

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:

POTOMAC CHEMICALS CORPORATION

Respondent

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: Docket No. III-342-C  
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Federal Insecticide, Fungicide and Rodenticide Act (hereinafter FIFPA)

FIFPA:

1. Accelerated Decision - Where neither the Respondent's Answer nor Prehearing Exchange contains anything to refute the facts alleged in the Complaint, and where Complainant has supported those allegations with a declaration under penalty of perjury, an Accelerated Decision in favor of the Complainant is appropriate.

FIFPA:

2. Penalty - Where the proposed penalty was properly calculated in conformance with the penalty policy and no extenuating circumstances exist which would change the result, the proposed penalty is accepted.

APPEARANCES

For Complainant: Donald J. Lott  
FIFRA Enforcement Coordinator  
U.S. EPA - Region III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

Of Counsel: Benjamin D. Fields  
Assistant Regional Counsel  
U.S. EPA - Region III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

For Respondent: Edward H. Schirmer  
President  
Potomac Chemicals Corporation  
2916 Annandale Road  
Falls Church, Virginia 22042

ACCELERATED DECISION \*

The Complaint in this matter, brought under the Federal Insecticide, Fungicide and Rodenticide Act (hereafter "FIFRA") § 14(a), 7 U.S.C. § 1361(a), charges that during 1987, Respondent was a pesticide producer as defined in FIFRA Section 2(w), 7 U.S.C. § 136(w), and maintained a pesticide-producing establishment registered with the EPA for which it was required to file an annual pesticide report on or before February 1, 1988, as required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the applicable regulations 40 C.F.R. § 167.1 and § 167.5. The Complaint further charged that Respondent failed to file the annual pesticide report for the 1987 production year, in violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

Respondent's Answer, filed in the form of a letter from Edward Schirmer, President of Respondent, does not directly deny the allegations. Respondent's Answer states that "[t]o my best knowledge, we have always filed a timely report with the E.P.A." However, the Answer goes on to state that the employee who was supposed to have filed the forms was no longer with the company, and Mr. Schirmer could only "assume" that the report had actually been filed. The Answer admits that "[a] search of our files does not show a copy of the 1987 (year) report."

Respondent's prehearing exchange, dated August 19, 1988, does not reference any evidence to refute any of the allegations contained in the Complaint.

Complainant filed a Motion for Accelerated Decision dated September 9, 1988, pursuant to the Consolidated Rules of Practice, 40 C.F.R. Section 22.20, requesting a judgement in favor of Complainant in that no genuine issue of material fact exists and Complainant is entitled to judgement as a matter of law. This Motion includes a declaration by Sally Block, the Region III employee responsible for compiling and maintaining records regarding compliance with Section 7 of FIFRA, that prior to issuance of the Complaint on June 8, 1988, no annual pesticide report had been received from Respondent for the 1987 calendar year.

Respondent failed to respond to the motion.

FINDINGS OF FACT

On consideration of the Complaint, Respondent's letter of June 30, 1988, in answer to the Complaint, Complainant's prehearing exchange dated August 18, 1988, Respondent's prehearing exchange in the form of a letter dated August 19, 1988, and Complainant's motion for an accelerated decision, I find that the following material facts are uncontroverted:

\* 40 C.F.R. Section 22.20(b) provides that this decision constitutes an Initial Decision of the Presiding Officer (Administrative Law Judge) and shall be filed with the Regional Hearing Clerk.

1. Potomac Chemicals Corporation, hereinafter referred to as the Respondent, is located in Falls Church, Virginia.
2. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
3. Respondent is a "producer" as defined in Section 2 (w) of FIFRA, 7 U.S.C. § 136(w) and the applicable regulation, 40 C.F.R. § 167.1(d).
4. Respondent's facility is registered under EPA Establishment No. 28690-VA-01.
5. Respondent failed to submit to the Administrator on or before February 1, 1988, its annual report consisting of information of the types and amounts of pesticides produced and/or distributed by the registered establishment as required by section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.5(c), which is a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

#### DISCUSSION AND CONCLUSION

Exhibit No. 1, the Answer to the Complaint (a letter dated June 30, 1988) does not directly deny the allegations contained in the Complaint. Respondent's Prehearing Exchange (a letter dated August 19, 1988, Exhibit No. 2, raises no new facts, and lists no witnesses who could rebut the allegations. Complainant, on the other hand, has submitted a declaration, under penalty of perjury, which establishes all of the elements of the alleged violation. There is therefore no material issue of fact in this case. Respondent has violated Section 7(c)(1) of FIFRA which constitutes a violation of Section 12(a)(2)(L) of FIFRA, and is therefore liable for a civil penalty.

The guidelines for the assessment of civil penalties for a violation of FIFRA, as amended, are contained in a document entitled "Civil Penalties Under the Federal Insecticide, Fungicide and Rodenticide Act, as amended [39 Fed. Reg. 27711, et seq., (July 31, 1974)]," Exhibit No. 3. These guidelines establish a uniform system for penalty assessment for the varying violations of FIFRA. The guidelines take into account the factors required to be considered by Section 14(a)(4) of FIFRA:

"In determining the amount of the penalty, the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation."

The proposed penalty for the alleged violation was modified by a memo entitled "Interim Deviation from Civil Penalties Schedule" issued April 22, 1975, Exhibit No. 4.

Respondent provided Complainant with copies of Respondent's corporate Federal income tax returns for the years 1985, 1986 and 1987 which indicated gross annual sales of \$3,737,148, \$3,806,268 and \$3,729,610, respectively. These figures are all well over \$1,000,000, which places Respondent in the largest category under the penalty policy. For a company in this category, the failure to file an annual pesticide report is a \$3,200 violation.

Additionally, Respondent has not raised any mitigating factors, while Complainant has demonstrated that Respondent has a history of late filings.


Complainant has shown that the proposed penalty was established in accordance with the policy guidance and that the amount is fair and equitable. Therefore, it is my opinion that a penalty of \$3,200.00 is appropriate.

PROPOSED FINAL ORDER 1

1. Pursuant to FIFRA § 14(a), 7 U.S.C. 1361(a), as amended, a civil penalty of \$3,200.00 is assessed against Respondent, Potomac Chemicals Corporation, for violation of FIFRA § 12(a)(2)(L), as amended.

2. Payment of the full amount of the civil penalty assessed, shall be made within sixty (60) days after receipt of the Final Order by submitting a cashier's check or certified check made payable to the United States of America and mailed to:

EPA - Region III  
(Regional Hearing Clerk)  
P.O. Box 360515M  
Pittsburgh, PA 15251

  
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Thomas R. Yost  
Administrative Law Judge

Dated: 11/12/88

Attachments:

1 40 C.F.R. Section 22.27(c) provides that this Accelerated Decision shall become the Final Order of the Administrator within 45 days after its service upon the parties unless an appeal is taken by one of the parties herein or the Administrator elects to review the Accelerated Decision on his own motion.

40 C.F.R. Section 22.30(a) provides for appeal herefrom within 20 days.

CERTIFICATION OF SERVICE

I hereby certify that the original of the foregoing was served on the Regional Hearing Clerk, Region III (service by first class U.S. mail); and that true and correct copies were served on counsel for Complainant and on the Respondent (service by certified mail return receipt requested).

Dated in Atlanta, Georgia this 14th day of November, 1988.

*Marsha P. Dryden*  
 Marsha P. Dryden  
 Secretary to Hon. Thomas B. Yost

HONORABLE THOMAS B. YOST  
 U. S. ENVIRONMENTAL PROTECTION AGENCY

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**RECEIPT FOR CERTIFIED MAIL**

INSURANCE COVERAGE PROVIDED  
 \*NOT FOR INTERNATIONAL MAIL  
 (See Reverse)

Sent to <i>Att</i>	
Street address	
P.O. State and ZIP Code	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark Date	

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