5/3/77

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE REGIONAL ADMINISTRATOR

In the Matter of Mammal Survey and Control Service Respondent	)	I. F. & R. Docket No. X-34C

DEFAULT ORDER

Preliminary Statement

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), 1973 Supp), instituted by a complaint filed by the Director, Enforcement Division, Region X, United States Environmental Protection Agency, which was served upon Respondent Mammal Survey and Control Service on February 23, 1976. Respondent filed an answer by letters dated March 12, 1976 and November 30, 1976. The matter was referred to the Office of Administrative Law Judges by letter on December 16, 1976, and a prehearing letter was issued on December 30, 1976 pursuant to Sec. 168.36(e) of the Rules of Practice (40 CFR 168.36(e)) requiring the parties to submit certain information by March 1, 1977.

Complainant, by letter dated February 10, 1977, filed its response to said prehearing letter. Respondent did not file a response. Complainant filed a Motion for Default Judgment dated February 25, 1977, which was duly served upon Respondent. Respondent did not answer such motion.

By letter dated March 15, 1977 Respondent was given until March 30, 1977 to respond to my prehearing letter, in addition to being advised that if no response was received consideration would be given to the issuance of a default order. No reply was received in response to said letter.

All of the above files are hereby incorporated into and made a part of the record of this proceeding.

By reason of the foregoing, Respondent is hereby found to be in default pursuant to the Rules of Practice issued under 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 Mammal Survey and Control Service is a sole-proprietorship which manufactures various rodent control pesticides. Its address is 216 N. Tillamook Street, Portland, Oregon 97227. Wayne A. Young is its sole owner.

2. The pesticide "This is the Way Bait for Ground Squirrels" held for sale by Respondent and collected October 30, 1974 at its premises in Portland, Oregon was misbranded under the Act. The label stated in part:

"* * *

This is the Way Bait for Ground Squirrels

Active Ingredient:	
Strychnine Alkaloid	.31%
Inert Ingredients:	99.69%
	100.00%

* * *"

The product contained an additional active ingredient, namely Zinc Phosphide, which was not listed in the ingredient statement.

3. The product was adulterated in that another substance, namely Zinc Phosphide, had been substituted in part. The product was found to contain 0.05% Zinc Phosphide.

4. The pesticide "This is the Way Bait for Field Mice" held for sale by Respondent and collected October 30, 1974 at its premises in Portland, Oregon was misbranded under the Act. The label stated in part:

"* * *

This is the WAY
BAIT FOR FIELD MICE
for hand or trail machine baiting
POISON

Directions: Place one teaspoonful of bait in surface trails under shelter of weeds, grass or boards, and at mouth of holes leading to underground burrow systems. *** Baiting should be conducted at the rate of 2 to 3 pounds per acre.

***"

The product would not be effective in killing field mice when used as directed. (During an eight-day feeding study involving peromyscus leucopus, only 30% of the test animals were killed by the bait product. The duration of choice feeding for the sampled pesticide was 72 hours, followed by a five-day lab diet hold and observation period. A mortality of 90% is considered necessary for the product to be effective in the commensal rodent environment.)

Conclusions

By reason of the facts set forth in Findings of Fact 2, 3, and 4, Respondent held for sale adulterated and misbranded pesticides, namely, "This is the Way Bait for Ground Squirrels" and "This is the Way Bait for Field Mice", in violation of Sec. 12(a)(1)(E) of the Act (7 U.S.C. 136j(a)(1)(E)).

Pursuant to Sec. 168.34(a) of the Rules of Practice, the penalty proposed to be assessed in the Complaint, $560.00, shall become due and payable by Respondent, Wayne A. Young, individually and as sole owner of Mammal Survey and Control Service, without further proceedings, upon the issuance by the Regional Administrator of a final order issued upon default.

ORDER

Pursuant to Sec. 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 l(a), 1973 Supp.), a civil penalty of $560.00 is hereby assessed against Respondent, Wayne A. Young, individually and as owner of Mammal Survey and Control Service 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, Wayne A. Young, individually and as owner of Mammal Survey and Control Service, by forwarding to the Regional Hearing Clerk a cashier's check or certified check payable to the United States of American in such amount.[1/]

Edward B. Finch
Administrative Law Judge

May 3, 1977

1/ See Sec. 168.34(b)(2) of the Rules of Practice with respect to effect and consequences of this Default Order.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Default Order in the matter of Mammal Survey and Control Service, was mailed, Certified Mail, Return Receipt Requested, postage prepaid, at Seattle, Washington, to the following:

Mr. Wayne A. Young
Mammal Survey and Control Service
216 N. Tillamook Street
Portland, Oregon 97227

✓Hearing Clerk (two copies)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

A copy of the foregoing Default Order was also hand-delivered to:

Mr. Donald P. Dubois
Regional Administrator
U.S. Environmental Protection Agency
Seattle, Washington

John Hohn, Esq.
U.S. Environmental Protection Agency
Seattle, Washington

Dated at Seattle, Washington, this 9th day of May, 1977.

Irene Franks

Irene Franks
Regional Hearing Clerk