UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

FILED

JUN 15 1987

ENVIRONMENTAL PROTECTION AGENCY
REGION IX
HEARING CLERK

IN RE	)	
	)	FIFRA-09-0439-C-85-18
HELENA CHEMICAL COMPANY	)	
	)	
Respondent	)	

1. Federal Insecticide, Fungicide and Rodenticide Act - An Independently Separate Charge - Where a complaint alleges several sales of restricted use pesticides by the same seller to the same buyer occurring on different days, a separate assessment of a penalty for each sale is not warranted.

2. Federal Insecticide, Fungicide and Rodenticide Act - Falsification of Records - Since the term falsification carries with it the connotation of intent to mislead, an erroneous entry on a document made in good faith and supported by evidence suggesting the veracity of said entry will not support a charge of falsification of records.

3. Federal Insecticide, Fungicide and Rodenticide Act - Sales of Restricted Use Pesticides to Noncertified Persons - Pursuant to the ruling in Tierra Verde Company, Inc., Docket No. FIFRA-09-0422-C-85-1, it is not unlawful to sell a restricted use pesticide to an uncertified person for application by a certified applicator, except in those states listed in that opinion.

APPEARANCES:

David M. Jones, Esquire
U.S. Environmental Protection Agency
San Francisco, California
(For Complainant)

Dennis D. Jenson, Esquire
Platt & Jenson, P.C.
Coolidge, Arizona
(For Respondent)

INTRODUCTION

This proceeding was commenced by the issuance of a Complaint and Notice of Opportunity for Hearing on April 16, 1985 by Harry Seraydarian, Director, Toxic Wastes Management Division, Region IX, U.S. Environmental Protection Agency charging Respondent, Helena Chemical Company, with violations of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136, et. seq. (FIFRA).

The Complaint contains 29 separate counts, all of which involve the sale of a restricted-use pesticide (RUP) to individuals and corporations who were, according to the Agency, not registered applicators of such pesticides. Counts 1 and 2 of the Complaint alleged that the Respondent sold the restricted use pesticide, paraquat, to native American farms on or about October 10, 1983 and November 9, 1983. Count 3 alleges that the Respondent sold 20 gallons of paraquat to Hannah Farms of Blight, California. Counts 1, 2 and 3 refer to alleged offenses occuring at the Respondent's place of business located in Ripley, California. Counts 4 through 23 involve alleged sales emanating from the Respondent's facility located in Goodyear, Arizona porpurtedly made to Tom Waddell, who apparently operates several farms in and around the Goodyear area of the State of Arizona. Count 24 alleges the sale

of parathion, a RUP, to Arena Farms in violation of the Act. Count 25 alleges the sale of the RUP, Temic, to Arena Farms. Count 26 also alleges the sale of the RUP, Temic, to John Fornes of John Fornes Ranches, Ltd. on or about May 31, 1984. Count 27 also alleges the sale of Temic to John Fornes on or about June 12, 1984. Counts 28 and 29 allege falsification of sales records involving the two hereinabove mentioned sales of Temic to John Fornes.

The Complaint seeks a penalty in the sum of $5,000.00 for each of the first 25 Counts; for Counts 26 and 27 it seeks a penalty of $1,200, and for Counts 28 and 29 it seeks a penalty of $4,200 each--bringing the total proposed penalty to $135,800.

The Respondent filed an Answer which, in essence, denied all of the violations alleged in the Complaint except as to Counts 26 and 27, wherein the Respondent alleges that he does not presently have enough information to admit or deny the allegations and, therefore, denies the same. As to the other violations which were denied, the Respondent alleges that the chemicals in question were, in fact, applied under the supervision of a licensed certified applicator.

The first 25 allegations in the Complaint state that the Respondent sold a restricted use pesticide to various and sundry facilities and individuals in violation of § 12(a)(2)(F) of FIFRA. That section reads as follows:

> "(a) In general...(2) It shall be unlawful for any person--... (F) to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with § 3(d) and any regulations there under; provided, that it shall not be unlawful to sell, under regulations issued by the Administrator, a restricted use pesticide to a person who is not a certified applicator for application by certified applicator;...." (Emphasis added.)

The language in the Complaint in every instance of the first 25 Counts merely states that the violations consist of selling a restricted use pesticide to a individual or other legal entity in violation of the above-quoted statute. The Complaint does not continue on with any language to suggest that the restricted-use pesticide was sold to a person and was not applied thereafter by a certified applicator. Read in its most charitable light, the Complaint merely alleges that the Respondent sold restricted-use pesticides to certain individuals and organizations, who were not certified for the application of restricted use pesticides. The Complaint does not go any further than that and allege, for example, that the restricted use pesticide once delivered to a non-certified applicator were also not applied, either immediately or later, by a certified applicator.

As the proviso portion of the above-quoted regulation makes clear, it shall not be unlawful to sell a restricted use pesticide to a person who is not a certified applicator for application by a certified applicator. And to that extent, at least, the charges in the first 25 Counts of the Complaint are potentially defective.

The rationale underlying that conclusion appears in a recent decision of the Agency, entitled: In the matter of Tierra Verde Company, Inc., Docket No. FIFRA-09-0422-C-85-1, issued by the Chief Administrative Law Judge of the Agency on December 2, 1985. Since the region elected not to appeal that decision, it became final Agency action and must be deemed to be the policy of the Agency in regard to these matters.

While it is true that the subject Complaint was issued in April of 1985 prior to the above-cited decision, the Hearing herein was held subsequent to that decision and therefore in reaching its conclusion in this case the undersigned is bound by the holdings in that case. As in the instant case, the

Complaint in the Tierra Verde case stated that the allegations consisted of 4 Counts of sales of restricted use pesticides to persons who are not certified for application of restricted use pesticides. As in the instant case that matter also involved the sale of paraquat to persons in the State of Arizona.

In the Tierra Verde case the decision was made on the basis of an accelerated decision based upon the defense raised by the Respondent in his answer which states in essence that the Complaint fails to state a claim upon which relief may be granted in that the sale of Paraquat alleged in the Complaint were made to persons who were not certified applicators, but paraquat was applied by or under the direction of a certified applicator. Subsequent, thereto, the Complainant filed a motion for accelerated decision together with a memorandum of support of its position. In the Tierra Verde case, the Chief Judge discussed at some length the meaning and interpretation to be given to that portion of the above-quoted regulation that says: "it shall not be unlawful to sell under regulations issued by the Administrator,..." and concluded that the regulations referred to have, in fact, not been issued by the Administrator up until the time of the case before him, even though approximately 7 years had elapsed since the Congress included the above-quoted language in the statute. Judge Finch concluded that:

> "While it is evident that the sales of paraquat here were unlawful, it is unconscionable to find that the 1978 amendment to Section 12(a)(2)(F), with its clear legislative intent to permit making restricted use pesticides available to uncertified applicators has not been implemented by the Administrator so as to apply to all states. From the facts of the case and both from the intent of Congress and of the Agency, the procedures used by the Respondent were in the letter of that intent, for the foregoing reason, the Complaint herein is dismissed."

In discussing at some length the regulations referred to and the various policy statements issued by the Agency since 1978 in regard to this matter, the Judge concluded that the only states wherein that section applies are Indian reservations and the States of Colorado and Nebraska. Since the illegal sales which were the subject of the Tierra Verde decision took place in Arizona, the Court concluded that the above-quoted portions of the Act do not make it unlawful to simply sell registered use pesticides to a uncertified purchaser where the pesticide is later applied, under the supervision of a certified applicator in the State of Arizona.

It should be noted that in the Tierra Verde case, there were attached to the pleadings the affidavits of several persons who swore that they were certified applicators and did, in fact, either apply or supervise the application of the paraquat which was the subject of the Complaint in that case.

The Complainant in the Tierra Verde case argued, in its memorandum in support of its motion for an accelerated decision, that the sale of a restricted use pesticide to an uncertified person is unlawful even though the pesticide may subsequently be applied either by or under the supervision of a certified applicator. Therefore, as far as the Complainant was concerned in the Tierra Verde case, the above-mentioned affidavits of the certified applicators who actually applied the restricted use pesticide were relatively irrelevant and immaterial since the sale itself was made to a person who was himself not a certified applicator.

Applying the lessons provided by the Tierra Verde case to the instant case, one must conclude that in order for the Complainant to make out a prima facie case it must not only show that the restricted use pesticides were sold

to a non-certified person, but also that the pesticides were not applied either by or under the supervision of a certified applicator. One must, therefore, in that light examine the evidence produced by the Complainant at the hearing to determine whether or not such a prima facie case was, in fact, made.

The Respondent operates two facilities--one in Ripley, California and the other in Goodyear, Arizona--from which they sell agricultural chemicals to the ranchers and growers in the area. Cotton seems to be the crop of choice.

The violations which form the basis for the Complaint in this matter were discovered as follows:

Roland Williams, an employee of the Arizona Commission of Agiculture and Horticulture, regularly inspects the pesticide sellers in his area. On his visits to the Helena locations, he inspected their records including invoices for the sale of restricted use pesticides (RUPs). On many of the invoices he examined, he noticed that the grower number or applicator number were missing. He made copies of these invoices and made further inquiries as to who applied the RUPs. In some cases, he was unable to do so and in others, he found that the alleged applicator either was no longer licensed or had no recollection of having applied or supervised the application of the subject RUPs. He made inspection reports and sent off the invoices and reports to EPA for their further investigation and disposition.

The agricultural chemical sellers in Arizona engage in a practice which, based upon my limited knowledge, is unique. It works as follows: some of the sales persons employed by the sellers hold private applicator licenses and when a sale is made to one of their customers who are not licensed to

apply RUPs, the salesman puts his applicator number on the invoice and thus "takes responsibility" for the application of the RUP. This practice allows the company to sell RUPs to a person who would not otherwise be permitted to take delivery thereof. Apparently, the sellers' office staff keeps a roster of these applicator-salesmen along with the names of their regular customers. So when, for example, Tom Waddell calls in for an order of Paraquat, the office staff looks on the roster to see which applicator is "taking responsibility" for Mr. Waddell's account and she puts that persons number on the invoice. The salesman provides this service at no charge to his customers. The legality of this process is highly questionable since, in Arizona, a private applicator may only apply or supervise the application of RUPs on his own land or that of his employer. This also seems to be the case under FIFRA, as well. (See 40 C.F.R. § 171.2(a)(20) which defines a private applicator.) Despite this apparent legal problem, the above-described practice appears to be wide-spread in Arizona, at least as it applies to the Helena Company. The witnesses who engage in this practice testified that they had some kind of oral approval from some high official with the Arizona Agriculture Commission. No one was able to produce any written document which purported to support these statements. Additionally, none of these State officers were brought in to testify as to the existence of such an oral approval. Accordingly, I am not able to accept the notion that somehow this practice, which is illegal on its face, is an acceptable practice in Arizona. It may well be that, over time, the practice became established based upon some vague word of mouth anecdotal precendent. I say this because my observation of the demeanor of the witnesses who thought that what they were doing was alright, seemed to really believe it to be true.

In addition to being illegal, the above-described practice is fraught with hazards, both deliberate and those resulting from human error. For example, the record shows that Helena was using the applicator number of Clark Webb in relation to Tom Waddell's purchases for a period of time after Mr. Webb had left the employ of Helena. Helena explains this anomaly by saying that the office secretary made a mistake and should have been using the number assigned to Mr. James Scarborough, following the absence of Mr. Webb. However, no one apparently told Mr. Scarborough about this arrangement and he provided no supervision. This situation caused a disciplinary hearing to be held by the Arizona Board of Pesticide Control. This hearing concerning Mr. Scarborough and his failure to supervise the application of RUPs on Tom Waddell's farm resulted in the levying of a $100.00 fine against Mr. Scarborough and the issuance of a formal admonition to him. The Board's order is found in the record as Respondent's Exhibit No. 2. In the order, Mr. Scarborough also admits that he speaks no Spanish and all of the field workers are Mexican and speak no English. Obviously, even if he were present, little or no meaningful supervision could have occurred. It should also be noted that Mr. Scarborough possesses a commercial applicator's license which would enable him to legally supervise the application of RUPs on another's property.

In view of the record, in its entirety, I must conclude that the Agency has made out a prima facie case of improper sales to Tom Waddell. These violations are described in Counts IV through XXIII of the Complaint. Further, I find nothing in this record in the way of rebuttal by the Respondent that would tend to cast doubt upon the prima facie case presented by the Complainant. Although there was some vague evidence concerning Mr. Scarborough's being available to supervise the application of Paraquat on Mr. Waddell's farms, there is no evidence to suggest that such supervision was actually made.

Consequently, I am of the opinion that Helena has violated FIFRA in the manner suggested by Counts IV through XXIII of the Complaint, as they relate to the Waddell matters. The issue concerning the amount of the penalty to be allocated to these violations will be discussed later.

Counts I, II and III have to do with improper sales allegedly made to Hanna Farms and Native American Farms from Helena's Ripley, California office.

As to the Hanna Farms' sale, the evidence shows that the sale was actually made to the farm located in the State of California and applied by Mr. David Brown, who is a certified applicator in California. Apparently, the problem arose because Mr. Hanna operates farms in both states, only separated by a river. The clerk mistakenly used Mr. Hanna's Arizona number on the invoice, rather than the California number. In view of this evidence, Count III is hereby dismissed.

The situation as to the Native American Farms' sales is a little more complex. There is no conflict that the RUPs were delivered to the Talley and Sons shop for the use of Native Farms. Apparently, the Talley farms and the Native Farms are contiguous and work closely together in raising, treating and harvesting their crops. Both entities have farms in both California and Arizona. Mr. Fred Wood, an independent agricultural consultant for 25 years, has both farms as customers. Mr. Wood is a licensed commercial applicator in California and has lectured on the use of and application of RUPs on many occasions. He went to school in Arizona to obtain his private applicators' license. He also holds a pest control advisor's license (PCA) in the States of California and Nevada. He testified that the PCA license is more difficult to obtain, and the knowledge and training necessary to obtain one is more difficult than that required for a private applicator's license in Arizona. He testified that after taking and passing the Arizona private applicator's

license, due to his long experience and being the holder of a PCA in California and Nevada, he was told by Mr. Sweet of the Arizona Commission that he need not pay the fee and could operate in Arizona.

Once again, we have no documentation to support his testimony that he was told by Mr. Sweet that he need not pay the license fee. However, given the nominal cost of the license (about $25), it is unlikely that a man of Mr. Woods' experience and integrity would jeopardize his livelihood and reputation by the failure to pay such a small sum unless he was actually advised that it was not necessary. Additionally, the knowledge he possesses is readily transferred from one state to another. Particularly when the record shows that the knowledge required to obtain a certified applicator's license is more difficult in California than it is in Arizona.

Since Mr. Woods testified that he did personally supervise the application of Paraquat on the Native American Farms' properties, I am of the opinion to dismiss Counts I and II, as well.

Count XXIV alleges the improper sale of Methyl Parathion to Arena Farms. The testimony was that the RUP was delivered to M&J Sprayers, who are certified custom applicators, who actually applied the RUP. This is also supported by Respondent's Exhibit No. 6. Since the RUP was applied by a certified applicator, this Count must also be dismissed.

Count XXV involves the sale of the RUP, Temic, to Arena Farms on May 15, 1984. The Respondent alleges that they inquired as to who the certified applicator would be prior to shipment and were advised that Mr. John Hutton of Gold Badge Roses, who raises roses on John Arena's land, would supervise the application. It turns out that no one informed Mr. Hutton of this arrangement and by affidavit, which appears as Complainant Exhibit No. 36,

swears that he had no knowledge of the order or its application. This situation, once again, points out the dangers inherent in the practice used by Helena, among others, of merely matching up the names of private applicators with certain growers and assuming that such applicator will actually apply or supervise the application of the RUP. If one is to believe the testimony in this case, it does not appear to be hard to qualify as a private applicator and certainly the cost is modest ($10.00). Why all growers do not take the test and qualify is certainly a mystery to me. It would solve a lot of the problems demonstrated by this case. Accordingly, I must conclude that the Agency has proved the violation alleged in this Count.

As to Counts XXVI and XXVII, the Respondent, in his post-hearing briefs, admits these violations and suggests the imposition of a $1200.00 fine for each Count. I will accept the Respondent's plea as to these two Counts and will not discuss them further.

Counts XXVIII and XXIX allege that the Respondent sold the RUP, Temic, to John Fornes of John Fornes Ranches on May 3, and June 12, 1984 and listed on the invoice the Appplicator Number 9942P. That number is the correct number for John Fornes, but the records of the State agency show that Mr. Fornes certification number was not issued to him until June 14, 1987. Consequently, the Agency cited Helena with two counts of falsification of records. In its defense, Helena argues that the list of private applicators distributed to the industry by the State agency dated 1984 shows John Fornes as a certified applicator with no indication as to what date the certification was effective. Helena argues that they relied on that list and put down John Fornes as the applicator in good faith and reliance on the State list. Complainant's Exhibit No. 35 shows that Mr. Fornes had been certified as a

private applicator for the years 1977, 1978, 1979, 1981, 1982, 1984 and 1985, thus demonstrating that he had a long history of being certified by the State, and thus Helena had no reason to doubt that he was not certifed at the time the sales were made.

Since the charge in the Complaint is one of falsification, it carries with it the notion of intent to mislead. See the American Heritage Dictionary which defines falsify as "to make untrue statements; lie, to state untruthfully, to counterfeit, to forge; to alter (a document) in order to deceive". There is nothing in this record to suggest that Helena put Mr. Fornes' number on the invoice knowing that he had not been certified at the time of the sale. All of the evidence suggests the contrary. The offense was more likened to an honest mistake made upon evidence which suggested the validity of the act. Under these circumstances and upon this record, I am of the opinion that no case of falsification has been made and, thus, these Counts must be dismissed.

Before turning to the determination of the proper penalty to assess for the remaining violations, there is one matter raised as a defense by the Respondent that deserves some comment. Through several witnesses, the Respondent tried to make the point that it was actually the legal responsibility of the State agricultural agency to see that properly certified persons actually applied or supervised the application of RUPs. (See the testimony of Glenn Pitts, Division Manager of Helena Chemical Company, which appears on pp. 97-98, Volume II of the Transcript.) Mr. Pitts was relating a conversation that he had had with Mr. George Rich of the Arizona State Department of Pesticide Control. He was asked by his counsel:

"Specifically, did he not tell you that it was the State of Arizona's responsibility to make sure that certified custom applicators or certified private applicators did their job, and this was not the responsibility of Helena Chemical Company?"

He replied: "He told me that, Yes."

Counsel for the Respondent argues that this state of affairs in some fashion relieves Helena of assuring that the RUPs which it sells are actually applied by the person they thought would do it. I do not view these statements by a State official to mean any such thing. What I take the statement to mean is that it is the responsibility of the State agency to see that when a certified applicator tells a grower that he will take the responsibility to oversee the application of a RUP, he must do so or face disciplinary action by the State board. This in no way implies that a seller is relieved of either selling a RUP to a certified applicator or, alternatively, to sell it to one not so certified with the assurance that a certified applicator will be there to apply the RUP. Relying on inaccurate lists or vague phone messages to accomplish that duty is not sufficient. The responsibility of the State agency is to assure itself that the persons it certifies are doing their duty. It is a relationship purely between the certified applicator and the certifying agency. It in no way can be interpretted to relieve a third party seller of its responsibility under the law.

The Penalty Issue

Having determined that the twenty Counts relative to the sales to Tom Waddell have been proven and constitute violations of the Act, we must address the issue, vigorously raised by the Respondent, to the effect that the Agency erred in making separate violations for each sale rather than lumping them all under one count.

The record is clear that in Region IX there have been several cases, some prepared by Ms. Popalai, who prepared the instant Complaint and testified at the hearing, wherein the Agency lumped several sales of RUPs to the same individual together under one count even though the sales were made on different dates. When asked why she felt that it was proper in this case to charge all twenty sales as separate counts, Ms. Popalai replied that her rationale was as follows: (1) We have a company with annual sales of $334 million, and a $30,000 fine is not going to impress them; (2) A worker on Tom Waddell's farm was injured by being sprayed with Dinitrol, which is a chemical not involved in this case; (3) The fact that Helena seemed to run a pretty sloppy operation; and (4) Mr. Scarborough could not speak Spanish and thus could not advise the Mexican workers as to how to apply the RUP. (See pp. 186 and 208 of Volume I of the Transcript.)

On page 185 of Volume I of the Transcript, the following appears:

> Question to Ms. Popalai by Respondent's counsel: "Are you aware of any complaint that has been filed against sellers of products in Arizona whereby...let's use, for this thing Paraquat, but you can use any RUP...where a sale...multiple sales were made to a grower, as Wadell in this case, and each sale was treated as a separate count?"
>
> Answer: "Off the top of my head, No. I don't."

The Agency, over the years, has issued, refined and re-issued several penalty policies as they apply to cases arising under FIFRA. The express purpose of issuing these penalty policies is to assure that there will be uniformity across the country when it comes to proposing penalties for similar violations. In this case, we do not even have uniformity within a single region; a situation I am sure would be deplored by the Agency leaders who drafted these penalty guidelines.

When one examines the reasons given by Ms. Popalai for charging separate counts for all of the sales to Tom Waddell, I am of the opinion that they are neither persuasive nor consistent with the penalty policy.

As to the volume of annual sales, the policy already takes that into account by setting up five categories based on the respondent's annual sales and placing a higher penalty as annual sale increase. Category V, which was used in this case, encompasses all firms whose gross sales exceeded one million dollars. Obviously the policy writers felt that $5,000 was a proper penalty for any company whose sales exceeded one million dollars by any factor. Therefore, because this Respondent had annual sales of $334 million is no reason to charge each sale as a separate count, since this factor has already been considered in the policy matrix.

The fact that a worker was injured when a piece of equipment broke is, likewise, no reason to charge separate counts. The policy also addresses this issue in the penalty matrix by establishing three levels of possible adverse affects going from "highly probable", "unknown" and "not probable" in decending order of suggested penalty amounts. Since the policy suggests that when you are dealing with a RUP, as opposed to some other pesticide, you should use the "highly probable" category; that factor also has already been considered.

The reason that Helena, in her judgement, runs a pretty sloppy operation is not recognized by the policy as a legitimate reason for making separate counts for each sale.

As to Mr. Scarborough's inability to speak Spanish - this is a totally irrelevant factor since the Complaint charges Helena with making sales to one who is not certified at all, and the fact that a commercial applicator who

was on the farm could not effectively supervise workers who only speak another language has no bearing on the violation cited.

The penalty policy specifically addresses this question on page 27711 of Federal Register, Volume 39, Number 148, wherein it says as follows:

> "(2) What constitutes an independently assessable charge. A separate civil penalty shall be assessed for each violation of the Act which results from an independent act (or failure to act) of the respondent and which is substantially distinguishable from any other charge in the complaint for which a civil penalty is to be assessed. In determining whether a given charge is independent of and substantially distinguishable from any other charge for purposes of assessing separate penalties, complainant must consider whether each provision requires an element of proof not required by the other. Thus, not every charge which may appear in the complaint shall be separately assessed. Where a charge derives primarily from another charge cited in the complaint for which a penalty is proposed to be assessed, the subsequent charge may not warrant a separate assessment. The complaint will propose to assess an appropriate civil penalty for each independent and substantially distinguishable charge."

Mr. Conroy's[1] memo of August 22, 1978 states that:

> "Violations of the Act that arise from independent acts, but which are part of the same series of events, should be assessed as a single offense."

When one reads all of the above-quoted policy statements together with Ms. Popalai's rationale for charging separate counts for each sale to Mr. Waddell, one is forced to conclude that her decision to do so was faulty. Accordingly, I am of the opinion that only one count involving the sales to Mr. Waddell should form the basis for a penalty assessment.

---

[1]Mr. Conroy was at that time Director of the Pesticides and Toxic Substances Enforcement Division in EPA Headquarters, and the author of all policy statements on this issue.

CONCLUSION

Based upon all of the above, the entire record, exhibits and briefs of counsel, I am of the opinion that the Agency has adequately demonstrated that the Respondent violated the following counts in the Complaint and that the below-listed penalties should be assessed.

Counts IV through XXIV (to be treated as one Count) - $5,000.00

Count XXV - $5,000.00

Count XXVI - $1,200.00

Count XXVIII - $1,200.00

TOTAL PENALTY - $12,400.00

ORDER[2]

Pursuant to the Federal Insecticide, Fungicide and Rodenticide Act, Section 14(a)(1), 7 U.S.C. 136(a)(1), a civil penalty of $12,400.00 is assessed against Respondent, Helena Chemical Company, for violations of the Act found herein.

Payment of the civil penalty shall be made by submitting a cashier's or certified check payable to the Treasurer, United States of America, and mailed to:

EPA - Region 9
(Regional Hearing Clerk)
P.O. Boxz 360863M
Pittsburgh, PA 15251

DATED: June 9, 1987

Thomas B. Yost
Administrative Law Judge

[2]Unless an appeal is taken pursuant to the rules of practice, 40 C.F.R. 22.30, or the Administrator elects to review this decision on his own motion, the Initial Decision shall become the final order of the Administrator. See 40 C.F.R. 22.27(c).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Initial Decision issued by Administrative Law Judge Thomas B. Yost on June 9, 1987, in the matter of Helena Chemical Company, Docket No. FIFRA-09-0439-C-85-18, was served on each of the parties, addressed as follows, by mailing certified mail, return receipt requested, in a U.S. Postal Mail Box, or by hand delivering, in the City and County of San Francisco, California, on the 15th day of June, 1987:

Dennis D. Jenson, Esq. Platt & Jenson, P.C. 161 West Central Avenue P.O. Box 279 Coolidge, AZ 85228	Certified Mail No. P007594506
David M. Jones, Esq. Office of Regional Counsel U.S. Environmental Protection Agency Region 9 215 Fremont Street San Francisco, CA 94105	Hand Delivered

Dated at San Francisco, California, this 15th day of June, 1987.

Lorraine Pearson

Lorraine Pearson
Regional Hearing Clerk
EPA, Region 9