

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	Docket No. IF&R VII-498C-83P
STEWART SANITARY SUPPLY, INC.,)	
Respondent)	

1. Federal Insecticide, Fungicide and Rodenticide Act - A party may be found to be in default upon failure to appear at a hearing without good cause being shown; and, where Complainant appears at the place and time designated for a hearing and submits sufficient evidence to establish a prima facie case against the Respondent that due notice of the hearing was received by Respondent, that the violation occurred as charged, and that the penalty proposed is appropriate, a default order will properly be issued.

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Appearances

For the Complainant: Rupert G. Thomas, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region VII
324 East 11th Street
Kansas City, Missouri 64106

INITIAL DECISION

This Initial Decision is rendered sua sponte on finding the above-styled Respondent to be in default for failing, without good cause, to appear at an adjudicatory hearing scheduled and held on Friday, May 25, 1984, beginning at 10 a.m., and closing at 11:05 a.m. in Room 304, Old Post Office, 815 Olive Street, in St. Louis, Missouri (Transcript ["Tr."] 4, Tr. 14); and after presentation by Complainant of evidence establishing a prima facie case against Respondent (40 CFR 22.17).

By Complaint filed July 29, 1983, Complainant, the Regional Administrator of the U.S. Environmental Protection Agency (hereinafter "EPA" or "the Agency") charges Respondent, Stewart Sanitary Supply, Inc. (hereinafter "Stewart" or "Respondent") with violation of Section 7(c)(1) 1/ of the Federal Insecticide, Fungicide and Rodenticide Act (hereinafter "FIFRA" or "the Act") for the reason

1/ Section 7(c)(1) 7 USC 136e(c)(1) provides:

(c) Information required. -

(1) Any producer operating an establishment registered under this section shall inform the Administrator within 30 days after it is registered of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides -

(A) which he is currently producing;

(B) which he has produced during the past year; and

(C) which he has sold or distributed during the past year.

The information required by this paragraph shall be kept current and submitted to the Administrator annually as required under such regulations as the Administrator may prescribe.

that Respondent failed to file an annual report on or before February 1, 1983, informing EPA of the types and amounts of pesticides which it was then currently producing and which was by it produced, sold or distributed during the preceding year.

For said violation, Complainant proposed (Complaint, Section IV, paragraph 12) the assessment of a civil penalty in the sum of \$3200, presuming that Respondent had gross receipts for the calendar year 1982 in excess of one million dollars, which would place Respondent in Category V under the Guidelines for the Assessment of Civil Penalties (39 FR 27711 et seq. (1974)). At the hearing, it was established that the gross receipts of Respondent in calendar year 1982 were \$804,000 and that Respondent's alleged violation was in Category IV under said Guidelines for the assessment of Civil Penalties and that the appropriate civil penalty should be \$2720 instead of \$3200.

In its Answer, filed in letter form, dated August 12, 1983 (Complainant ["C"] Exhibit ["Ex."]-5), and signed by Dottye Stewart Miller, Vice President, Respondent stated:

"In answer to EPA Complaint, I.F.& R. Docket No. VII-498C-83P against . . . Stewart Sanitary Supply, Inc., paragraphs 6 through 10, we plead guilty with extenuating circumstances. We should not be in Category V, because our business revenues were not in excess of \$1,000,000 per year . . . "

(In said Answer, it was stated Respondent would file its Annual Pesticide Report by August 24, 1983.)

On August 23, 1983, Respondent wrote another letter and amended its Answer to request a hearing and stated "Our pesticides report for 1982 is enclosed."

The record further shows (C Ex. 4) that Respondent's said officer, on March 7, 1983, requested, by its letter addressed to Judy Sturgess, EPA Region VII, a copy of its report for the previous year and promised to file the delinquent report "as soon as we get it" - referring to the copy requested.

Although there was no statutory provision so requiring, Complainant sent by Certified Mail (C Ex-1) on December 27, 1982, a notice to Respondent of the statutory requirement that it file its Annual Report no later than February 1, 1983. On February 14, 1983, a "reminder letter" was sent (C Ex.-3). It, too, was sent Certified Mail (C Ex-2).

On this record, it is clearly shown that Respondent was advised, by Certified Mail:

1. of the date and time of hearing, by letter of April 3, 1984 (Certified Mail P506 686 626);
2. of the place of the hearing, by letter dated May 3, 1984 (Certified Mail P506 686 925), and
3. of the hearing being set for one day later on May 25, 1984, at the time and place previously announced, i.e., 10 a.m. in Room 304, Old Post Office, 815 Olive Street, St. Louis, Missouri (Certified Mail P506 686 935).

At 10:43 a.m. on May 25, 1984, the date set for the hearing, and after said proceedings began, Rupert G. Thomas, who appeared at all times pertinent as Attorney in the Office of Regional Counsel for Complainant, stated that Dottye Stewart Miller, Respondent's Vice President, who had communicated with Complainant throughout this proceeding, had spoken with him on the telephone

twice during the preceding week, had stated she was aware of the hearing and proceeded to discuss with him facts concerning the hearing and that Ms. Miller gave him reason to believe she would be present at the hearing (Tr. 3).

In the premises, I find that:

1. A prima facie case was established at said hearing on May 25, 1984, that Respondent violated Section 7 of the Act, as charged in subject Complaint, by failing to file said annual report by said section required; and
2. Respondent, by its failure to appear at said hearing, scheduled as more fully hereinabove set forth, should be and is hereby found in default (40 CFR 22.17).

On the basis of the foregoing, and on consideration of the entire record, I find that a civil penalty in the sum of \$2720 should be assessed against Respondent for the violation charged in subject Complaint.

ORDER 2/

Pursuant to Section 16(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, a civil penalty in the total sum of \$2720 is hereby assessed against Respondent, Stewart Sanitary Supply, Inc., for the violations of the Act found herein.

Payment of the full amount of the civil penalty shall be made within 60 days of the Service of the Final Order upon Respondent by forwarding to the Regional Hearing Clerk, U.S. EPA, Region VII, a cashier's check or certified check payable to the Treasurer, United States of America.

DATE: June 22, 1984



Marvin E. Jones
Administrative Law Judge

2/ Unless an appeal is taken pursuant to the Rules of Practice, 40 CFR 22.30, or the Administrator elects to review the Decision on his own Motion, this Initial Decision shall become the Final Order of the Administrator (40 CFR 22.27(c)).

CERTIFICATION OF SERVICE

I hereby certify that, in accordance with 40 C.F.R. 22.27(a), I have this date forwarded to the Regional Hearing Clerk of Region VII, U.S. Environmental Protection Agency, the Original of the foregoing Initial Decision of Marvin E. Jones, Administrative Law Judge, and have referred said Regional Hearing Clerk to said section which further provides that, after preparing and forwarding a copy of said Initial Decision to all parties, she shall forward the Original, along with the record of the proceeding, to the Hearing Clerk, EPA Headquarters, Washington, D.C., who shall forward a copy of said Initial Decision to the Administrator.

DATED: June 22, 1984



Mary Lou Clifton
Secretary to Marvin E. Jones, ADLJ

Attachment CRECUSAL FORM

This form must be included with all documents requiring review by the Administrator, Mr. William D. Ruckelshaus.

1. It appears that the financial interest of an entity listed on Attachment A, or the industry of which it is a member, is distinctively affected or involved in this particular matter.

Name of entity and/or industry: _____

Nature of entity's interest: _____

2. It appears that (1) this is a particular regulatory or adjudicatory matter in which an entity listed on Attachment A or Attachment B is a party-in-interest and (2) the matter (a) was pending before EPA at the time Mr. Ruckelshaus was affiliated with that entity, or (b) was one in which he was directly and substantially involved while affiliated with that entity.

Name of entity: _____

Nature of entity's participation: _____

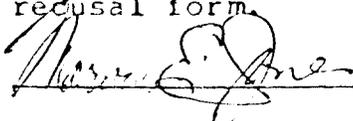
3. It appears that the entity listed below has an interest in this matter and that Mr. Ruckelshaus had a prior affiliation with such entity. (Do not check this box if No. 1 or No. 2 above applies.)

Name of entity: _____

Nature of entity's interest: _____

- 4. There is no potential recusal issue apparent to the office originating this matter.

Names and signature of official(s) filing
recusal form.



MARVIN E. JONES

ADMINISTRATIVE LAW JUDGE

Date: JUNE 22, 1984

Concur _____

Non-concur _____

Comments: _____

General Counsel

Note: The concurrence of the General Counsel is not required if Box 4 is checked.

I recuse myself from decision-making in this matter.

Date: _____

Administrator

I do not recuse myself from decision-making in this matter.

Date: _____

Administrator