

4/10/90

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
MURD COMPANY, INC.,) Docket No. IF&R-III-380-C
)
Respondent)

Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136, et seq. When respondent failed to comply with the order concerning prehearing exchanges, it was found to be in default pursuant to 40 C.F.R. § 22.17, to have admitted the violations, and assessed a penalty of \$1,960.

ORDER ON DEFAULT

By: Frank W. Vanderheyden Dated: April 10, 1990
Administrative Law Judge

APPEARANCES

For Complainant: Donald J. Lott
FIFRA Enforcement Coordinator
U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

Stephen N. Field
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

For Respondent: Arthur A. Haines
Murd Company, Inc.
2314 N. American Street
Philadelphia, PA 19133
Pittston, Pennsylvania 18640

Introduction

This civil proceeding for the assessment of a penalty was initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 1(a) (Act). The action was instituted by complaint and notice of opportunity for hearing served August 23, 1989, and received by respondent on August 24, 1988. The complaint charges respondent with failure to timely submit an annual pesticide production report as required by Section 7 of the Act, 7 U.S.C. § 136e, and 40 C.F.R. Part 167. A proposed penalty in the amount of \$1,936 is sought.

FINDINGS OF FACT

The complaint alleged respondent's failure to timely file the required annual pesticide production report for the 1988 production year. The proposed penalty was calculated in accordance with the Environmental Protection Agency Guidelines for Assessment of Civil Penalties under the Act, 39 Fed. Reg. 27711, et seq. (July 31, 1974). For the purposes of this penalty calculation, complainant determined respondent's size of business as having gross annual sales between \$400,000 and \$700,000. According to the Guidelines, this would place respondent in Category III.

The Guidelines indicate an assessment of \$1,760 for companies with gross annual sales between \$400,000 and \$700,000. Pursuant to the Guidelines, an additional ten percent or \$176 upward adjustment was made in consideration of respondent's history of non-compliance, thereby bringing the total proposed penalty

assessment to \$1,936. The complaint advised respondent that this administrative proceeding would be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., and the Consolidated Rules of Practice, 40 C.F.R. Part 22, 45 Fed. Reg. 24360 (April 9, 1980). A copy of the Consolidated Rules of Practice was enclosed with the complaint.

On or about September 26, 1989, respondent filed an answer to the complaint. Respondent did not challenge the penalty stated in the complaint. By order of October 17, 1989, complainant and respondent were directed to file a prehearing exchange no later than December 18, 1989. Complainant complied with the order. Respondent failed to abide by the order. On January 10, 1990, the undersigned Administrative Law Judge issued an order to show cause why a default order should not be taken against respondent, pursuant to 40 C.F.R. § 22.17, for its failure to serve the prehearing exchange within the time frame set forth in the order of October 17, 1989.

To date, no response has been forthcoming from respondent.

CONCLUSIONS OF LAW

Respondent's failure to file its prehearing exchange constitutes failure to comply with the order of October 17, 1989. Respondent is in default. 40 C.F.R. § 22.17. This default constitutes an admission by respondent of all the facts alleged in the complaint and a waiver of its right to a hearing regarding these factual allegations. 40 C.F.R. § 22.17(a).

Respondent has violated the Act by failing to file an annual pesticide production report for the year 1988, as required by Section 7(c)(1) of the Act, 7 U.S.C. § 136e(c)(1), and applicable regulations found in 40 C.F.R. Part 167. Respondent's failure constitutes a violation of Section 12(a)(2)(L) of the Act, 7 U.S.C. § 136j(a)(2)(L).

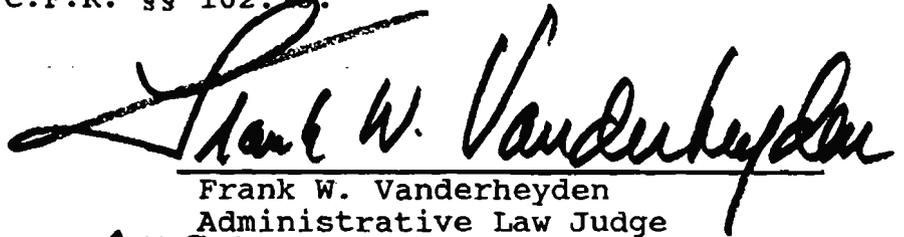
ORDER¹

IT IS ORDERED, pursuant to Section 14(a) of the Act, 7 U.S.C. § 136 1(a), that respondent be assessed a civil penalty of \$1,960. Payment of the full amount of the penalty shall be made by cashier's check or certified check, payable to the Treasurer, United States of America, within sixty (60) days of the entry of this decision and order and mailed to the Regional Hearing Clerk, EPA, Region III, P.O. Box 360515M, Pittsburgh, Pennsylvania 15251. A photocopy of the check shall be sent to:

Ms. Suzanne M. Canning
Regional Hearing Clerk
United States Environmental
Protection Agency, Region III
841 Chestnut Building
Philadelphia, PA 19107

¹ The Order on Default shall constitute the Initial Decision. 40 C.F.R. § 22.17(b). 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. 40 C.F.R. § 22.27(c).

Failure upon the part of respondent to pay the penalty within the prescribed time frame after entry of the final order shall result in the assessment of interest on the civil penalty. 31 U.S.C. Section 3717; 4 C.F.R. §§ 102.13.


Frank W. Vanderheyden
Administrative Law Judge

Dated: April 10, 1990

IN THE MATTER OF MURD, INC., Respondent,
Docket No. IF&R-III-380-C

Certificate of Service

I certify that the foregoing Order on Default, dated 4/10/90, was sent this day in the following manner to the addressees below.

Original Hand Delivered to:

Ms. Bessie Hammiel
Headquarters Hearing Clerk
U.S. Environmental Protection
Agency
401 M Street, S.W.
Washington, D. C. 20460

Copies (5) by Certified Mail,
Return Receipt Requested to:

Ms. Suzanne M. Canning
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region III
841 Chestnut Building
Philadelphia, PA 19107

Marion I. Walzel
Marion I. Walzel
Secretary

Dated: April 10, 1990