

9-7-92

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
SCHALL CHEMICAL, INC.,)	Docket No. IF&R-VIII
)	92-312-C
Respondent)	

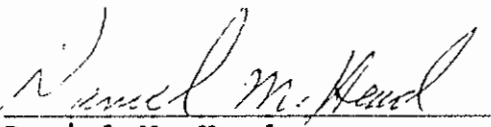
ORDER DENYING MOTION FOR INITIAL DECISION ON PENALTY

On June 1, 1992, Complainant filed a Motion for Initial Decision on Penalty. This motion asserts that no facts are at issue in this cause, that settlement negotiations have not been successful and that, based on the Federal Insecticide and Rodenticide Act (FIFRA) Enforcement Response Policy, the proposed \$5,000 penalty is appropriate. Therefore, the motion requests that an Initial Decision be entered assessing a \$5,000 penalty against Respondent. No response to this motion was filed by the Respondent.

However, the motion seeking assessment of the proposed penalty must be denied without prejudice at this juncture because it is premature. A review of the Complaint and Answer reveals that the Respondent has raised certain issues of fact, for example, whether the material in question was ever a restricted-use pesticide. Moreover, to date there has been no determination on liability in this action, either through a motion for accelerated decision or through an evidentiary hearing. The entry of a decision assessing a penalty cannot be made prior to their being an official determination that the Respondent is

liable for a violation of FIFRA as alleged in the Complaint. The mere assertion in the motion that no facts are at issue is not sufficient to warrant a determination on liability, where the Answer on its face raises issues of material fact. The motion is, however, being denied without prejudice, in the event Complainant can establish that there are no factual matters at issue and that there should be a summary determination on liability and on the amount of penalty.

SO ORDERED.



Daniel M. Head
Administrative Law Judge

Dated:

September 8, 1992
Washington, DC

IN THE MATTER OF SCHALL CHEMICAL, INC., Respondent
DOCKET NO. IF&R-VIII-92-312C

CERTIFICATE OF SERVICE

I certify that the foregoing Order Setting Prehearing Procedures, dated Sept. 8, 1992, was sent in the following manner to the addressees listed below:

Original by Regular Mail to:

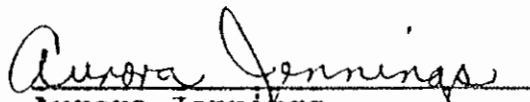
Joanne McKinstry
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region VIII
999 18th Street
Denver, CO 80202-2405

Copy by Certified Mail, Return
Receipt Requested to:

Counsel for Complainant:

Daisy Kathleen Curry, Esquire
Office of Regional Counsel
U.S. Environmental Protection
Agency, Region VIII
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Denver, CO 80202-2405

Representative for Respondent: Richard R. Brumfield
Secretary of Corporation
Schall Chemical, Inc.
120 North Broadway
Monte Vista, CO 81144


Aurora Jennings
Secretary, Office of
Administrative Law Judges

Dated: September 8, 1992
Washington, D.C.