UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF: WAYNE SPIER, D/B/A BIG RED TERMITE & PEST CONTROL, RESPONDENT	IF&R DOCKET NO. V-174-P

DEFAULT ORDER

COMES NOW Complainant, by its attorney, Sandra M. Lee, Assistant Regional Counsel for the U.S. EPA, Region V, Chicago, Illinois, and files its MOTION praying that a DEFAULT ORDER be issued against Respondent pursuant to 40 CFR 22.17(a)(2) for the reason that Respondent has at all pertinent times failed and refused to comply with prehearing orders of the undersigned Administrative Law Judge who, on July 15, 1986, was designated as presiding officer herein. A prehearing order was issued on July 18, 1986, specifically directing the Complainant and Respondent to submit to the Regional Hearing Clerk, the other party and me the names of witnesses who they intended to call at a hearing requested by Respondent, along with a narrative summary of the expected testimony of such witnesses; further, the parties were directed to submit copies of all documents and exhibits to be introduced in evidence at said hearing. Said letter, advising my designation as presiding officer and

containing the directives above set forth, was mailed to Respondent's representative as requested in Respondent's Answer (responsive pleading), filed July 10, 1986. Said Answer requested a hearing on the charges in subject Complaint and requested that correspondence be directed to:

Wayne Spier
Post Office Box 2644
Youngstown, Ohio 44507.

Said July 10, 1986, Answer further advised that Wayne Spier, the Respondent, was no longer in business and that he then no longer resided at 19 East Midlothian, Youngstown, Ohio 44507.

My said letter of designation, dated July 18, 1987, containing said directive to the Complainant and Respondent, was mailed to Wayne Spier, Post Office Box 2644, Youngstown, Ohio 44507, via Certified Mail #P 605 749 476, Return Receipt Requested. Said letter was returned to me on August 11, 1986, marked "Unclaimed."

On August 12, 1986, I mailed a second letter addressed to Complainant, a copy of which was mailed to Wayne Spier at said Youngstown, Ohio, address, Certified # 605 758 292, which mail to said Respondent was returned unopened with the notation: "Returned to Sender, Box Closed, No Order."

On April 27, 1987, after repeated unsuccessful efforts to contact Respondent, said Order of Designation, dated July 15, 1986, and signed by EPA Chief Administrative Law Judge Edward B. Finch and copies of said letters previously undelivered to Respondent, were, on April 27, 1987, personally

hand-delivered to Respondent by James A. Mittica, Parole Agent II, who resides in Beaver County, Pennsylvania. Mr. Mittica made Proof of such Personal Service on Respondent by affidavit pursuant to 40 CFR 22.05(b)(1)(v), which affidavit is on file with the Regional Hearing Clerk, U.S. EPA, Region V, in Chicago, Illinois. Following said Service, Respondent has continued to refuse to comply with the directives in said letters contained, or to advise where he can be contacted by mail (see 40 CFR 22.05(c)(4)).

In the premises, I find that said Complainant's Motion for Default Order should be and it is hereby granted as prayed.

40 CFR 22.17(a) provides that:

> "Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the Complaint and a waiver of respondent's right to a hearing on such factual allegations . . . . the penalty proposed in the complaint shall become due and payable by respondent without further proceedings sixty (60) days after a final order issued upon default . . . "

I find that the facts 1/, alleged in subject Complaint, are by the Respondent, Wayne Spier, admitted to be true. I further find that, by by failing to respond to Complainant's subject Motion for Default in the manner and time provided by 40 CFR 22.16(b), Respondent Wayne Spier has waived any objections, that he might now or at any time raise, to the

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1/ The Complaint alleges in Counts I, II and III that Respondent violated sections of 7 USC, viz., 136j(a)(1)(A); 136j(q)(1)(F) and 136j(a)(1)(E), because Respondent offered for sale Four Season's DURS-VAP Insect Spray which was unregistered, misbranded and adulterated. On said Counts, the assessment of civil penalties in the amounts of $550, $1250 and $850, respectively, or a total of $2650, is proposed in the Complaint.

granting of Complainant's subject Motion for Default. I further find that the assessment of a civil penalty in the total sum of $2650 is appropriate (40 CFR 22.17(a), supra).

Upon consideration of the findings hereinabove set forth, I propose the following

ORDER 2/

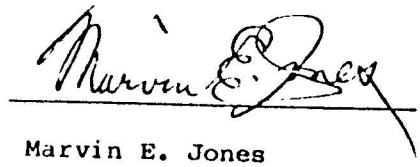
It is ORDERED that a civil penalty in the total sum of $2650 is hereby assessed against the Respondent Wayne Spier, d/b/a BIG RED TERMITE AND PEST CONTROL, for the violations found to have occurred as charged in subject Complaint, dated February 26, 1986.

It is further ORDERED that 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, by forwarding to the Regional Hearing Clerk, at the following address, a cashier's or certified check payable to the Treasurer, United States of America, in said amount:

EPA - Region 5
(Regional Hearing Clerk)
P.O. Box 70753
Chicago, IL 60673.

So ORDERED.

DATE: October 19, 1987



Marvin E. Jones
Administrative Law Judge

2/ See 40 CFR 22.17(b) and 22.27(b) for provisions concerning the effect and consequences of this Default Order. Unless an appeal is taken pursuant to 40 CFR 22.30, or the Administrator elects to review on his own Motion, this Decision shall become the FINAL ORDER of the Administrator. See 40 CFR §22.27(c).

CERTIFICATE OF SERVICE

I hereby certify that the Original of the foregoing DEFAULT ORDER was mailed via Certified Mail, Return Receipt Requested, to Ms. Beverly Shorty (5MFA-14), Regional Hearing Clerk, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604; that a True and Correct Copy was mailed in the same manner and to the same address to Counsel for Complainant, Sandra M. Lee, Office of Regional Counsel, and that a True and Correct Copy was mailed in the same manner to Respondent at his last known addresses:

Mr. Wayne Spier
Post Office Box 2644
Youngstown, Ohio 44507

and

Mr. Wayne Spier
c/o Mr. James Mittica
Pennsylvania Department of
Probation and Parole
504 Hull Street
Rochester, Pennsylvania 15074;

all such service effected this 19th day of October, 1987.

Mary Lou Clifton

Mary Lou Clifton
Secretary to Marvin E. Jones, ADLJ