UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

REGIONAL HEARING CLERK
SEP 09 1985
REGION VII

IN THE MATTER OF:	)	I.F. & R. VII-619C-85P
	)	
TURNER COPTER SERVICES, INC.,	)	DEFAULT ORDER
	)	
RESPONDENT	)	

1. Federal Insecticide, Fungicide and Rodenticide Act - DEFAULT - Failure of the Respondent to file prehearing response ordered pursuant to 40 C.F.R. 22.19(e) constitutes a violation of 40 C.F.R. 22.17(a)(2) and provides the basis for the issuance of a Default Order.

2. Federal Insecticide, Fungicide and Rodenticide Act - MOTIONS - Where Respondent fails to comply with an order directing the parties to file an exchange of witness lists and documents, it may, upon proper and timely Motion filed by Complainant, be found in default, which constitutes for purposes of the pending action only, an admission of all facts alleged in the subject Complaint; and where Complainant filed a Motion for Default Order and Respondent did not respond thereto, within the time provided by 40 C.F.R. 22.17, said Motion was by the Respondent confessed and where the Complaint is for the assessment of a civil penalty, the penalty proposed in said Complaint shall become due and payable without further proceedings sixty (60) days after a Final Order issued upon default (40 C.F.R. 22.17[a]).

SEP 13 AM 10:39

Entry of Appearance

For Complainant: Henry F. Rompage, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

For Respondent: Philip L. Turner, President
Turner Copter Services, Inc.
R.R. No. 1
Elliott, Iowa 51532

INITIAL DECISION

By Complaint filed herein on May 2, 1985, Complainant, United States Environmental Protection Agency, Region VII (hereinafter "EPA" or "the Agency"), charges Respondent, Turner Copter Services, Inc. (hereinafter "Respondent"), of Elliott, Iowa, in three Counts, with separate violations of Section 12(a)(2)(G) of the Federal Insecticide, Fungicde and Rodenticide Act (hereinafter "FIFRA" or "the Act"), 7 U.S.C. Section 136j(a)(2)(G), and proposes to assess penalties totaling $1500 ($500 on each of three Counts) pursuant to Section 14(a) of FIFRA, 7 U.S.C. 136l. By its Answer, filed herein on June 10, 1985, Respondent denied the allegations alleged, requested that a hearing be scheduled and stated good cause for filing its Answer more than 20 days after Service of the Complaint on Respondent.

On June 19, 1985, the undersigned, by Certified Mail, Return Receipt Requested, advised the parties of his designation as Administrative Law Judge to preside at the hearing requested by Respondent and directed that a prehearing exchange take place to accomplish some of the purposes of a prehearing conference as permitted by the rules of practice, 40 C.F.R. 22.19(e). In particular, my Order required that the parties, on or before July 25, 1985, submit to each other, to the

Regional Hearing Clerk and to me a list of witnesses such party intended to call to testify at said hearing with a brief narrative summary of such expected testimony, along with copies of all documents and exhibits intended to be introduced into evidence. Complainant made a timely submittal of said required information but Respondent has not made such submittal.

On August 2, 1985, Complainant filed its Motion herein, pursuant to 40 C.F.R. 22.17(a)(2), for issuance of an Order finding Respondent in Default for failing to timely comply with the prehearing order contained in my said letter of June 19, 1985.

I find that Respondent received, on June 21, 1985, the said designation letter directing said prehearing exchange, and that Respondent has failed to comply with said directive and order in that it has not filed said prehearing exchange or in any way responded to said directive. I further find that Complainant's said Motion for Default Order was by Respondent received on August 6, 1985, and and no timely response has been made thereto as by said Section 22.17 required.

Said Section 22.17 of the rules of practice further provides that such default by Respondent constitutes an admission of all facts alleged in subject Complaint and a waiver of Respondent's right to a hearing on such factual allegations.

On the basis of the record herein, including Complainant's Motion for Default Order, I make the following

FINDINGS OF FACT

1. On or about June 6 and 7, 1983, Respondent applied a tank mix of ALBAUGH LO-VOL 6D HERBICIDE (EPA Registration No. 42750-6) and VELSICOL BANVEL HERBICIDE (EPA Registration No. 876-25), to pastureland owned by John Winninger, Union

Township, Guthrie County, Iowa, and subleased to Chuck Priestly and Floyd Van Roekel, for control of musk thistle.

2. Respondent's use of ALBAUGH LO-VOL 6D HERBICIDE and VELSICOL BANVEL HERBICIDE was as described in said Complaint and thus was inconsistent with label directions in that it was sprayed onto or allowed to drift onto susceptible plants, i.e., ornamental and potato plants.

3. On or about June 15, 1983, Respondent applied a tank mix of ALBAUGH LO-VOL 6-D HERBICIDE (EPA Registration No. 42750-6) and VELSICOL BANVEL HERBICIDE (EPA Registration No. 876-25) to 265 acres of pasture owned by Bill McCarty, Union Township, Guthrie County, Iowa.

4. Respondent's use of ALBAUGH LO-VOL 6-D HERBICIDE and VELSICOL BANVEL HERBICIDE was as described in subject Complaint and thus was inconsistent with label directions in that it was sprayed onto or allowed to drift onto susceptible plants, i.e., ornamentals.

5. On or about August 27, 1983, Respondent applied STAUFFER TRITHION 8-E INSECTICIDE to a four-acre cornfield farmed by Wilson Hybrids, Walnut, Iowa, to control spider mites.

6. Respondent's use of STAUFFER TRITHION 8-E INSECTICIDE was as described in subject Complaint and thus was inconsistent with label directions in that it was applied to or allowed to drift onto areas occupied by humans.

CONCLUSIONS OF LAW

Based on the facts, admitted by Respondent, and set forth hereinabove, it is concluded that Respondent violated 12(a)(2)(G) of FIFRA, 7 U.S.C. 136j(a)(2)(G), at the times and in the manner described. Having considered the entire record and pursuant to the Act and the rules of practice, it is hereby

ORDERED 1/

1. A civil penalty of $1500, being $500 on each of three counts set forth in subject Complaint, is hereby assessed against Respondent, Turner Copter Services, Inc., of Elliott, Iowa, for said violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. 136j(a)(2)(G).

2. Payment of $1500, the total penalty assessed, shall be made within sixty (60) days of Service of the Final Order upon Respondent, by forwarding a Cashier's or Certified Check, in said amount, payable to Treasurer, United States of America, to:

EPA - Region 7
(Regional Hearing Clerk)
P.O. Box 360748M
Pittsburgh, PA 15251

It is SO ORDERED.

DATE: September 6, 1985

Marvin E. Jones
Administrative Law Judge

1/ The rights and duties of the parties and the effect and consequences of this Default Order are set forth in 40 C.F.R. 22.30.

CERTIFICATE OF SERVICE

I hereby certify that, in accordance with 40 CFR 22.27(a), I have this date forwarded to the Regional Hearing Clerk of Region VII, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101, the original of the foregoing Initial Decision of Marvin E. Jones, Administrative Law Judge, and have referred said Regional Hearing Clerk to said section which further provides that, after preparing and forwarding a copy of said Initial Decision to all parties, she shall forward the Original, along with the record of the proceeding, to the Hearing Clerk, EPA Headquarters, Washington, D.C., who shall forward a copy of said Initial Decision to the Administrator.

DATED: September 6, 1985

Mary Lou Clifton

Mary Lou Clifton
Secretary to Marvin E. Jones, ADLJ

REGIONAL HEARING CLERK
SEP 10 1985
REGION VII

IN THE MATTER OF

TURNER COPTER SERVICES, INC.,

RESPONDENT

I. F. & R. VII-619C-85P

CERTIFICATION OF SERVICE

In accordance with Section 22.27(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties ... (45 Fed. Reg., 24360-24373, April 9, 1980), I hereby certify that the original of the foregoing Initial Decision issued by Honorable Marvin E. Jones along with the entire record of this proceeding was served on the Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 by certified mail, return receipt requested; that a copy was hand-delivered to Counsel for Complainant, Henry F. Rompage, Office of Regional Counsel, Environmental Protection Agency, Region 7, 726 Minnesota Avenue, Kansas City, Kansas; that a copy was served by certified mail, return receipt requested on Respondent, Philip L. Turner, President, Turner Copter Services, Inc., R. R. No. 1, Elliott, Iowa 51532.

If no appeals are made (within 20 days after service of this Decision), and the Administrator does not elect to review it, then 45 days after receipt this will become the Final Decision of the Agency (45 F.R. Section 22.27(c), and Section 22.30).

Dated in Kansas City, Kansas this 10th day of September 1985.

Diana G. Reid
Regional Hearing Clerk

cc: Marvin E. Jones
Administrative Law Judge
726 Minnesota Avenue
Kansas City, Kansas 66101