

4/12/91

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of)
)
Ignatios Hadjiloukas, d/b/a) Docket No. I. F. & R.-III-358-C
 Tradig Company, and)
 J. L. Hoffman Co., Inc.,)
)
 Respondents)

ORDER DENYING COMPLAINANT'S MOTION FOR DEFAULT

On February 28, 1991, pursuant to section 22.17(a) of the Consolidated Rules of Practice, 40 CFR § 22.17(a), Complainant filed a motion for a default order. The motion was accompanied by a proposed default order. A party's default constitutes an admission of the facts alleged in the complaint and, an order, if entered, will result in assessment of the full amount of the proposed penalty.

Respondent was initially charged in a five-count complaint with violations of section 12 of FIFRA, 7 U.S.C. § 136j, i.e., production and distribution of an unregistered pesticide, sales of a misbranded pesticide and production of pesticides at an unregistered establishment. By an order, dated June 20, 1989, Complainant was permitted to file an amended complaint, adding a sixth count for allegedly filing a false pesticide production

report. The amount of the proposed penalty was increased from \$20,600 to \$24,850.^{1/}

The basis for Complainant's motion for default is Respondent's failure to comply with the ALJ's order for the filing of a prehearing exchange.^{2/} This requirement was imposed by the ALJ's letter to the parties, dated February 9, 1989. By an order, dated June 14, 1989, proceedings were suspended, pending a ruling on Complainant's motion to amend the complaint.

By an order, dated February 16, 1990, the parties were directed to file prehearing information, as directed in the letter of February 9, 1989, on or before March 30, 1990.^{3/} Information requested of Respondent included an explanation of the relationship between it and J. L. Hoffman Co., Inc. and an explanation of why shipments in drums bearing the label "Oniachlor 90" were made on two separate occasions, if the transfers of product were temporary or inadvertent and from damaged drums as alleged. Respondent was also directed to furnish financial statements or other data showing its financial condition, if it is contending that imposition of the

^{1/} Amended complaint, dated May 31, 1989, at 9.

^{2/} Section 22.17(a)(2) provides, "A party may be found to be in default. . . after motion. . . upon failure to comply with a prehearing order of the Presiding Officer."

^{3/} Complainant filed its prehearing exchange on April 6, 1990, seven days after the due date, because of counsel's unforeseen absence from the office.

proposed penalty would jeopardize its ability to remain in business.

By a document entitled "Status Report," dated March 13, 1991, Respondent replied to the motion for default. Respondent states that it did have preliminary negotiations with the Complainant which were never concluded and that it was under the impression either Complainant or the court would inform it of the next step in the procedure. Additionally, ". . . being engaged in the business of running a commercial enterprise and not in the practice of law, [Respondent] did not realize that the letter [order], dated the 16th day of February, 1990, required information. . . be separately submitted . . . as part of the prehearing exchange." According to Respondent, this omission occurred, not because of neglect or contempt, but because of its incorrect comprehension of the nature of the proceedings. Respondent is of the opinion that it has taken all steps necessary to respond to orders of the ALJ and asks that any further action be taken only after an appropriate hearing.

D I S C U S S I O N

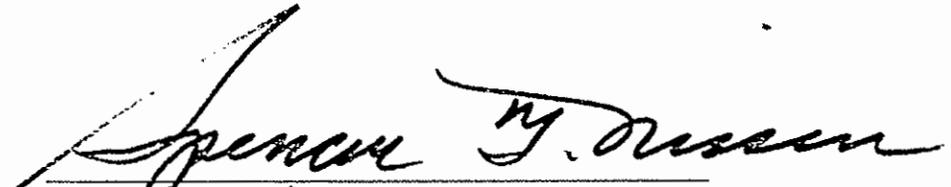
The general rule is that cases should be decided upon their merits and that default orders, being drastic remedies, will not necessarily be granted, merely because a party may be technically in default. See, e.g., Thoro Products Co., CERCLA/EPCRA Docket No. EPCRA-VIII-90-04 (Order Denying Motion For Default Judgment, etc., dated March 6, 1991), issued by Judge Frazier. Here, Respondent is not represented by counsel and, for all that appears, is acting in

good faith. Respondent will be given another opportunity to comply with the requirement for filing prehearing exchange information.

O R D E R

The motion for a default order is denied. Respondent will furnish the prehearing exchange information specified by my letter, dated February 9, 1989, and which is summarized above, on or before May 3, 1991.

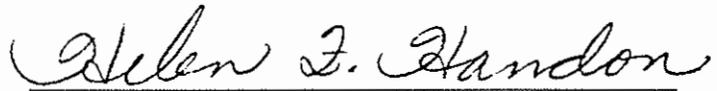
Dated this 12th day of April 1991.



Spencer T. Nissen
Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that the original of this ORDER DENYING COMPLAINANT'S MOTION FOR DEFAULT, dated April 12, 1991, in re: Ignatios Hadjiloukas, d/b/a Tradig Co., and J. L. Hoffman Co., Inc., Dkt. No. IF&R-III-358-C, was mailed to the Regional Hearing Clerk, Reg. III, and a copy was mailed to Respondent and Complainant (see list of addressees).


Helen F. Handon
Secretary

DATE: April 12, 1991

ADDRESSEES:

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