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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
System Sales Company,	)	Docket No. IF&R IV-539-C
	)	
Respondent	)	

1. Federal Insecticide, Fungicide and Rodenticide Act. Violation for failure to register a product or a producer establishment are substantiated if not accomplished at the time the product is offered for sale even though applications may be pending.

2. Federal Insecticide, Fungicide and Rodenticide Act. When determining the size or category of a business for civil penalty purposes, the gross sales (total business revenues from all business operations) must be used.

Appearances

Mr. John Breeding
President
System Sales Company
2232 N. Forsyth Road
Orlando, Florida 32807

James Lawrence Zimmerman, Esquire
Office of Regional Counsel
U. S. EPA, Region IV
345 Courtland Street, NE
Atlanta, Georgia 30365

An adjudicatory hearing was held in Auditorium A; Municipal Justice Building; 100 S. Hughey Avenue; Orlando, Florida on February 15, 1984. Since Respondent, who appeared in its own behalf, admitted the violations charged, the only question is the appropriateness of the proposed civil penalty.

Findings of Fact

1. System Sales Company is a business located in Orlando, Florida. Two of its products are Zapper #1 and Zapper #2, both of which are Biocides for Control of Algae and Slime.

2. Zapper #1 and Zapper #2 are pesticides within the meaning of Section 2(u) of FIFRA.

3. On or about August 1, 1980, System Sales offered for sale and sold either Zapper #1 or Zapper #2 to R. C. Stevens Co., Orlando, Florida.

4. R. C. Stevens used the product in a closed environment causing several people to become ill.

5. At the time System Sales sold the product to R. C. Stevens Co., the product was not registered in accordance with the provisions of Sec. 3 of FIFRA as required by Sec. 12(a)(1)(A).

6. At the time of the sale, the establishment where the pesticide was produced was not registered in accordance with Sec. 7 of FIFRA. Respondent admits Findings 5 and 6 (Respondent's brief, letter dated March 26, 1984).

7. Gross sales of Respondent for the year 1980 were $218,578.00. Gross sales for Zapper #1 and 2 and related products for 1980 were approximately $18,600.00.

Discussion and Conclusion

Due to the fact that Respondent has admitted failure to register product and establishment at the time of offering for sale and sale of the product, the remaining issue is a determination of the amount of the penalty.

First, it should be made clear that the Civil Penalty Guidelines provide that when determining the size or category of the business, the gross sales (total business revenues from all business operations) must be used. Respondent's gross sales for 1980 were between $100,000.00 and $400,000.00, thus placing Respondent in Category II.

The Complaint proposes an assessment of $1,150.00, whereas Complainant's brief proposes $1,500.00. The figure $1,150.00 will be used. For nonregistration of product Complainant, in Category II, has selected Cell C - Application Pending, $700.00. For nonregistration of producer establishment Complainant has selected, in Category II, Cell B - No Knowledge of Registration Requirement, $450.00.

The record in this proceeding presents honest confusion on the part of Respondent as to reliance upon his supplier as to registration of the product. While Complainant has proposed a modest civil penalty, it is my belief that the $700.00 proposed should be reduced to $300.00. The record is clear that the penalty proposed, of $450.00, for nonregistration of producer establishment is appropriate.

FINAL ORDER [2/]

1. Pursuant to Section 14(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, a civil penalty of $750.00 is assessed against Respondent, System Sales Company, for the violations which have been established on the basis of the Complaint.

2. Payment of $750.00, the civil penalty assessed, shall be made within sixty (60) days after receipt of the Final Order by forwarding to the Regional Hearing Clerk; U. S. Environmental Protection Agency; Region IV; 345 Courtland Street, NE; Atlanta, Georgia 30365, a Cashier's Check or Certified Check, made payable to the Treasurer, United States of America.

Edward B. Finch
Chief Administrative Law Judge

Dated: July 7, 1984

2/ 40 CFR 22.27(c) provides that this Initial 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 or the Administrator elects to review the Initial Decision. Section 22.30(a) provides for appeal herefrom within 20 days.