

7/23/79

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE REGIONAL ADMINISTRATOR



In the Matter of)
L. J. Veal, an individual, d/b/a)
Tri-Cities Termite and Insect)
Control)
Respondent)

I. F. & R. Docket No. III-129-C

DEFAULT ORDER

Preliminary Statement

This is a proceeding under Sec. 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 1(a), 1973 Supp), instituted by a complaint filed by the Director, Enforcement Division, Region III, United States Environmental Protection Agency, which was served upon Respondent L. J. Veal, d/b/a Tri-Cities Termite and Insect Control on April 19, 1977. Respondent filed an answer by letter dated May 1, 1977. The matter was referred to the Office of Administrative Law Judges by letter on September 11, 1978, and a pre-hearing letter was issued on September 19, 1978 pursuant to Sec. 168.36(e) of the Rules of Practice (40 CFR 168.36(e)) requiring the parties to submit certain information by November 3, 1978. A subsequent extension to November 11, 1978, was granted. A return receipt signed by L. J. Veal indicates he had received both of these documents.

Complainant, by letter dated October 27, 1978, filed its response to said prehearing letter. Respondent did not file a response. Under date of November 30, 1978, a letter was delivered to L. J. Veal by certified mail which informed him that "unless you so comply with my letter of September 19, 1978, by December 22, 1978, consideration will be given to the issuance of a Default Order against you pursuant to Sec. 168.34." No response was received to this letter.

Complaint filed a Motion For Finding of Default dated February 15, 1979, which was served by certified mail upon L. J. Veal. The Post Office advised that L. J. Veal was notified of the letter on two occasions, but it remained unclaimed and was returned to Complainant on March 4, 1979. Subsequently an extensive attempt to locate L. J. Veal was made by Respondent, but to no avail. (See letter dated July 3, 1979 signed by Heather Gray, counsel for Complaint, with attachments, attached hereto and made a part of the Order). In addition to these attachments all of the subject files are hereby incorporated into and made a part of the record of this proceeding.

By reason of the foregoing, Respondent is hereby found to be in default pursuant to the Rules of Practice issued under the Act (40 CFR 168.34(a)(2)). Such default constitutes an admission of all facts alleged in the complaint and a waiver of hearing by Respondent.

Findings of Fact

1. Respondent L. J. Veal is an individual doing business as Tri-Cities Termite and Pest Control with offices formerly located at 1632 Smith Dupont Highway (Post Office Box 32) Dover, Delaware 19901.

2. Respondent is a distributor of pesticides in that its pest control work entailed the sale of pesticides contemporaneous with their application and that the pesticides were in fact supplied by Respondent.

3. The product "Chlordane 8E" is registered by Agway, Inc., Chemical Division, Box 1333, Syracuse, New York, as a pesticide with the Environmental Protection Agency (hereinafter referred to as "EPA") under Registration Number 8590-45 which was approved on October 8, 1968.

4. On or about May 15, 1975, Respondent gave Mrs. Marion Massey, 118 New Street, Cheswold, Delaware, a one year guarantee following treatment of the attic of Mrs. Massey's residence for bats.

5. On or about March 1, 1976, in response to a complaint by Mrs. Marion Massey that there were bats in her attic, Respondent applied the pesticide, Chlordane 8E, to the attic of Mrs. Massey's residence.

6. An inspection performed by EPA Consumer Safety Officer, David K. Hannuman, on or about March 15, 1976, and subsequent analysis of samples collected during the inspection, confirmed the fact that chlordane had been applied in the attic of Mrs. Marion Massey's residence.

7. An affidavit signed on or about March 11, 1976 by L. J. Veal, owner of Respondent, confirmed the fact that Respondent had treated the attic of Mrs. Marion Massey's residence with chlordane.

8. An affidavit signed on or about March 15, 1976 by L. J. Veal, owner of Respondent, confirmed the fact that Respondent had purchased from Agway, Inc., New Burton, Delaware on February 18, 1976, a one gallon glass bottle of Agway, Inc. Chlordane 8E which was used in treating Mrs. Marion Massey's attic.

9. The accepted label for the pesticide, Chlordane 8E, does not contain any statements which indicate that the pesticide may be used on bats.

Conclusions

By reason of the facts set forth above, Respondent has violated FIFRA by using a registered pesticide in a manner inconsistent with its labeling, Section 12(a)(2)(G) of FIFRA, and U.S.C. Sec. 136j(a)(2)(G) in that Respondent applied chlordane to control bats when such use of chlordane was not registered with the EPA.

Respondent has also violated FIFRA by using a registered pesticide in violation of the Administrator's suspension order related to the use of chlordane dated December 24, 1975 (41 Fed. Reg. 7552, February 19, 1976), Section 12(a)(2)(J) of FIFRA, 7 U.S.C. Sec. 136j(a)(2)(J), in that Respondent applied chlordane above ground when the above noted Administrator's suspension order restricted use of chlordane to subterranean application if used for termite control.

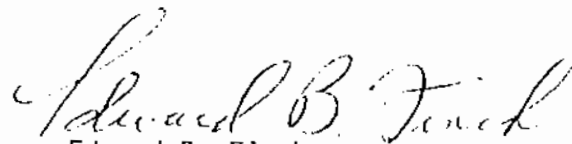
Pursuant to Sec. 168.34(a) of the Rules of Practice, the penalty proposed to be assessed in the Complaint, \$5,000.00, shall become due and payable by Respondent, L. J. Veal, individually and as sole owner of Tri-Cities Termite and Insect Control, without further proceedings, upon the issuance by the Regional Administrator of a final order issued upon default.

ORDER

Pursuant to Sec. 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 1(a), 1973 Supp.), a civil penalty of \$5,000.00 is hereby assessed against Respondent, L. J. Veal, individually and as owner of Tri-Cities Termite and Insect Control for the violations of the Act found herein.

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, L. J. Veal, individually and as sole owner of Tri-Cities Termite and Insect Control, by forwarding to the Regional Hearing Clerk a cashier's check or certified check payable to the United States of America in such amount.^{1/}

July 20, 1979


Edward B. Finch
Administrative Law Judge

^{1/} See Sec. 168.34(b)(2) of the Rules of Practice with respect to effect and consequences of this Default Order.