

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

MICROFT SYSTEMS INTERNATIONAL
HOLDINGS, S.A.

DOCKET NO. FIFRA-93-H-03

AND

ALFRED WALDNER COMPANY,

RESPONDENTS

SECOND ORDER ON DEFAULT

By an order, dated December 13, 1994, the default order, issued in this proceeding on July 15, 1994, was set aside. The ALJ determined that there was a strong probability of a different result, at least as to the amount of the penalty, if a hearing were held. Despite this second opportunity to present documents and witnesses to support its defense, the pro se Respondents have again failed to respond to the ALJ's orders and failed to submit responses to nine requests for admission posed by Complainant and approved by the ALJ. Once again, the case is before me on a motion for default judgment, which, for the reasons hereinafter appearing, will be granted.

The complaint under Section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 1361, issued on December 28, 1992, alleged that toxicity studies submitted by Respondent, Microft Systems International Holdings, S.A (Microft), contained false information in violation of FIFRA § 12 (a) (2) (Q). ^{1/}The complaint alleges Microft falsely certified that five acute toxicity studies submitted to support its applications for registration of the pesticides, Insecticide 2000 Concentrate and Insecticide 2000 Ready to Use, were performed on a product containing permethrin and bioresmethrin as active ingredients. For this alleged violation, Complainant proposes to assess Microft a penalty of \$5,000.

Microft's registration agents, Science Regulatory Services International (SRSI), filed a letter-answer, on January 19, 1993, on behalf of Alfred Waldner Company (Waldner), successor to Microft's interest in the pesticides at issues.

^{2/} Waldner denied liability, denied that the certification was false, and maintained that the toxicity studies were conducted on a substance (Clean Kill Insecticide and/or Clean Kill Insecticide 2000) containing the same active ingredients as the products proposed for registration.

The five toxicity studies submitted by Microft to support its pesticide registrations were conducted by RCC, Research & Consulting Company, AG (RCC), Itingen, Switzerland. The study sponsor is listed as "Alpha-Intertrading AG," Zurich, Switzerland, and the study monitor is listed as "Herr Schnider." ^{3/} The testing for the study was conducted in Itingen, Switzerland from February 4, 1986 through February 25, 1986. When describing the test article, the report states that the batch number is "unknown; information in the sponsors' files" and that purity "information [is] in the sponsors' files". ^{4/}

Hubert Steuerer, Director of Jesmond, Ltd., averred that Jesmond supplied a sample from its Bio-Kill/Clean Kill Batch-no. 03/8503 to RCC to perform the toxicity studies. ^{5/}

The ALJ found Respondent to be in default, on July 15, 1994, because Waldner did not respond to the ALJ's letter-order, dated April 22, 1993, which, as extended, required the parties to exchange prehearing information on or before July 16, 1993. Waldner did not respond to Complainant's motion for a default order, filed September 10, 1993, was found to be in default, and the full amount of the proposed penalty assessed (order on Default).

On August 5, 1994, Mr. Otmar Hofer of Hofer-Real, Wien, Austria, business agent for Waldner, filed a document entitled "Appeal for Temporary Stay of Order on Default". Among other things, the "appeal" alleged that SRSI no longer represented Waldner. The ALJ ruled that Waldner's "appeal" would be treated as a motion to set aside the default order pursuant to Rule 22.17(d) (40 CFR Part 22) and Waldner was directed to provide certain information in order to determine whether "good cause" to set aside the default order existed (Order, August 10, 1994).

Waldner, by Hofer-Real (Otmar Hofer) responded under date of September 23, 1994 (Hofer letter). The Hofer letter explained, inter alia, that Mr. Waldner was formerly employed by Steuerer GesmbH, the company that sponsored the toxicology studies at issue in this case. The letter identified a Dr. Berger, living in Vienna, as the [former] chief chemist and finally the producer of Clean Kill Insecticide 2000 for Steuerer GesmbH. Dr. Berger allegedly confirmed that "we worked with two active Pyrethroids," but was unwilling to write out an

affidavit because he was so disappointed with Mr. Steuerer that he would never have anything to do with him (Hofer letter at 2).

An affidavit from Mr. Waldner, attached to the Hofer letter, stated that the tested product contained two active ingredients. Also attached to the Hofer letter were pages from an "Opinion on Insecticide 2000" from the Higher Federal School and Test Institute for the Chemical Industry, dated June 7, 1984, and an opinion on Insecticide 2000, requested by Steuerer [sic] Ges.m.b.H, from the Austrian Foodstuffs Research Institute, dated October 12, 1984. The former opinion does not identify the active ingredient and appears to relate solely to the effectiveness of the product tested. Although the second of these "opinions" refers to the product as a "feed-and contact-insecticide on a pyrethrin basis", this does not preclude the product containing bioresmethrin, because "bioresmethrin," is described as a synthetic insecticide of the pyrethrin type. Hawley's Condensed Chemical Dictionary (Eleventh Ed. 1987).

The Hofer letter also included a statement from a Professor Fritz Schreiner, identified as a scientist and an expert in pest control, who stated that Insecticide 2000 contained two active ingredients. Professor Schreiner reviewed the "Opinions" referred to above and opined that these studies would show "less suitable datas", if made with a permethrin only ingredient. Waldner presented these opinions to support his assertion that the RCC studies were conducted on a substance with two active ingredients: permethrin and bioresmethrin.

Based upon the Hofer letter and attachments, the ALJ concluded that Waldner had shown a strong probability of an outcome different from that reached by the default order, if a hearing were held, and set aside the default by an order, dated December 13, 1994. ^{6/}

The order setting aside the default order directed the parties to submit a schedule for suggested further proceedings no later than January 13, 1995. Complainant's response, dated January 26, 1995, indicated that Complainant had attempted unsuccessfully on several occasions to contact Waldner to discuss settlement. Complainant proposed that the A.LJ issue an order directing the parties to participate in a conference call or an order directing Waldner to submit a prehearing exchange so that the parties may begin to prepare for the prehearing conference and discovery. Complainant also moved that the ALJ direct Waldner to engage a domestic registration agent in accordance with 40 CFR § 152.50(b) so that settlement negotiations may proceed in an expeditious manner.

Waldner did not respond to the order to submit a schedule for suggested further proceedings and made no response to Complainant's motion that he be required to appoint a domestic agent.

On June 3, 1996, Complainant filed a motion for an order requiring Waldner to admit or deny some 20 factual allegations. Again, Waldner did not respond to the motion. By motions, dated July 18 and July 22, 1996, Complainant requested an immediate ruling on its request for admissions. ^{7/}

In an order, dated August 2, 1996, the A.LJ set forth his conclusion that there existed disputed issues of material fact, in particular as to the chemical composition of the substance tested by RCC. The order directed Complainant to supplement its prehearing exchange by submitting copies of certificates of analysis to support the allegation that the studies submitted by Waldner reflected tests on a product with only permethrin as the active ingredient. The order also instructed Waldner to appoint a domestic agent for registration matters, and directed him to admit or deny nine of the 20 requests for admissions.

Complainant complied with the August 2, 1996 order by submitting, on September 26, 1996, a Second Motion to Supplement Prehearing Exchange (C's Third PHE). ^{8/} Waldner has not appointed a domestic agent for registration matters, ^{9/} has not admitted or denied the nine requests for admissions to which he was ordered to respond, and has not responded in any fashion to the August 2, 1996 order. ^{10/}

Complainant asserts that the materials in its Third PHE, Exhibits 26 and 27, show that Batch 03/8503 of Clean Kill Concentrate, which was the subject of the RCC toxicity studies, was manufactured according to a formula containing only one active ingredient, permethrin. Exhibit 26 includes a fax from Jesmond Marketing Services GesmbH Vienna, Austria to Bio-Environmental Products Corp., dated September 2, 1996, re: Jesmond Bio Kill Lot No. 03/8503, signed by Hubert Steuerer. The fax reflects that it is in response to an inquiry from Scott Garrison of EPA and states that we have found the following documents in our file: Our (Jesmond, Ltd., Zurich) order for a 1,000 liters of Clean Kill 25 (Bio Kill) to Mr. Dicker of Cooper, McDougal & Robertson (formerly a subsidiary of the Wellcome Foundation, Ltd), which has acted as a contract manufacturer and also a supplier of Permethrin technical; certificate of analysis of the Permethrin Technical; and the formulation of that lot.

The fax states that both documents (Permethrin Analysis & Clean-Kill formulation) came together with the shipment. The attached order is in the form

of a letter to Mr. Dicker, dated August 14, 1985, purports to confirm an order made by telephone on the preceding day for 1,000 lt of the insecticide concentrate 'clean-kill 25'. The letter states, inter alia, that the concentrate should contain 25 percent of technical permethrin and that it will be distributed, diluted, and applied in the same form as our last order. The letter contains a handwritten notation "03/8503". The attached analysis is undated, does not contain a letterhead or other identification, is on a product identified as "Permethrin Cis:Trans Isomers 25/75", Analytical Lot No. 10860, which is described as "a dark straw coloured oil". Assay results are shown as 93.3% total Isomers and 26.8% Cis-Permethrin. The analysis also contains the handwritten notation "03/8503".

The foregoing information is to be compared with Mr. Steuerer's answers to questions posed by Complainant's counsel in a letter on the letterhead of Jesmond Holding AG, dated July 2, 1993 (CPH Ex. 13).

The letter states in part:

"(3) CERTIFICATES OF ANALYSIS: In Jesmond's notarized statements of Feb. 3, 1993, we have already informed you that the Clean-Kill batch which has been used by RCC in order to perform the Toxicity Studies has been taken from Jesmond's production lot no. 03/8503. Jesmond had that Lot No. 03/8503 toll-manufactured in the factory of Cooper France, Paris (at that time Cooper France was a subsidiary of the Wellcome Foundation, Ltd., UK; today it is part of Roussel Uclaf, Paris). For the production of that lot Cooper France have used technical Permethrin, produced by the Wellcome Foundation Ltd., UK (PE batch No. 10070). Attached as ANNEX 3 please find the certificate of analysis concerning the Permethrin batch. The Jesmond Clean Kill Lot 03/8503 contained 25% of technical Permethrin from that batch."

The mentioned certificate of analysis is on the letterhead of the Wellcome Foundation, Ltd, is dated June 28, 1995, describes the product as Permethrin Cis:Trans Isomers 25/75, refers to Analytical Lot No. 10070, states that the product was manufactured on June 27, 1985, describes the product as a "dark straw coloured oil", states that the content of Total Isomers is 93.5 percent, and that the content of Cis-Permethrin is 26.8 percent.

Exhibit 27 assertedly contains the complete formula for the Clean Kill concentrate of Batch 03/8503. This formula was claimed as Confidential Business Information (CBI) by Jesmond, Inc., and will not be disclosed herein. Suffice

it to say, however, that the formula includes only one active ingredient. Exhibit 27 contains a handwritten notation "03/8503".

The certificate of analysis enclosed with Mr. Steuerer's letter to BEP, dated September 2, 1996, refers to Analytical Lot No. 10860, and presumably reflects the result of an analysis performed subsequent to the analysis shown on the letterhead of The Wellcome Foundation, dated June 28, 1985. This indicates that perhaps the batch number of permethrin technical used in the Clean-Kill batch utilized by RCC to perform the studies in question was not, in fact, Batch No. 10070 as represented by Mr. Steuerer in his letter, dated July 2, 1993. These and other inconsistencies in Mr. Steuerer's statements, the former relationship, if any, between Steuerer and Waldner, and the factual basis for the assertions in the Hofer letter are matters to be addressed at a hearing.

Complainant filed a motion, on October 22, 1996, to reinstate the July 15, 1994 default order. Complainant asked the ALJ to once again find Respondent liable for the violation alleged in the complaint and assess the full amount of the proposed penalty, \$5,000. As will be explained, the July 15, 1994 default order will not be reinstated; Respondent will, however, be found in default because of failures to comply with subsequent orders of the ALJ.

DISCUSSION

Waldner established good cause to set aside the default by submitting information which showed the likelihood of a different result, if a hearing were held. Therefore, orders prior to the default order, dated July 15, 1994, are no longer extant and a default may not be based thereon.

Subsequent to the order setting aside the default, however, Waldner has continued to ignore prehearing orders of the ALJ, and has declined to participate in prehearing procedures designed to narrow the issues and expedite resolution of this controversy. Accordingly, Waldner has effectively waived his right to a hearing. ^{11/} Waldner is again in default, because of his failure to respond to the ALJ's December 13, 1994 order that the parties submit a schedule for suggested further proceedings, his general failure to respond to the ALJ's August 2, 1996 order, his failure to appoint a domestic agent for registration matters, and his failure to admit or deny the nine requests for admissions to which he was directed to respond.

As noted in the order setting aside the default, and in the order on motions, dated August 2, 1996, there are reasons for questioning Mr. Steuerer's

credibility. The record, however, presents no sound reason for refusing to accept Steurer's assertions that permethrin was the only active ingredient in the Clean-Kill tested by RCC. In any event, Waldner is in default and has waived the right to contest this assertion.

Based upon the entire record, I make the following:

FINDINGS OF FACT

1. Respondents are Microft Systems International Holdings, S.A. (Microft), a Lugano, Switzerland corporation and its successor in interest, Alfred Waldner Company (Waldner) , an Austrian corporation. Microft is no longer in business.
2. Microft and Waldner are persons and registrants as defined by FIFRA (7 U.S.C. §§ 136(s) and 136(y)).
3. On or about August 12, 1988, Microft authorized Todhunter, Mandava & Associates, a.k.a. SRSI, to act as its registration agent pursuant to 40 CFR § 152.50(b).
4. On or about May 5, 1989, Microft, through its registration agent, submitted two applications for the registration of pesticides: "Insecticide 2000 Concentrate" and "Insecticide 2000 Ready-To-Use." The products were conditionally registered on October 29, 1990, "Insecticidal 2000 Concentrate" being assigned EPA Registration No. 62212-1 and "Insecticidal 200 Ready-To-Use" being assigned EPA Registration No. 62212-2. Registrations for these pesticides were transferred to Respondent, Alfred Waldner Company, on January 26, 1993. EPA approved the transfer, assigning EPA Registration Nos. 66410-1 and 66410-2, respectively.
5. The applications for the registration of the pesticides referred to in finding 4 and the labels thereof represent that the active ingredients for the products are permethrin and bioresmethrin.
6. Supporting data for the applications included toxicity studies conducted by RCC, Research & Consulting Company AG, located in Itingen, Switzerland, on a product identified as "Clean-Kill Insecticide Concentrate" (RCC Studies).
7. Microft, through its agent, certified that the RCC Studies were conducted on a substance containing the identical active ingredients, permethrin and

bioresmethrin, contained in Insecticidal 2000 Concentrate and Insecticide 2000 Ready to Use.

8. Hubert Steuerer was the sponsor of the RCC Studies and was head of Jesmond Limited, London, the company manufacturing Clean-Kill Insecticide, the subject of the studies.

9. In statements, dated February 2, 1993, July 2, 1993, and September 2, 1996, Mr. Steuerer certified, inter alia, that the formula for the Clean-Kill Insecticide, Batch 03/8503, which had been supplied by Jesmond to RCC in order to perform the toxicity studies in 1986, contained only one active ingredient, permethrin. The record contains no sound reason for refusing to accept these representations.

10. The formula for Jesmond's product, Bio-Kill Insecticide, a.k.a. Clean Kill Insecticide, contains only one active ingredient, permethrin.

11. The RCC Studies were conducted on a substance containing one active ingredient, permethrin.

12. Microft's certification that the RCC Studies were conducted on a substance with two active ingredients, permethrin and bioresmethrin, was false.

13. Under date of July 10, 1993, Hofer-Real submitted a Pesticides Report for Pesticide-Producing Establishments on behalf of Microft for the products "Insecticide 2000 Concentrate" and "Insecticide 2000 Ready-To-Use" in accordance with 40 CFR Part 167, Subpart E. The report indicates that there was no production of either pesticide in the calendar year 1992.

14. On January 13, 1993, Waldner through SRSI paid the annual pesticide maintenance fee for the pesticides referred to in finding 13 of \$1,950. On that date, the registrations were held by Microft.

15. A Dunn & Bradstreet report reflecting data through July 29, 1993, states that Waldner's sales for a period not stated, totaled \$1,260,000 in U.S. currency.

16. In calculating the proposed penalty, Complainant considered the appropriateness of the penalty to the size of Waldner's business, the effect on Waldner's ability to continue in business, and the gravity of the violation, as required by FIFRA § 14 (a) (4), 7 U. S. C. § 1361 (a) (4). Additionally,

Respondents' history of compliance with the Act and any evidence of good faith or lack thereof were considered as required by 40 CFR § 22.35(c).

17. By letter, dated July 12, 1996, Otmar Hofer informed Complainant that he no longer represented Microft and Waldner, because Mr. Waldner owes him a lot of money and is in bankruptcy.

18. Respondents have not challenged their ability to pay the proposed penalty nor has Mr. Waldner disputed the assertion that he is in bankruptcy.

CONCLUSIONS

1. Microft and Waldner are persons and registrants as defined by FIFRA §§ 2 (s) and 2 (y) and are thus subject to the Act. Waldner as successor to Microft and transferee of the registrations identified above is liable for the violation alleged in the complaint.

2. Respondents, having failed to comply with ALJ's December 13, 1994 order that the parties submit a schedule for suggested further proceedings, having failed to respond in any fashion to the ALJ's August 2, 1996 order, having failed to appoint a domestic agent for registration matters, and having failed to admit or deny the nine authorized factual allegations presented by Complainant, as required by the ALJ's August 2, 1996 order, are in default in accordance with Rule 22.17 of the Consolidated Rules of Practice (40 CFR Part 22).

3. The statement submitted by Microft to the effect that the RCC Studies reflected tests on a substance identical to its Insecticide 2000 product, was false and in violation of FIFRA § 12(2)(Q).

4. Under § 12 (Q) of FIFRA it is unlawful to falsify all or any part of any information submitted to the Administrator relating to the testing of any pesticide, including the nature of any protocol, procedure, substance, organism, or equipment used, observation made, or conclusion or opinion formed.

5 . Respondents, having violated FIFRA as alleged in the complaint, are jointly and severally liable for a penalty in accordance with FIFRA § 14(a)(1) (7 U.S.C. § 1361(a)(1)).

6. Although current information on Respondents' financial condition is lacking, the recommended penalty of \$5,000 is considered appropriate and will be assessed against Respondents.

ORDER

Complainant's motion for a default order is granted.

Microft Systems International Holdings, S.A. and its successor Alfred Waldner Company, having violated FIFRA § 12 (a) (2) (Q) as alleged in the complaint, a penalty of \$5,000 is assessed against these companies jointly in accordance with § 14(a)(1) of the Act (7 U.S. C. § 1361 (a) (1)). Payment of the full amount of the penalty shall be made by sending a cashier's or certified check payable to the Treasurer of the United States to the following address within 60 days of the date of this order: ^{12/}

Hearing Clerk
U.S. EPA Headquarters
P.O. Box 360277
Pittsburgh, PA 15251-6277

Dated this 26th day of March 1997.

Spencer T. Nissen

Administrative Law Judge

^{1/} Section 12(a)(2)(Q) of FIFRA states:

It shall be unlawful for any person ... to falsify all or part of any information relating to the testing of any pesticide (or any ingredient, metabolite, or degradation product thereof), including the nature of any protocol, procedure, substance, organism, or equipment used, observation made, or conclusion or opinion formed, submitted to the Administrator, or that the person knows will be furnished to the Administrator or will become a part of any records required to be maintained by this subchapter. 7 U.S.C. § 136j(a)(2)(Q).

^{2/} Letter from SRSI to Headquarters Hearing Clerk, dated January 19, 1993, incorporating by reference letter from SRSI to Michael F. Wood, Director, Compliance Division, dated January 6, 1993 (Respondent's Answer). SRSI, located in Washington, DC, was formerly called Todhunter, Mandava & Associates. (Id.) Microft was a Lugano, Switzerland corporation, which, on May 6, 1991, transferred all of its interest in EPA labels, registrations and the data in support of the registration for EPA Reg. Nos. 62212-1 and 62212-2 to Alfred Waldner Company (Waldner), located in Vienna, Austria (Complainant's Prehearing Exchange [C's PHE] Ex. 16). Sometime thereafter, Microft ceased operations (Respondent's answer at 1). Complainant's motion to add Waldner as a party

respondent was granted by an order issued contemporaneously with the default order.

^{3/} Alpha-Intertrading AG was later renamed Jesmond Holding AG (C's PHE at 12; Ex. 13, Annex 2). In response to an inquiry from Complainant's counsel, Messrs. L.Ullmann and E.Rudin, in a letter on RCC stationary, dated June 8, 1993, state that "At the time the studies were performed, RCC did not analyze the chemical composition of the substance tested. Analysis was then not required yet. A data sheet without analytical information but signed and dated by the sponsor was provided together with the test substance.

Explicitly no analysis was requested by the sponsor ... At the time the studies were performed RCC did not learn the chemical composition of the test substance from any other source ... At the time the studies were performed the sponsor for the studies was Jesmond Ltd, Denning House, 90, Chancery Lane, London WC 2A 1EU, U.K., Mr. Hubert Steuerer. Placement letter being dated January 1, 1986" (C's PHE, Ex. 8).

^{4/} C's PHE, Ex. 11, RCC Study at 13. Complainant submitted a copy of one of the five RCC studies included by Microft in its pesticide registration application (C's PHE, Ex. 12). It was dated by EPA "May 5, 1989" (Id.). Complainant also submitted a copy of the same RCC study that another pesticide registrant applicant, Bio-Environmental Products Corporation (BEP), attached to its application to register a product called Bio-Kill (C's PHE, Ex. 11). EPA marked this copy of the RCC study "October 19, 1990" (Id.). BEP's parent company is Jesmond, Ltd. The RCC study submitted by BEP is identical to the RCC study submitted by Microft more than a year earlier, except for a few variations not relevant to determination of liability in this case.

Complainant explained that it would "provide the Court with copies of each report submitted by Respondent and by BEP/Jesmond if the Court so requests" (C's PHE, note 3).

^{5/} C's PHE, Ex. 13 at Annex 1. Although support for Mr. Steuerer's assertion that Batch 03/8503 was the subject of the RCC tests is limited to a handwritten notation of unknown origin on a certificate of analysis and related documents, it is accepted that the test sample came from this batch. Evidence demonstrating that Batch 03/8503 contained only one active ingredient, permethrin, would support the conclusion that the RCC studies reflect tests on such a substance.

^{6/} Rule 22.17(d) (40 CFR Part 22) permits the Regional Administrator or the ALJ, as appropriate, to set aside a default order "for good cause shown."

^{7/} The second of these motions was included in a document entitled "Notice of Withdrawal of Respondent's Representative." The notice stated that counsel for Complainant had received a letter [from Mr. Hofer] indicating that Otmar Hofer and Hofer-Real had not represented Waldner for more than 1 year and were no longer in contact with him. The mentioned letter, dated July 12, 1996, a copy of which was attached to the notice, provided in part: "As Mr. Waldner is owing quite a lot of money to me and that he is bankrupcy [sic] I have broken any contact to him. As I did everything what was possible from my function to clear that matter up I can't be anymore of any use to you. Sorry I can't give you a better answer."

^{8/} Complainant filed a motion, on September 10, 1993, to supplement its prehearing exchange, and added exhibits 20 - 25.

^{9/} Waldner's registrations have been cancelled, 59 Fed. Reg. 49395 (September 28, 1994). Nevertheless, the pendency of this enforcement action is a registration matter within the meaning of 40 CFR § 152.50 (b) . See In re Health Care Products, Inc. et al., I.F.& R. Docket No. VIII-90-279C et al. (Order On Motions, June 13, 1996).

^{10/} It is not clear that Waldner actually received the order, dated August 2, 1996. The Hearing Clerk served a copy of the order on Mr. Waldner, via regular, first class mail, at his only known address in Vienna, Austria. Mail cannot be sent "certified" outside the United States. The packet was returned, marked "Verzogen/Déménagé - indicating that Mr. Waldner was no longer at that address. The Hearing Clerk then attempted to serve the order on Waldner, at the same address, via Federal Express. The Federal Express packet was also returned. A copy of the order was also sent to Otmar Hofer, via regular, first class mail, even though Mr. Hofer no longer represents Waldner. Because Mr. Hofer's copy was not returned, Hofer presumably received the order. It is not known, however, whether he made any attempt to forward the order to Waldner. Ultimately, it is Respondent's obligation to inform the Hearing Clerk, Presiding Officer and all parties of any changes in name, address, and telephone number (40 CFR § 22.05 (c) (4)) . "A party who fails to furnish such information and any changes thereto shall be deemed to have waived his right to notice and service under these rules." (Id.) Because Waldner has not informed the Hearing Clerk, the ALJ, or Complainant's counsel of his current

address, his right to notice and service is deemed to have been waived. See In re: P.L.C. Corporation, FIFRA Appeal No. 95-1 (EAB, July 12, 1995).

^{11/} Default by respondent constitutes, for the purpose of the pending action only, an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing on such factual allegations". 40 CFR § 22.17(a).

^{12/} In accordance with Rule 22.17(b) this default order constitutes an initial decision, which unless appealed to the EAB in accordance with Rule 22.30 or unless the EAB elects, sua sponte, to review the same as therein provided, will become the final order of the EAB and of the Agency in accordance with Rule 22.27(c).

CERTIFICATE OF SERVICE

I do hereby certify that the foregoing Second Order on Default was filed in re Microft Systems International Holdings, S.A. & Alfred Waldner Company; Docket No. FIFRA-93-H-03 and copies of

the same were mailed to the following:

(Interoffice) Scott Garrison, Esq.

Toxics & Pesticides Enforcement Div. (2245A)

U.S. Environmental Protection Agency

401 M Street, S.W.

Washington, D.C. 20460

(FEDERAL EXPRESS) Otmar Holer

Hofer Real Immobilien GesmbH

Oberlaaerstrasse 21

A-1100 Wien, Austria

(FEDERAL EXPRESS) Mr. Alfred Waldner

Alfred Waldner Company

Neustiftgasse 5

1070 Vienna, Austria

Bessie L. Hammel, Hearing Clerk

U.S.E.P.A. (1900)

401 M Street, S.W.

Washington, D.C. 20460

Dated: March 26, 1997