UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

ENVIRONMENTAL PROTECTION AGENCY, Complainant	)	
v.	)	Docket No. FIFRA-09-0440-C-85-19
CHEMICAL COMMODITIES AGENCY, INC., Respondent	)	

Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq. Respondent found in violation 7 U.S. C. §§ 136j(a)(1)(A); (a)(2)(L); (a)(2)(A); and (a)(1)(E). Violations concerned sale of unregistered product; failure to include precautionary statement and statement of child warning; adulteration; misbranding and label alteration; and appropriate implementing regulations.

APPEARANCES:

For Complainant:

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Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region IX
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For Respondent:

Richard G. Simon, Esquire
572 N. Arrowhead Avenue
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INITIAL DECISION

INTRODUCTION:

This matter concerns a proceeding brought pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, (FIFRA) 7 U.S.C. § 1361(a). It involves a pesticide designated as chlorpyrifos. The complaint in the proceeding was issued on May 17, 1985 by the Director, Toxics and Waste Management Division of Region IX of the U. S. Environmental Protection Agency, (complainant) against Chemical Commodities Agency, Inc., (respondent). The latter is charged with 12 counts regarding violations of Section 12 FIFRA 7 U.S.C. § 136j. In short, and as set out in the complaint the violations charged are as follows:*

Count I. On or about November 28, 1983, respondent distributed, offered for sale . . . an unregistered pesticide (chlorpyrifos) from its facility to the Department of Defense (DOD), Richmond, Virginia general supply depot in violation of Section 12(a)(1)(A) of FIFRA. (Hereinafter "FIFRA" is omitted with reference to the counts in the complaint.)

Count II. On or about November 28, 1983, respondent produced the pesticide at its unregistered establishment in violation of Section 12(a)(2)(L).

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* The penalty sought for each violation is found in the complaint. The complainant's rationale for the the amount of the penalties is set forth in its prehearing exchange, reproduced in the Appendix attached to this Initial Decision.

Count III. On or about November 28, 1983, respondent distributed, offered for sale . . . the pesticide from its facility to the DOD general supply depot in Richmond, Virginia; that the labeling of the pesticide was an altered label in that it was copied and printed in its entirety from the Environmental Protection Agency (EPA) registered product Orion Dursban 2E; and that such alteration in the labeling was in violation of Section 12(a)(2)(A).

Count IV. On or about November 28, 1983, respondent distributed, offered for sale . . . the pesticide; that the pesticide was misbranded in that the label on which the human hazard signal word "Warning" did not appear with sufficient prominence and in the minimum type size so as to distinguish it from other label text in violation of Section 12(a)(1)(E), and 40 C.F.R. 162.10(h)(1)(iv).

Count V. On or about November 28, 1983, respondent distributed, offered for sale . . . the misbranded pesticide, on the label of which the child hazard warning did not appear with sufficient prominence and in the minimum type size so as to distinquish it from other label text in violation of Section 12(a)(1)(E) and 40 C.F.R. 162.10(h)(1)(iv).

Count VI. On or about November 28, 1983, respondent distributed, offered for sale . . . the misbranded pesticide which did not bear the name and address of the producer as required by Section 2(2)(C)(i), which was in violation of Section 12(a)

(1)(E).

Count VII. On or about November 28, 1983, respondent distributed, offered for sale . . . the pesticide which was misbranded in that its label bore a statement concerning its ingredients which was false under the provision of Section 2(q)(1)(A) in that the pesticide label stated that it contained 44.4 percent of the active ingredient chlorpyrifos; that on or about January 17, 1985, a Georgia Department of Agriculture Laboratory analysis revealed that the pesticide contained 23.53 percent of the active ingredient chlorpyrifos rather than 44.4 percent as claimed on respondent's label, in violation of Section of 12(a)(1)(E).

Count VIII. On or about November 28, 1983, respondent distributed, offered for sale . . . the unregistered pesticide from its facility to the DOD in Memphis, Tennessee in violation of Section 12(a)(1)(A).

Count IX. On or about November 28, 1983, respondent distributed, offered for sale . . . the misbranded and adulterated pesticide from its facility to the DOD in Memphis, Tennessee in violation of Section 12(a)(1)(E).

Count X. On or about January 6, 1984, respondent distributed, offered for sale . . . the unregistered pesticide from its facility to the Tracy Defense Supply Depot in Lyota, California, in violation of Section 12(a)(1)(A).

Count XI. On or about January 6, 1984, respondent dis-

tributed, offered for sale . . . the unregistered pesticide from its facility to the DOD supply depot in Memphis, Tennessee, in violation of Section 12(a)(1)(A).

Count XII. On or about January 6, 1984, respondent distributed, offered for sale . . . the pesticide from its facility to DOD supply depot in Memphis, Tennessee and Lyota, California; that the labeling of the pesticide was an altered label in that it was copied and printed in its entirety from the EPA registered product ORION DURSBAN 2E, and that such alteration was in violation of Section 12(a)(2)(A).

FINDINGS OF FACT

Respondent is a California corporation with its principal place of business at 27447 Pacific Street, Highland, California. Its officers are as follows:

1. Mr. Richard Simon, President, and also counsel for respondent in this proceeding.
2. Mr. William Weishaupt, Vice President.
3. Mr. Donald Reuben, Secretary-Treasurer.
4. Mr. Charles A. Eisenhard, General Manager, and Chemist. (Ex. C-22; Tr. at 111-112, 115)

Respondent's principal business is with DOD through competitive bidding. This is done by invitation or procurement announcement. When an order is received respondent places same with a supplier. It does not manufacture any of the products it sells. Respondent handles around 11,000 to 12,000 different products. When goods are received from its suppliers

they are sent to the appropriate military establishment. Respondent's profit is the difference between the cost of the product supplied and the price bid with DOD. For the year ending March 1985, respondent's gross sales were approximately $3.5 million. Respondent relies upon "Certifications" from its suppliers and does not maintain an independent quality assurance or a quality control concerning the products it sells as a middleman. (Tr. at 9-10, 94-95,105, 120, 135). Involved in the purported violations were 270 one gallon containers of the pesticide stemming from two DOD contracts for an approximate total sales price of $16,000. (Exs. C-2-4, 2-6, 2-7, 2-8, 2-13, 2-14, 2-15; Tr. at 122-124).

The proceeding had its origin in complaints received from a military establishment that the particular chlorpyfiros product was not effective during its application and did not mix properly according to label instructions. (Ex. C-1-7; Tr. at 28). On December 13, 1984, the first inspection concerning respondent's product occurred at Fort Gordon, Georgia. At that time, a Consumer Safety Officer of the complainant met with the Pest Control Foreman at Fort Gordon. The former provided the latter with a written notice of inspection, and a receipt for the sample of one gallon container of: Insecticide Chlorpyrifos Emulsifiable Concentrate, Defense Contract No. DLA 400-83-M-CM15; MFD. 11/83; Lot 20273; "EPA #4862". (Exs. C-1-5, 1-6; Tr. at 26-27) The label on the sample stated the active ingredient of chlorpyfiros to be 44.4 percent. At the request of Region IX of complainant, the sample obtained was sent

to the Georgia Department of Agriculture for analysis which disclosed the chlorpyrifos content 23.53 percent. This approximate 50 percent deficiency amounted to an adulterated product, and the application of the pesticide to an infestation would have no positive results. (Exs. C-1-8, 1-9; Tr. at 28-29, 54-55).

The label on the sample product was changed. It was typewritten or in some other manner transposed from an "Orion-approved label," which label was provided by Orion Chemical, Inc., (Orion) of Garden Grove, California, the supplier of the product to the respondent. The "Orion-approved label" supplied was that for Dursban 2E. (Exs. C-6, C-7; Tr. at 77). The label contained much of the information and numerous instructions required to be upon labels of pesticides. However, in the upper right hand corner of the label from the sample obtained at Fort Gordon there appeared "EPA #4862". This number was intended to be that assigned to complainant (U.S.EPA) as a registration number for that particular product. This number was run many times through complainant's various systems and could not be identified. Nor was there any establishment registration number on the product label. (Ex. C-1-4; Tr. at 25, 51-53). One of the respondent's documents also bore the printed inscription: "Use same containers-change labels." Below that was the handwritten direction: "OK to use previous labels per Charles." (Ex. C-2-13; Tr. at 77). "Charles" apparently was with reference to Charles Eisenhard (Eisenhard). The statement of Gerald L. Gavin (Gavin), Environmental Scien-

tist with complainant, on cross-examination that respondent's label was prepared off an "Orion-approved label" was not challenged by respondent's counsel. Gavin also explained with clarity how such alteration on the label greatly reduced the efficiency of the pesticide. (Tr. at 17, 53-54). Gavin conceded however, that there was no risk of injury to man or the environment in that there was no illnesses or death as a result of the use of the pesticide. (Tr. at 38-39). The diluted product would be like water. (Tr. at 54-55).

Misbranding of the pesticide occurred also for the following reasons: The label of the Fort Gordon sample was printed in such a way that is did not distinguish the child hazard warning or the human hazard signal word from the rest of the text by its placement and prominence on the label. Also, the label falsely stated the chlorpyrifos content of the product, and the name and address of the producer was not found on the label of the sample.(Exs. C-1-4, 1-8, 1-9; Tr. at 33, 38, 39, 53, 56-59). Examples of what constituted complainant's approved labels for chlorpyrifos were admitted into evidence. (Exs. C-4-2, 4-5).

Prior to the inspection, it was determined that the product which was sampled as a result of the first inspection was shipped for sale from respondent's facility to military installations in California, Tennessee and Virginia. Some of the product shipped to Virginia ended its journey at Fort Gordon, Georgia. As found above, the product label obtained at the latter military installation reflected a claimed or pretended registration number which number was not traceable by com-

plainant to any registrant. (Exs. C-I-I, 1-3, 1-4, 2-6, 2-7, 2-14, 2-15; Tr. at 30, 36, 51-52, 60).

Additionally, the name and address of the producer as well as the producer establishment registration number was not found on the Fort Gordon sample. A search of complainant's record of pesticide producers failed to disclose the registration of respondent's facility. The respondent was revealed as the producer through the defense contract number "DLA400-M-CM15" printed on the label of the Fort Gordon sample. (Exs. C-1-3, 1-4, 1-6; Tr. at 20,30,33-37, 53, 63).

Further inspections were conducted of the respondent on April 1 and 2, 1985. On the former date an inspection was authorized by Region IX of complainant at the respondent's place of business. (By contract, California State inspectors were authorized to do certain inspections for complainant.) The inspection was conducted by Rachel A. Morton (Morton) a Senior Pesticide Use Specialist of the State of California. At the time of the inspection, Eisenhard, respondent's general manager, was provided with a Notice of Inspection and a receipt for documentary samples collected by Morton. (Exs. 2-1, 2-2; Tr. 65-66). The following day, another inspection was conducted by Amelia Cea (Cea) also a Senior Pesticide Use Specialist of California. Cea provided Eisenhard with a written Notice of Inspection and receipt for documentary samples collected by her. (Exs. C-2-10, 2-11). The documents obtained,

one of which was a purchase order, showed that respondent placed an order with Orion for the 270 one gallon containers of chlorpyrifos at a concentration of four pounds to a gallon. (This is the same concentration shown on the label of the Fort Gordon sample.) The purported cost to respondent was $54.37 per gallon. However, Orion's packing slip showed the product sold and received was chlorpyrifos with a concentration of two pounds a gallon at $23.10 per gallon.* (Exs. C-2-4, 2-5, 2-6, 2-7, 2-8, 2-12; Tr. at 69-71, 73). The respondent typed its label from that furnished by Orion. Eisenhard, however could not explain why the label on the pesticide that was sold by it represented its chlorpyrifos concentration as four pounds per gallon (44.4 percent), when Orion's invoice showed the product having a concentration of two pounds per gallon (Dursban 2E). In reproducing or retyping the label, Eisenhard stated that the only information added to the label was the military specifications and the bar codes. Yet, he could not furnish a satisfactory explanation of why the simulated or invented number "E PA #4862" appeared on the label of the Fort Gordon sample.

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* Orion's documents speak of "Dursban 2E." Dursban is the same chemical or pesticide as chlorpyrifos with the "2E" representing two pounds of chlorpyrifos per gallon, and the designation of "4E," if it were to appear, indicating a concentration of four pounds per gallon. (Exs. C-4-2, C-5; Tr. at 71).

(Exs. C-1-4, 2-4, 2-5, 2-14, 2-15; Tr. at 35-36, 74-76). It is found that the respondent was responsible for an adulterated product, a product label that was altered, a misbranded product, the distribution of an unregistered product and being an unregistered producer.

Another inspection took place on April 2, 1984 by Morton at Orion, at which time she she obtained documentary samples. (Exs. C-3-1, 3-2). Subsequently, on August 29, 1985, Morton obtained a written statement from Frank Maggiore (Maggiore). (Ex. C-6). This statement is summarized as follows: That Orion sold and shipped to respondent "chlorpyrifos 2E" which is the two pounds per gallon concentrate; that the products were brought into Orion with either "Eagle" or "Ronco" labels (companies which Orion had recently purchased); that at the time of the sale to respondent the individual containers as well as the cartons in which they were packaged had either an Eagle or Ronco lables glued thereon; * that the label shown to him by Morton that was on the product sold by respondent to DOD was "foreign" to him; that Orion did not send such a label to res-

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* The Eagle and Ronco labels bore EPA establishment and and registration numbers. The latter were different from that appearing on respondent's product.

spondent and he, Maggiore, had never seen the label before; that Orion's record indicated that the product sold to respondent was chlorpyrifos 2E; that the price was for a two pound a gallon concentration; that chlorpyrifos 4E would have been in the $40 per gallon range; and that if Orion shipped respondent "the 4E" pesticide at a price of $23.10 per gallon it would have lost approximately $20 per gallon. The documentary samples obtained at Orion on April 2, 1985 disclosed that for the year 1983 only Dursban 2E was shipped to the respondent. (Exs. C-1-4, 2-4, 2-5, 2-12, 3-2, 3-3, 3-5, 3-7, 3-9, 6).

Michael R. Shiohama (Shiohama) a Special Agent for the Defense Criminal Investigative Service, DOD, took a statement from Mike Branscom (Branscom) of Orion. There is some conflict on some points between the testimony of Eisenhard and the statement of Branscom. It is found that Branscom's statement, taken with the totality of the evidence, is more credible than that of Eisenhard. Branscom stated that he took a telephone call from Eisenhard requesting a price quote for Dursban 2E; that Branscom had to check with his manager concerning what price he could quote; that he telephoned Eisenhard back and quoted a price on the product of $23; that Branscom gave the paper work to the warehouseman to ship what was in stock and to back order the remaining balance; that another phone call was received from Eisenhard requesting that the balance of the order be shipped; that Eisenhard subsequently communicated with Branscom requesting that a specimen label be sent, which request

was complied with; that the label sent was not the same label shown to him by Shiohama; that upon the price of the product there could not have been a mix up in that a 4E Dursban would have been substantially higher in price; and that Branscom had 10 years experience in the business and he knew the difference between 2E and 4E Dursban. (Ex. C-C-7; Tr. at 90-92, 98-100).

From the shipping documents obtained by Morton at Orion, plus the statements of Maggiore and Branscom and admissions by Eisenhard concerning the origin of the label on the Fort Gordon sample, it is found that Orion shipped a product that contained two pounds of chlorpyrifos per gallon at a price of $23.10 instead of the four pound concentration of the pesticide ordered by the DOD. It is further found that the four pound per gallon would have sold for either $54.37 based on respondent's purchase order No. 20273, or $40.00 according to Maggiore. It is further found that when respondent received the product it removed the labels that were on the containers and placed thereon the label it had printed, which label reflected the chlorpyrifos concentration at 44.4 percent instead of the actual

content of two pounds per gallon product of about 24.7 percent. The preponderance of the evidence shows that respondent was responsible for the sale of the adulterated product obtained at Fort Gordon.

Respondent, in the person of Eisenhard, was much aware of military specifications concerning sales to the DOD. (Tr. at 102-104, 108, 109). However, he was not familiar with FIFRA's labeling and packaging standards that are incorporated into DOD requirements. It was not until investigator Morton's visit that he became aware of such requirements. (Tr. at 110). The labeling violations were the result of negligence by someone on respondent's clerical staff. Eisenhard admitted that Dursban 2E may have been shipped and he did not deny responsibility concerning it. (Tr. 98, 100-102, 105, 107, 116, 122, 125, 131).

DISCUSSION AND CONCLUSIONS OF LAW

The twelve counts of the complaint involving violations of Section 12 of the Act involved, in part, the sale of the pesticide in question to three different locations. More specifically, respondent:

1. Altered a product label which was registered with complainant.
2. Distributed, offered or shipped for sale an an adulterated and misbranded pesticide product.
3. Distributed, offered or shipped for sale an unregistered pesticide.
4. Produced a pesticide at an unregistered facility.

Eisenhard was a chemist, he should have been aware that respondent was dealing with a pesticide. During the investigation, he admitted that the label on the Fort Gordon sample was reproduced or a retyped facimile of the label sent to him by Orion, done by some member of the respondent's office staff. As confirmed by Maggiore, the product used by respondent to fill its orders contained either an Eagle or Ronco label. Branscom confirmed that the label on respondent's product was not the label sent by him to respondent. Further, Exhibit 2-13, bearing the inscription "use same containers - change labels" means that respondent removed the labels on the product delivered to it and placed its own labels on the pesticide product for the DOD order. Additionally, Gavin's statement the respondent's label was prepared off an "Orion -

approved label" went undisputed by respondent's counsel. Gavin went on to explain how the label alteration detracted from the efficiency of the product because of dilution instructions printed on the label which were designed for the four pound per gallon chlorpyrifos. It is concluded that respondent altered the labels on the pesticide product in violation of Section 12(a)(2)(A) of FIFRA; 7 U.S.C. § 123j(a)(2)(A).

The analysis of the Fort Gordon sample show the product was adulterated. The placing of an altered label on the product by respondent holding it out as a pesticide with four pounds of chlorpyrifos when, in fact, it contained two pounds of the chemical per gallon was a stellar example of adulteration of the product by the respondent. The respondent's claim of submitting a purchase order to Orion for a four pound per gallon product is not supported by the credible evidence. Rather, the complainant has shown that a two pound per gallon product was delivered by Orion to the respondent.

The label from the Fort Gordon sample was retyped or produced by respondent from an Orion Dursban 2E label. Someone in a clerical capacity on the respondent's staff re - typed the label, but the record is unclear concerning the specific person. What is established, however, is that the party who typed the label did not follow the requirements for

a pesticide label that: (1) Certain words or phrases should be displayed prominently. (2) A registration number be placed on the label following its issuance to the proper party by complainant. (3) The name and address of the manufacturer should appear on the retyped label, and no false information appear thereon. It is concluded that respondent shipped for sale an adulterated and misbranded pesticide product in violation of Section 12(a)(1)(E) of FIFRA; 7 U.S.C. § 136j(a)(1)(E).

The alteration of Orion's label by respondent by placing a fictitious registration number thereon, and subsequently selling the product to DOD was another infraction committed by respondent. It was found above that a search of complainant's records failed to disclose the origin of the number. Eisenhard claimed the number was obtained from the Orion label sent to respondent. The labels sent, however, contain no such number. The credible evidence supports the finding that the registration number used by respondent was fabricated. It is concluded that respondent shipped for sale an unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA; 7 U.S.C. § 136j(a)(1)(A).

When respondent altered the Orion label it held itself out to the world as the producer of the pesticide. In this capacity, respondent was under the legal obligation to properly register its facility with the complainant. This it failed to do. It is concluded that respondent shipped for sale a pesticide which was produced in an unregistered facility in violation of

Section 12(a)(1)(L) of FIFRA; 7 U.S.C. § 136J(a)(1)(L).

PENALTY ISSUE

In determining the amount of penalty for violations Section 14 of FIFRA; 7 U.S.C. § 1361, provides, in pertinent part, that:

> (a) Civil Penalties
>
> (1) In general - Any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than $5,000 for each violation. (emphasis supplied)
>
> (4) Determination of penalty. - In determining the amount of penalty, the Administrator shall consider the appropriateness of such penalty to the size of the business . . . the effect on the person's ability to continue in business, and the gravity of the violation . . . . (emphasis supplied)

The complainant's Guidelines for Civil Penalties under FIFRA (Guidelines), 39 Fed. Reg. 27111-27222 (July 31, 1984) expand upon and clarify the factors mentioned above. In applying the guidelines, complainant properly chose category V in determining the size of respondent's business, as its gross sales for the previous year were in excess of $ 1 million, or more precisely for the fiscal year ending March 1985, $3.5 million. With this benchmark, the complainant then applied the Civil Penalty Assessment Schedule (Schedule), containing a charge code, found in the Guidelines (at 27713-27718) with regard to each violation.

Considering respondent's gross annual sales, the penalty payment sought would not effect its ability to stay in business. It is apposite to note at this juncture that respondent did not offer any evidence that the penalty sought would adversely effect its ability to remain in business. It is important to resolve, however, whether or not the gravity of the respondent's violations justify the the penalty of sought of $42,200. The Guidelines provide that in assessing the "gravity of the violation" the following factors are to be considered in determining the penalty: (1) The potential that the act committed has to injure man or environment; (2) The severity of such potential injury; (3) The scale and type of use anticipated; (4) The identity of the persons exposed to injury; (5) The extent to which the applicable provisions of FIFRA were in fact violated; (6) The particular person's history of compliance and the actual knowledge of FIFRA; and (7) Evidence of good faith in the instant circumstance. (at 27712).

Many of the above factors are in the respondent's favor. The potential that respondent's action, or lack of proper action had to injure man or the environment cannot be determined with exactitude. The pesticide, because of its adulteration, however was inefficient. Conceivably, the weakness of the product could cause some damage to the environment in a negative sense in that it was ineffective in controlling or eliminating pests. Complainant contends that because of the product's dilution an applicator could be led to "supplement the use di-

rections on the label to get the desired effect. Which may lead to harm human health and environment." (Op. Br. at 29). This is not convincing. More than likely the dilution would result in a complaint from the user concerning the ineffectiveness of the pesticide, - the precise situation which was the genesis of this case. The scale and type of respondents product was generally non-residential in character in that the pesticide was sold to military establishments where, whatever its risks, it would be mainly to adults and not children. (Complainant's own witness spoke of the diluted product as almost water).

This is not a case of flagrant violator, having sold and distributed a highly toxic pesticide on a large scale. Also, respondent does not have a history of non-compliance with FIFRA, and the complaint in this matter is its only failure to comply with the Statute. Additionally, it is established that respondent was completely unaware of the requirements of FIFRA at the time the violations were committed. Concerning good faith, respondent's violations were not deliberate or intentional. Rather, they were the result of negligence apparently due to the large volume of products that respondent handled. Intent, however, is not an element of an offense under the civil penalty provisions of FIFRA. However, the absence of intent certainly bears some relationship to respondent's good faith or lack thereof.

The violations display that respondent was negligent in its labeling practices. Considering the volume of products sold by respondent sanctions must be applied that are adequate to compel compliance with FIFRA concerning any products coming within its provisions, and also to prevent any repetition of violations of the Statute. To do less would defeat the purposes of FIFRA, which has as its central theme the protection of the public.

ULTIMATE CONCLUSION AND ORDER

It is concluded that the respondent has violated those provisions of FIFRA as charged in the complaint. It is further concluded that the penalty proposed by complainant in its complaint of $42,200 be DENIED. Based upon the totality of record evidence, the factors mentioned in Section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), and the Guidelines, it is concluded that the total appropriate penalty in this matter should be $20,000. This amount is adequate for a penalty and sufficient to deter any future violations by the respondent.

IT IS ORDERED that this assessed penalty of $20,000 against Chemical Commodities Agency, Inc., shall be paid by submitting a certified or cashier's check in this amount, payable to the Treasurer of the United States, and mailed to "EPA-Region 9 (Regional Hearing Clerk), P.O. Box 360863M, Pittsburg,

Pa. 15251" within 60 days of receipt of this decision and order. *

Frank W. Vanderheyden
Administrative Law Judge

Dated: July 3 1986
Washington, D.C.

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* Unless appealed in accordance with 40 C.F.R. § 22.30, or unless the Administrator elects to review same sua sponte as provided therein, this decision and order shall become the final order of the Administrator in accordance with 40 C.F.R. § 22.27)c).

APPENDIX

Count Number	Charge Code	Gravity Classification	Specified Penalty
I	E1 (Non Registered Product)	Knowledge	$3,200
II	E33 (Failure to register producer establishment)	Knowledge	$4,200
III	E24 (Label Alteration)	Adverse effects highly probable.	$5,000
IV	E14 (Precautionary Labeling not prominently displayed)	Toxicity level warning.	$2,000
V	E14 (Precautionary Labeling not prominently displayed)	Child warning not prominent.	$2,000
VI	E11 (Failure to bear name and address)	Lacks name and address of producer.	$1,200

Count Number	Charge Code	Gravity Classification	Specified Penalty
VII	E18 * (Chemical deficiency)	Adverse effects * probable.	$5,000
VIII	E1 (Non registered product)	Knowledge	$3,200
IX	E18 * (Chemical deficiency)	Adverse effects* highly probable.	$5,000
X	E1 (Non-Registered product)	Knowledge	$3,200
XI	E1 (Non-Registered product)	Knowledge	$3,200
XII	E24 (Label alteration)	Adverse effects highly probable.	$5,000

* In the interest of clarity "E18" is defined in the Guidelines as a "violation in that the composition of the product differed from the composition as represented in connection with its registration." The "E18" charge code would not appear to be applicable in that the pesticide was not registered. The more appropriate charge code for the alleged violation would be "E19" which provides: "Adulterated in that its strength or purity fell below the professed standard quality under which it was sold." (at 27722) The use of "E18" instead "E19" may be construed as harmless error in that both come under the rubric of "Chemical Deficiencies" and provide for the same type of gravity classifications and penalty. However, there is probable error in complainant classifying the chemical deficiency under "Adverse Effects Probable" or "Adverse Effects Highly Probably." Inasmuch as the proceeding concerns, in part, an adulterated product that was inefficient the proper classification would appear to be "D. Inefficacious" total or partial, with $5,000 and $2,800 penalties respectively.