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ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE REGIONAL ADMINISTRATOR

In re	)	I.F. & R. Docket No. V-101-C
Hub States Corporation,	)	
Respondent	)	Default Order

Preliminary Statement

This is a proceeding under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 l(a), 1973 Supp.), instituted by a complaint filed by the Director, Enforcement Division, Region V, Environmental Protection Agency, which was served upon Respondent Hub States Corporation July 3, 1974. Respondent filed an answer by letter dated July 25, 1974. The matter was referred to the Office of Administrative Law Judges by letter dated May 16, 1975, and a prehearing letter was issued May 22, 1975 pursuant to section 168.36(e) of the rules of practice (40 CFR 168.36(e)) requiring the parties to submit certain information by June 20, 1975.

After many extensions of time for the filing of the first submission required by the May 22, 1975 prehearing letter due to settlement negotiations and laboratory testing of pertinent samples on behalf of Respondent, such first submissions were due November 21, 1975. Complainant filed such submission, but Respondent failed to do so. By letter dated December 12, 1975, and received by Respondent December 18, 1975, Respondent was

given until December 29, 1975 within which to file its first submission with the admonition that a default order might be issued against it in the proceeding for failure to do so. No response was received from Respondent. By letter dated January 7, 1976, and received by Respondent on or about January 12, 1976, Respondent was given until January 21, 1976 to file its first submission as required by the May 22, 1975 prehearing letter with the statement that a default order pursuant to section 168.34(a) would issue for failure to do so. Respondent did not file its first submission.

By reason of the foregoing, Respondent is hereby found to be in default pursuant to section 168.34(a)(2) of the rules of practice issued pursuant to the act (40 CFR 168.34(a)(2)). Such default constitutes an admission of all facts alleged in the complaint and a waiver of hearing by Respondent.

Findings of Fact

1. Respondent, Hub States Corporation, is a corporation whose address is 2000 North Illinois Street, Indianapolis, Indiana 46202.

2. The pesticide Formula 42 held for sale by Respondent and collected on September 19, 1973 at its premises in Indianapolis, Indiana, was misbranded under the act. The label thereof stated in part, as follows:

ACTIVE INGREDIENTS	By Wt.
1,1-bis (chlorophenyl)-2,2,2-trichloroethanol*...	10.00%
2,2-dichlorovinly dimethyl phosphate**.....	7.44%
Related Compounds**.....	.56%
Ovex p-Chlorophenyl p-Chlorobenzenesulfonate....	5.00%
Xylene.....	77.00%
Total	100.00%

*Kelthane
**Vapona

The product contained less total chloride than the amount represented by 10.00% 1,1-bis (chlorophenyl)-2,2,2-trichloroethanol (Kelthane), 7.44% 2,2-dichlorovinyl dimethyl phosphate (Vapona) and 5.00% Ovex p-Chlorophenyl p-Chlorobenzenesulfonate. Such pesticide was also adulterated under the act in that its strength or purity fell below the professed standard or quality under which it was sold. Based on a declaration of 10.00% Kelthane, 7.44% Vapona and 5.00% Ovex p-Chlorophenyl p-Chlorobenzenesulfonate, the expected total chloride content of the product would be 8.29%. However, the product coded "1872" was found to contain only 5.59% total chloride.

3. The pesticide 4 LB. Emulsifiable Diazinon held for sale by Respondent and collected on September 19, 1973 at its premises in Indianapolis, Indiana, was misbranded under the act. The label thereof stated in part, as follows:

4 LB. EMULSIFIABLE DIAZINON*
***
ACTIVE INGREDIENTS:

*0,0-diethyl 0-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate.....	47.5%
Aromatic petroleum derivative solvent.....	26.2%
INERT INGREDIENTS.....	26.3%
TOTAL.....	100.00%

The product contained an additional active ingredient, namely chlordane, which was not named in the ingredient statement. Such pesticide was also adulterated under the act in that another substance, namely chlordane, had been substituted wholly or in part for the article. The product coded "1924" was found to be contaminated with 0.30% chlordane.

4. The pesticide Heptachlor Emulsifiable held for sale by Respondent and collected on September 19, 1973 at its premises in Indianapolis, Indiana, was misbranded under the act in that the label did not bear a warning or caution statement which is necessary and, if complied with, adequate to protect health and the environment. The product failed to bear the environmental cautions "This product is toxic to fish and wildlife" and "Do not contaminate water by cleaning of equipment, or disposal of wastes." The product also failed to bear the cautions "Not for storage in or around the home" and "For use by Pest Control Operators only." These statements did appear on the label accepted October 19, 1971, under registration number 5602-30.

5. The pesticide No Escape With Chlordane held for sale by Respondent and collected on September 19, 1973 at its premises in Indianapolis, Indiana, was misbranded under the act. The label thereof stated in part, as follows:

NO ESCAPE
WITH CHLORDANE

ACTIVE INGREDIENTS	BY Wt.
Technical Chlordane*	2.0%
Petroleum Distillates	98.0%
Total	100.0%

*Equivalent to 1.2% octachloro-4, 7-methanotetrahydroindane and 0.8% of related compounds.

The product contained more than 2.0% technical chlordane. The product coded "7344" was found to contain 9.31% chlordane. Concentrations of chlordane above 3% are not acceptable for use in the household.

Conclusions

By reason of the facts set forth in Findings of Fact 2 and 3, Respondent held for sale adulterated and misbranded pesticides, namely, Formula 42 and 4LB. Emulsifiable Diazinon, in violation of section 12(a)(1)(E) of the act (7 U.S.C. 136j(a)(1)(E)). By reason of the facts set forth in Findings of Fact 4 and 5, Respondent held for sale misbranded pesticides, namely, Heptachlor Emulsifiable and No Escape With Chlordane, also in violation of section 12(a)(1)(E) of the act.

Pursuant to section 168.34(a) of the rules of practice, the penalty proposed to be assessed in the complaint, $3500, shall become due and payable by Respondent without further proceedings upon the issuance by the Regional Administrator of a final order issued upon default.

Order

Pursuant to section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 l(a), 1973 Supp.), civil penalties of $3,500 are hereby assessed against Respondent Hub States Corporation for the violations of the act found herein.

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 Respondent by forwarding to the Regional Hearing Clerk a cashier's check or certified check payable to the United States of America in such amount. 1/

Herbert L. Perlman
Chief Administrative Law Judge

February 3, 1976

1/ See section 168.34(b)(2) of the rules of practice with respect to effect and consequences of this default order.