation is a producer operating an establishment registered pursuant to Section 7 of the Act, EPA registration No. 334-TX-01; and is required to file a report as provided by 7 U.S.C. 136 e (c)(1) (Section 7 (c)(1) of the Act) and 40 CFR 167.5.
3. Respondent did not file a report as required for the year 1982 by February 1, 1983.
4. Respondent violated Section 7 of the Act, 7 U.S.C. 136 e(1)(c), which violation is made unlawful by 7 U.S.C. 136j(a)(2)(L), for which a civil penalty may be assessed in the amount of \$5,000.00 per violation pursuant to § 14(a)(1) of the Act, 7 U.S.C. 136 l(a)(1).
5. Under the circumstances of this case, and where the record shows no previous violation of the Act, \$1,000.00 is an appropriate penalty for the violation in question.



J. F. Greene
Administrative Law Judge

Washington, DC

RECUSAL FORM

INSTRUCTIONS: This form must be included with ALL documents requiring review by the Administrator, Mr. William D. Ruckelshaus.

1. It appears that the financial interest of an entity listed on Attachment A, or the industry of which it is a member, is distinctively affected or involved in this particular matter.

NAME OF ENTITY AND/OR INDUSTRY

NATURE OF ENTITY'S INTEREST

2. It appears that (1) this is a particular regulatory or adjudicatory matter in which an entity listed on Attachment A or Attachment B is a party-in-interest and (2) the matter (a) was pending before EPA at the time Mr. Ruckelshaus was affiliated with that entity, or (b) was one in which he was directly and substantially involved while affiliated with that entity.

NAME OF ENTITY

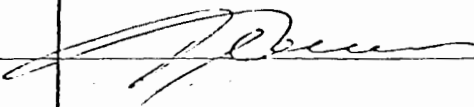
NATURE OF ENTITY'S PARTICIPATION

3. It appears that the entity listed below has an interest in this matter and that Mr. Ruckelshaus had a prior affiliation with such entity. (Do not check this box if No. 1 or No. 2 above applies.)

NAME OF ENTITY

NATURE OF ENTITY'S INTEREST

4. There is no potential recusal issue apparent to the office originating this matter.

NAME(S) OF OFFICIAL(S) FILING RECUSAL FORM	SIGNATURE(S)	DATE
J. F. Greene Administrative Law Judge		March 21, 1984

CONCURRENCES

Concur

Nonconcur

COMMENTS

SIGNATURE OF THE GENERAL COUNSEL

DATE

NOTE: The concurrence of the General Counsel is not required if Box 4 is checked.

I recuse myself from decision-making in this matter.

SIGNATURE OF THE ADMINISTRATOR

DATE

I do not recuse myself from decision-making in this matter.

SIGNATURE OF THE ADMINISTRATOR

DATE

INSTRUCTIONS

1. The attached form must be included with *all* documents forwarded to the Administrator if the document either requires approval or concurrence or is intended for briefing in a matter in which approval or concurrence will eventually be required.
2. Whether a proceeding is a "particular regulatory or adjudicatory matter" covered by Box 2, and whether an entity is a "party-in-interest" may involve complex legal issues. For the purposes of filling out the form, treat any lawsuit or any rulemaking or other administrative EPA proceeding that has regulatory effect or involves award of or payment under assistance agreements or contracts as a "particular regulatory or adjudicatory matter." Similarly, treat any party in a lawsuit or entity that participates in an administrative proceeding or a contract or assistance agreement as a "party-in-interest."
3. Recusal forms are recommendations only. The Administrator is not recused from any matter before having so decided.