

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of)
)
Leatex Chemical Company, Inc.,) Docket No. IF&R-III-298-C
)
Respondent)

FIFRA - Penalty of \$9600 assessed for failure to file annual pesticide reports for the years 1984, 1985 and 1986.

APPEARANCES:

For Complainant: Benjamin D. Fields, Esquire
Office of Regional Counsel
U.S. EPA, Region III
841 Chestnut Building
Philadelphia, PA 19107

For Respondent: Mr. John McChesney, Jr.
President
Leatex Chemical Company
2722 N. Hancock Street
Philadelphia, PA 19133-3579

ACCELERATED DECISION

The complaint in this matter charges Respondent with failing to file annual pesticide reports for the years 1984, 1985 and 1986, as required by § 7 of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136e, and the applicable regulations 40 C.F.R. Part 167. Respondent answered, in effect, admitting the violations. Respondent initially indicated that it was interested in settling this matter, but made no further effort to pursue settlement. Complainant filed a motion for an accelerated decision pursuant to 40 C.F.R. § 22.20, to which Respondent did not reply. By order dated January 28, 1988, I issued a partial accelerated decision finding that the uncontroverted material facts establish Respondent's violations and liability for a penalty, and directing Respondent to show cause within 20 days from the date of the order why the proposed penalty of \$9600 should not be assessed against Respondent. A copy of my partial accelerated decision and order to show cause with the postal return receipt showing service upon Respondent are attached hereto as Exhibit A and made a part of this initial decision.

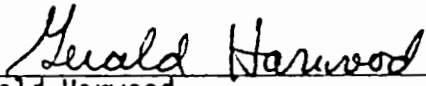
Respondent has not come forward with any grounds as to why the proposed penalty of \$9600 should not be assessed against it. Accordingly, the penalty of \$9600 is found to be the appropriate penalty for the violations found herein.

ORDER */

Pursuant to the Federal Insecticide, Fungicide and Rodenticide Act, § 14(a)(1), 7 U.S.C. § 136 1(a)(1), a civil penalty of \$9600 is assessed against Respondent Leatex Chemical Company, Inc.

Payment of the full amount of the civil penalty assessed shall be made within sixty (60) days of the service of the final order by submitting a certified or cashier's check payable to the United States of America and mailed to:

EPA - Region III
(Regional Hearing Clerk)
P.O. Box 360515M
Pittsburgh, PA 15251



Gerald Harwood
Chief Administrative Law Judge

DATED: February 25, 1988

Attachment

*/ 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).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of)
Leatex Chemical Company, Inc.) Docket No. IF&R-III-298-C
Respondent)

ORDER GRANTING PARTIAL ACCELERATED DECISION AND ORDER TO SHOW CAUSE

The complaint in this matter, brought under the Federal Insecticide, Fungicide and Rodenticide Act (hereafter "FIFRA") § 14(a), 7 U.S.C. § 1361(a), charges that during 1984, 1985 and 1986, Respondent was a pesticide producer as defined in FIFRA Section 2(w), 7 U.S.C. § 136(w), and maintained a pesticide-producing establishment registered with the EPA for which it was required to file an annual pesticide report. The complaint further charged that Respondent failed to file annual reports in the years 1984, 1985 and 1986. Respondent in answer submitted a letter stating that "we have not been able to establish from our records that the Annual Pesticide Reports for the years 1984, 1985 and 1986 were submitted."

Complainant has been unable to settle this case and now moves for an accelerated decision. With his motion he has submitted the affidavit of the custodian of records for annual pesticide reports at EPA Region III that no annual reports were received from Respondent for the years 1984, 1985 and 1986. Respondent has failed to respond to the motion.

On consideration of the complaint, Respondent's letter of May 21, 1987, in answer to the complaint, and Complainant's motion for an accelerated decision, I find that the following material facts establishing Respondent's violations and liability for a penalty are uncontroverted:

1. Respondent is a corporation which has, at all times relevant to this complaint, been doing business in the Commonwealth of Pennsylvania.
2. During 1984, 1985 and 1986, Respondent was a pesticide producer as defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.1. During those years Respondent maintained a pesticide-producing establishment in Philadelphia, Pennsylvania which was registered with EPA under establishment number 50325-PA-001.
3. As a producer, Respondent was subject to the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e, and the applicable regulations promulgated pursuant thereto contained in 40 C.F.R. Part 167.
4. According to Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the applicable regulation, 40 C.F.R. § 167.5, Respondent was required to submit an annual pesticide report covering the 1984 calendar year on or before February 1 of 1985. Due to the unavailability of the forms to be mailed for the 1984 reporting year, causing delay in mailing the 1984 reports, by a "Notice to Registrants of Pesticide-Producing Establishments" dated January 23, 1985, Respondent was advised to submit its 1984 report on or before April 15, 1985.

5. EPA sent the Respondent an annual pesticide report form on or about February 5, 1985. EPA advised Respondent to return the completed form by April 15, 1985.
6. On or about June 20, 1985, EPA issued Respondent a Notice of Warning letter requiring Respondent to submit its 1984 pesticide report within ten (10) business days of receipt of the Notice.
7. EPA has not received a completed annual pesticide report from Respondent for the production year 1984.
8. According to Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1) and the applicable regulation, Respondent was required to submit an annual pesticide report covering the 1985 calendar year on or before February 1, 1986, and an annual pesticide report covering the 1986 calendar year on or before February 1, 1987.
9. EPA sent the Respondent an annual pesticide report form for the production year 1985 on or about November 23, 1985. EPA advised Respondent to return the completed form by February 1, 1986.
10. EPA has not received a completed annual pesticide report from Respondent for the production year 1985.
11. EPA sent the Respondent an annual pesticide form on or about November 15, 1986, for the production year 1986. EPA advised Respondent to return the completed form by February 1, 1987.
12. EPA has not received a completed annual pesticide report from Respondent for the production year 1986.

ORDER TO SHOW CAUSE IF RESPONDENT HAS VALID
GROUNDS FOR CONTESTING THE PROPOSED PENALTY

The only issue remaining in this proceeding is the appropriateness of the proposed penalty of \$9600. The complaint avers that the proposed penalty has been determined in accordance with the EPA's "Guidelines for the Assessment of Civil Penalties" under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 39 Fed. Reg. 27711 (July 31, 1974). These Guidelines state how the various statutory factors in Section 14(a) - Respondent's size of business, the effect of the penalty on Respondent's ability to continue in business and the gravity of the violation - are applied in determining the appropriate penalty. Respondent's silence to date on the penalty could be construed as an admission that there is no dispute over the penalty and that Complainant's assumptions in calculating the penalty are correct. To ensure that Respondent fully understands the consequences of its failure to respond to the penalty, Respondent will be given one final opportunity to contest the penalty, if it has valid grounds for doing so.

The proposed penalty of \$9600, accordingly, will be assessed against Respondent unless Respondent within twenty (20) days from the date of this order shows cause why the penalty is inappropriate because it does not comply with the EPA's Guidelines. If Respondent contends that the penalty

will adversely affect Respondent's ability to continue in business, Respondent must submit copies of its latest Federal Income Tax return, or, in lieu thereof, copies of its financial records for all its business operations for its latest complete fiscal year.

Gerald Harwood
Gerald Harwood
Chief Administrative Law Judge

DATED: January 28, 1988

CERTIFICATE OF SERVICE

I hereby certify that the original of this Order Granting Partial Accelerated Decision and Order to Show Cause was mailed to the Regional Hearing Clerk, U.S. EPA, Region III, and copies were sent by certified mail, return receipt requested to the following:

Benjamin D. Fields, Esquire
Counsel for Complainant

Mr. John McChesney, Jr.
President, Leatex Chemical Co.

Dottie Woodward
Secretary to the Chief Judge

January 28, 1988

IFR-298-C- Leatey Chem Co Received 1/28/88

SENDER: Complete Items 1 and 2 when additional services are desired, and complete Items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery.

3. Article Addressed to:

Mr. John Mc Cleary, Jr.
President
Leatey Chemical Co.
2722 N. Hancock St.
Chula, PA 19133

4. Article Number

189107

Type of Service:

- Registered Insured
 Certified COD
 Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Addressee

X Leatey Chem.

6. Signature - Agent

X J. Weiss

7. Date of Delivery

2-1-88

8. Addressee's Address (ONLY if requested and fee paid)