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UNITED STATES 76 NOV 17 AIO: 51
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE REGIONAL ADMINISTRATOR
REGION IX

IN RE)
)
DEL CHEMICAL CORPORATION,)
ONER II, INC., AND JERRY) IFR DOCKET NO. IX-111C
SAYLOR, PRESIDENT, ONER)
II, INC.,)
)
Respondents)

Respondents found to be jointly and severally liable for violations of the governing statute by Del Chemical Corporation. No evidence introduced by respondents at the hearing. Proposed penalty found to be authorized by the guidelines for assessment of civil penalties, and order entered assessing such penalty.

Glade Hall for respondent Del Chemical Corporation.
Craig Litman and Matthew Walker for complainant.

INITIAL DECISION BY WILLIAM J. SWEENEY
ADMINISTRATIVE LAW JUDGE

By complaint filed on January 23, 1976, the United States Environmental Protection Agency, Region IX, alleged that respondent Del Chemical Corporation had violated Section 12 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, in the manner described in the complaint. This respondent requested a hearing. On March 1, 1976 the operating assets of Del Chemical Corporation were transferred to Oner II, Inc. Jerry Saylor is President of both of the aforesaid respondents. On August 9, 1976, a motion by complainant to join Oner II, Inc. and Jerry Saylor as additional respondents

to the complaint was granted. By order dated September 16, 1976 the parties were instructed to exchange certain information on or before October 6, 1976, and a hearing was scheduled to commence on October 13, 1976. The complainant filed the information specified in the order. The respondents did not comply with the order but a motion was filed requesting dismissal of the complaint as to Oner II, Inc., and Jerry Saylor on the grounds of lack of jurisdiction over them as to the alleged violations by Del Chemical Corporation. The complainant replied to such motion and at the hearing the motion was denied. Although the attorney representing Del Chemical Corporation also had represented Oner II, Inc. and Jerry Saylor in filing the motion to dismiss the complaint, he limited his appearance at the hearing to Del Chemical Corporation because he does not consider the United States Environmental Protection Agency to have jurisdiction over the other respondents. The attorney stated further: "We don't have a defense. We don't have money to hire a chemist to analyze what has been presented by the Environmental Protection Agency, and I guess we could say we would stipulate to a judgment. As a matter of fact, I'm over here merely as a courtesy to the Court because I'm not going to get paid for my appearance here. Del Chemical for all intents and purposes is insolvent."

The complainant introduced unrebutted testimony and exhibits which warrant the following findings and conclusions.

1. Del Chemical Corporation was incorporated in Nevada.
2. Del Chemical Corporation had annual gross sales in excess of \$1,000,000.
3. On February 13, 1975, Robert E. Peterson, a consumer safety officer employed by the complainant, conducted a routine inspection at the plant of Del Chemical Corporation in Sparks, Nevada. A sampling of two products was taken by Peterson with the knowledge of respondent's employees. A sample of Del-Quatra D was identified as No. 111225, and a sample of Del-Weed Killer 400 Liquid was identified as No. 111226.
4. Analysis of sample No. 111225 disclosed the following violations:
 - a) Misbranding. The label on the product container showed 0.71% total chloride whereas the product contained only 0.31% of chloride.
 - b) Adulteration. The product was represented as containing 0.71% of total chloride whereas it contained only 0.31% of chloride.
 - c) Misbranded in that the label did not bear on the front panel or the part of the label displayed under customary conditions of purchase the warning "Keep out of reach of children", nor a signal word such as "Caution".

5. Analysis of sample No. 111226 disclosed the following violations:

a) Misbranding. The label on the product container showed 1.09% of 2,4 Dichlorophenoxyacetic Acid isoctyl ester whereas the product contained no detectable isoctyl ester.

b) Adulterated. The strength or purity of the product fell below the professed standard or quality under which it was offered for sale in that no detectable isoctyl ester was found on analysis; the lowest detectable, concentration would have been 0.03%.

c) Misbranding. The label on the product container showed 0.98% of Bromacil (5-Bromo-3-sec-butyl-6-methyluracil) whereas the product contained no detectable Bromacil.

d) Adulterated. The strength or purity of the product fell below the professed standard or quality under which it was offered for sale in that no detectable Bromacil was found on analysis; the lowest detectable concentration would have been 0.03%.

e) Misbranded. The label on the product container showed 0.80% of Pentachlorophenol whereas the product contained no detectable Pentachlorophenol.

f) Adulterated. The strength or purity of the product fell below the professed standard or quality under which it was offered for sale in that no detectable Pentachlorophenol was found on analysis; the lowest detectable concentration would have been 0.02%.

g) Misbranded. The label on the product container did not contain those directions for use as required by the product's registration on January 23, 1973.

6. The complainant has proposed six separate penalties, totaling \$20,600, for the ten violations. The individual penalties proposed are:

Sample No. 111225		
Product adulterated and misbranded - chemical deficiency		\$3,400
Product misbranded - inadequate warning statement		\$2,000
Sample No. 111226		
Product adulterated and misbranded - chemical deficiency in 2,4 D		\$3,400
Product adulterated and misbranded - chemical deficiency in Bromacil		\$3,400
Product adulterated and misbranded - chemical deficiency in Pentachlorophenol		\$3,400
Product misbranded - inadequate directions for use		\$5,000

7. The respondent, Del Chemical Corporation, had violated the Act on two occasions in 1971.

8. The penalties proposed are proper amounts under the governing guidelines for the assessment of civil penalties under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, As Amended.

9. Respondent Jerry Saylor was President of Del Chemical Corporation in January 1976.

10. As of March 1, 1976 there were numerous civil actions pending against Del Chemical Corporation in Nevada District Court, as well as the complaint under consideration herein.

11. On March 1, 1976 the operating assets of Del Chemical Corporation were transferred to Oner II, Inc., a Nevada corporation which was incorporated on February 20, 1976.

12. Respondent Jerry Saylor was President of Oner II, Inc. at the time of its incorporation and is the President today.

13. The United States Environmental Protection Agency has jurisdiction to sue and penalize Oner II, Inc. and Jerry Saylor, for the violation of the Act by Del Chemical Corporation.

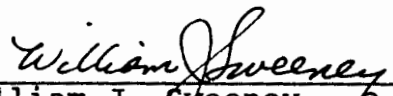
Based on the foregoing findings and conclusions the following order is entered.

ORDER

1. Pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended [86 Stat. 973; 7 USC 136 1(a)], a civil penalty of \$20,600 is hereby assessed jointly and severally against Del Chemical Corporation, Oner II, Inc., and Jerry Saylor, President, Oner II.

2. 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 respondents by forwarding to the Regional Hearing Clerk, Region IX, a cashier's check or certified check payable to the United States of America in such amount.

Dated: November // , 1976



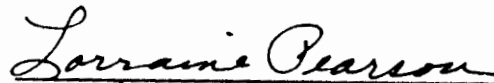
William J. Sweeney
Administrative Law Judge

I hereby certify that a copy of the foregoing Initial Decision, addressed to the following, was mailed, Certified Mail, Return Receipt Requested, postage prepaid, in a United States Postal mail box, or hand-delivered, at San Francisco, California, on the 11th day of November 1976:

Glade L. Hall
Laub, Clark & Hall, Ltd.
One West Liberty, Suite 200
Reno, NV 89501

Paul De Falco, Jr., Regional Administrator
Matthew S. Walker, Esq.
Craig A. Litman, Esq.
U.S. Environmental Protection Agency
Region IX
100 California Street
San Francisco, CA 94111

Dated at San Francisco, California, this 11th day of November 1976.


Lorraine Pearson
Lorraine Pearson
Regional Hearing Clerk
Region IX