4/27/77

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE REGIONAL ADMINISTRATOR

In re Carbola Chemical Company, Inc., Respondent	)))))	I.F. & R. Docket No. II-158C

Order Upon Default

This is a proceeding under Sec. 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. §136 l(a) (Supp V, 1975) ("FIFRA"). The proceeding was instituted by a complaint issued by the United States Environmental Protection Agency ("EPA") on October 8, 1976, charging Carbola Chemical Co., Inc. ("Carbola") with violating FIFRA by holding for sale the pesticides GARDEN ROTE ORGANIC INSECTICIDE and CARBOLA WHITE INTERIOR COATING AND INSECTICIDE, which were not in compliance with the Act. A proposed penalty totalling $1,950 was requested, and Carbola was notified of the opportunity for a hearing.

By letter dated November 1, 1976, Carbola by its president, Edward R. Smith, responded to the complaint alleging generally that the assessment is arbitrary and capricious and requesting a hearing.

The matter was then referred to the Chief Administrative Law Judge and the undersigned was assigned as the Administrative Law Judge to conduct the proceeding. By letter dated November 23, 1976, the undersigned pursuant to Section 168.36(e) of the Rules of Practice, 40 CFR 168.36(e), directed the parties to make a prehearing exchange of certain

information by January 4, 1977. The letter was served by certified mail and the United States Postal Service return receipt shows that Carbola received this letter on November 26, 1976. EPA furnished the information as requested but no response was received from Carbola.

By letter dated February 18, 1977 and also sent by certified mail, Carbola was notified that if a response to the undersigned's letter was not received by March 14, 1977, Carbola may be found in default and have a default judgment issued againt it in the amount of the proposed penalty, as provided in Section 168.34 of the Rules of Practice, 40 CFR 168.34. The Postal Service return receipt shows that Carbola received this letter on February 22, 1977. No response was received from Carbola.

Complainant thereafter by motion dated March 28, 1977, moved for a default judgment against Carbola. The certificate of service attached to the motion showed that the motion was mailed to Carbola on March 29, 1977. Under sections 168.07(c) and 168.32(b) of the Rules of Practice, 40 CFR 168.07(c), 168.32(b), Carbola was required to respond to this motion within 13 days or by April 10, 1977. No response has been received.

By reason of the foregoing, Carbola is hereby found in default pursuant to Section 168.34(a)(2) of the Rules of Practice, 40 CFR 168.34(a)(2). That rule further provides that a default by a respondent shall constitute an admission of all facts alleged in the complaint and waiver of respondent's right to a hearing on such factual allegations.

Findings of Fact

1. Respondent, Carbola Chemical Co., Inc., is a Corporation whose address is Natural Bridge, New York.

2. On or about August 5, 1975, respondent held for sale at Natural Bridge, New York, the products known as GARDEN ROTE ORGANIC INSECTICIDE and CARBOLA WHITE INTERIOR COATING AND INSECTICIDE, both of which products were "pesticides" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. 136(u).

3. The label attached to GARDEN ROTE ORGANIC INSECTICIDE stated in part: "Rotenone . . . 0.75%." The product was misbranded in that it contained less than 0.75% rotenone. The product was further misbranded in that its label failed to bear the registration number assigned under Section 7 of FIFRA, 7 U.S.C. §136e, for each establishment in which it was produced. Said product was also adulterated in that its strength or purity fell below the professed standard of quality under which it was sold. The product was tested and found to be approximately 32.9% deficient in the active ingredient rotenone.

4. The label attached to CARBOLA WHITE INTERIOR COATING AND INSECTICIDE stated in part: "Ronnel . . . 0.50%." The product was misbranded in that it contained less than 0.50% ronnel. The product was further misbranded in that its label failed to bear the registration number assigned under Section 7 of FIFRA for each establishment in which it was produced. Said product was also adulterated in that its

strength or purity fell below the professed standard of quality under which it was sold. The product was tested and found to be approximately 66.4% deficient in the active ingredient ronnel.

Conclusions

By reason of the fact set forth in Findings of Fact 2, 3 and 4, respondent held for sale misbranded and adulterated pesticides, namely, GARDEN ROTE ORGANIC INSECTICIDE and CARBOLA WHITE INTERIOR COATING AND INSECTICIDE, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. 136j(a)(1)(E).

Pursuant to Section 168.34(a) of the Rules of Practice, 40 CFR 168.34(a), the penalty proposed to be assessed in the complaint, $1,950, 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 FIFRA, 7 U.S.C. 136 l(a), civil penalties totalling $1,950 are hereby assessed against Carbola Chemical Co., Inc., for the violation herein found.

Gerald Harwood
Gerald Harwood
Administrative Law Judge

April 27, 1977

CERTIFICATE OF MAILING

I hereby certify that the original and 7 copies of this Order Upon Default, was sent by certified mail to the Regional Hearing Clerk, Region II to be served upon the parties in this proceeding and to the headquarters Hearing Clerk, on April 27, 1977.

Shirley G. Clifford

Shirley G. Clifford

April 27, 1977

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EPA HEADQUARTERS
HEARING CLERK

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CERTIFICATION

Re: Carbola Chemical Company, Inc.
IF&R Docket No. II-158C

I hereby certify that the original and 7 copies of "Order Upon Default" were received by me from the Administrative Law Judge; that two copies were mailed, regular mail, to the Hearing Clerk, USEPA, Washington, DC; and one copy was mailed, regular mail, to Edward R. Smith, President, Carbola Chemical Co., Inc., Natural Bridge, New York 13665. I further certify that one copy each was hand delivered to: Gerald M. Hansler, Regional Administrator; Susan Levine, Attorney for complainant; and the Environmental Programs Division.

Helen Lee

Helen Lee
Regional Hearing Clerk

May 3, 1977