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BEFORE THE
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

In re:	)	
	)	
Chem-Pak Company,	)	I.F. & R. No. 04-8544-C
	)	
Respondent.	)	
	)	

DEFAULT ORDER

Preliminary Statement

This is a proceeding under Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) 7 U.S.C. §§136 et seq., instituted by a Complaint filed by the Director; Air, Pesticides and Toxics Management Division; Region IV; United States Environmental Protection Agency, which was served upon Respondent on or about March 23, 1985. The Respondent filed an Answer dated March 30, 1985. A prehearing order was issued on August 16, 1985 requiring the parties to submit certain information by September 3, 1985 with replies due on September 17, 1985.

Complainant filed its prehearing information. Respondent has failed to file the prehearing information set forth in prehearing order on August 16, 1985 but rather filed a letter dated September 10, 1985, which failed to comport with the requirements of the Courts Order.

All of the above documents are hereby incorporated into and made a part of the recording of this proceeding.

Motion for Default was filed by Complainant on September 26, 1985. No response thereto has been received by the Regional Hearing Clerk from Respondent.

By Order of the Court dated November 13, 1985, Respondent was notified that a Default Order would be issued if no response was received by November 27, 1985. That Order was mailed by certified mail, return receipt requested. The Respondent filed no response to that Order.

Findings of Fact

1. Respondent is a corporation doing business in the State of Georgia.

2. Respondent is a "person" as defined by Section 2(s) of FIFRA [7 U.S.C. § 136(s)] and as such is subject to FIFRA and the regulations promulgated thereunder.

3. On or about September 19, 1984, the Respondent held for sale or distribution the product "C MALATHION 50 SPRAY" (sample number ID No. 245610).

4. Said product is a pesticide within the meaning of Section 2(u) of FIFRA [7 U.S.C. § 136(u)].

5. Said pesticide is registered as required by Section 3(a) of FIFRA [7 U.S.C. § 136(a)] under EPA Reg. No. 7478-7.

6. Claims made for the said pesticide differed in substance from the representations made in connection with its registration in violation of Section 2(a)(1)(B) of FIFRA [7 U.S.C. §136j(a)(1)(B)].

The sampled product bore claims and directions for use for flea and tick control on dogs and cats, and as a pet premise spray. These pet claims and directions had not been accepted in connection with the registration for this product.

7. On or about September 19, 1984, the Respondent held for sale or distribution the product "DIAZINON 25% EMULSIFIABLE CONCENTRATE LAWN & GARDEN INSECT CONTROL" in 8 fl. oz. size bottles (sample number I.D. No. 245608).

8. Said product is a pesticide within the meaning of Section 2(u) of FIFRA [7 U.S.C. §136(u)].

9. Said pesticide is registered as required by Section 3(a) of FIFRA [7 U.S.C. §136a(a)] under EPA Reg. No. 655-475-7478.

Said product is supplementally registered to Respondent. The basic product, "PRENTOX DIAZINON 25% EC", is registered by Prentiss Drug & Chemical Company, Inc., CB 2000 Floral Park, New York, New York, 11001 under EPA registration number 655-475.

10. Said pesticide was misbranded per Section 2(q)(1)(B) of FIFRA [7 U.S.C. §136(q)(1)(B)] in that the package, container, or wrapping in which it was enclosed did not conform to the child-resistant packaging standards established by the Administrator pursuant to Section 25(c)(3) of FIFRA [7 U.S.C. §136w(c)(3)]. Said misbranding is unlawful under Section

12(a)(1)(E) of FIFRA [7 U.S.C. §136j(a)(1)(E)].

EPA regulations require residential use liquid pesticide formulations containing seven percent (7%) diazinon or more to be in child-resistant packaging. The subject sample was not in child-resistant packaging.

11. On or about September 19, 1984, the Respondent held for sale or distribution the product "HIBISCUS GARDENIA & IXORA SPRAY" in approximately 8 fl. oz. bottles (sample number ID No. 246512).

12. Said product is a pesticide within the meaning of Section 2(u) of FIFRA [7 U.S.C. §136(u)].

13. Said pesticide is covered under EPA accession number 7478-8033 (Florida).

14. Said pesticide was adulterated per Section 2(c)(1) of FIFRA [7 U.S.C. §136(c)(1)] in that its strength or purity fell below the professed standard of quality as expressed on its labeling under which it was sold. Said adulteration is unlawful under Section 12(a)(1)(E) of FIFRA [7 U.S.C. §136j(a)(1)(E)].

When tested by the Georgia Department of Agriculture for EPA, the sample was found to contain only 28% of the declared amount of the active ingredient "ethion". This represents a 72% deficiency in this insecticidal active ingredient.

15. Said pesticide was misbranded per Section 2(q)(1)(B) of FIFRA [7 U.S.C. §136(q)(1)(B)] in that the package, container, or wrapping in which it was enclosed did not conform to the child-resistant packaging standards established by the Admin-

istrator pursuant to Section 25(c)(3) of FIFRA [7 U.S.C. §136w(c)(3)]. Said misbranding is unlawful under Section 12(a)(1)(E) of FIFRA [7 U.S.C. §136j(a)(1)(E)].

EPA regulations require residential use liquid pesticide formulations containing three and one-half percent (3 1/2%) ethion or more to be in child-resistant packaging. The subject sample ID No. 246512 was not in child-resistant packaging. The subject product is labeled, in part, for use "...on ornamentals and in flower gardens".

Conclusions

By reason of the immediately preceding "Findings of Facts", the Respondent (1) made unapproved claims on the label of its C MALATHION 50 SPRAY in violation of 7 U.S.C. §136j(a)(1)(B); (2) misbranded its DIAZINON 25% EMULSIFIABLE CONCENTRATE LAWN & GARDEN INSECT CONTROL in violation of 7 U.S.C. §136j(a)(1)(E); (3) adulterated its HIBISCUS GARDENIA & IXORA SPRAY in violation of 7 U.S.C. §136j(a)(1)(E); and (4) misbranded its HIBISCUS GARDENIA & IXORA SPRAY in violation of 7 U.S.C. §136j(a)(1)(E). Pursuant to Section 22.17 of the Consolidated Rules of Practice, the penalty proposed to be assessed in the Complaint, $2,350.00, shall become due and payable by Respondent, Chem-Pak Company, without further proceedings.

ORDER[1]

Pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, a civil penalty of $2,350.00 is hereby assessed against Respondent, Chem-Pak Company, for 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, Chem-Pak Company, by forwarding to the Regional Hearing Clerk, P.O. Box 100142, Atlanta, Georgia 30384, a cashier's check or certified check payable to the United States of America in such amount.

Thomas B. Yost
Administrative Law Judge

DATED: January 15, 1986

[1]Pursuant to 40 CFR 22.17(b), this Default Order will constitute the initial decision in this matter. Unless an appeal is taken pursuant to 40 CFR 22.30, or the Administrator elects to review this decision on his own motion, this decision shall become the final order of the Administrator. See 40 CFR 22.27(c).

CERTIFICATION OF SERVICE

I hereby certify that the original of the foregoing Default Order along with the original of all documents filed in this matter were served on the Hearing Clerk (A-110), U.S. Environmental Protection Agency, 401 "M" Street, S.W., Washington, D.C. 20460 (service by certified mail return receipt requested); and that true and correct copies were served on: W. D. Horton, Chem-Pak Company, Route 1, Box 114, McRae, Georgia 31055 (service by certified mail return receipt requested); and Charles E. Rooks, Esquire, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, Atlanta, Georgia 30365 (service by hand-delivery).

Dated in Atlanta, Georgia this 15th day of January 1986.

Sandra A. Beck
Legal Assistant to Judge Yost