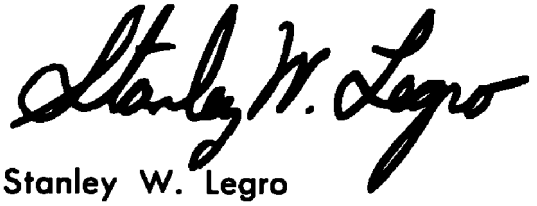
I.F.R. 1601-1650 Issued January 1976

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENFORCEMENT
OFFICE OF GENERAL ENFORCEMENT
PESTICIDES ENFORCEMENT DIVISION

NOTICES OF JUDGMENT UNDER THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Nos. 1601-1650

Notices of Judgment report cases involving seizure actions taken against products alleged to be in violation, and criminal and civil actions taken against firms or individuals charged to be responsible for violations. The following Notices of Judgment are approved for publication as provided in Section 16(d) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136n).



Stanley W. Legro
Assistant Administrator
for Enforcement

Washington, D.C.

1601. In Re: Astor Exterminating Company, EPA Region I, January 22, 1975. (I.F&R. Nos. I-11C and I-15C, I.D. Nos. 102863, 102868 and 102861.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E); 136(q)(1)(A); 136(q)(1)(G); 136(q)(2)(C)(iii); and 136(q)(2)(C)(v). The action pertained to products held for distribution or sale on December 16, 1973, at Astor Exterminating Company, Charlestown, Massachusetts. The pesticides involved were **ASTOR-X 75% CHLORDANE EMULSION CONCENTRATE, ASTOR-X SAF-BRAND VAPORIZING CONCENTRATE,** and **ASTOR-X RE-SIST-O-SPRAY;** the charge was misbranding—lack of adequate warning or caution statement on labels, lack of adequate net content statement on labels, and lack of assigned registration number on labels.

The respondent signed a Consent Agreement. The Final Order assessed a penalty of $1,950.00.

1602. U.S. v. Sudbury Laboratory, Inc., U.S. District Court, Massachusetts, Criminal No. 72–59(b), May 18, 1973. (I.F.&R. Nos. I-C-5 and I-C-7, I.D. Nos. 96076 and 69472.)

This was a criminal action prepared by EPA Region I charging the defendant in a three count information with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135a(a)(1); 135a(a)(5); 135b; and 135(z)(1). The action pertained to shipments made on March 13 and July 22, 1971, from Sudbury, Massachusetts, to East Providence, Rhode Island, and Landover, Maryland. The pesticides involved were **SUDBURY CHAPERONE SQUIRREL REPELLENT** and **CHAPERONE LIVESTOCK SPRAY;** charges included nonregistration and misbranding—labels bore false or misleading statements.

The defendant entered a plea of nolo contendere to count 1. The remaining counts were dismissed.

A fine of $250.00 was levied.

1603. U.S. v. Delro Industries, Inc., U.S. District Court, Massachusetts, Criminal No. 74–215-F, December 6, 1974. (I.F.&R. No..I-C-9, I.D. Nos. 96116, 96117, 96114, 96115, and 96157.)

This was a criminal action prepared by EPA Region I charging the defendant in a 13 count information with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135a(a)(1); 135a(a)(5); 135b; 135a(a)(2)(c); 135(z)(2)(d); 135(z)(1); 135(y); 135(z)(2)(e); and 135(o). The action pertained to shipments made on April 8, April 22 and October 18, 1972, from Springfield, Massachusetts, to Newington and South Windsor, Connecticut. The pesticides involved were **AQUAMAID E-Z TABS STABILIZED CHLORINE TABLETS, AQUAMAID ALGAECIDE 10, AQUAMAID SHOCK TREATMENT, AQUAMAID QUICK DISSOLVE E-Z TABS STABILIZED CHLORINE TABLETS,** and **AQUAMAID WINTERIZER;** charges included claims made for products differed in substance from the representations made in connection with their registration, nonregistration, adulteration and misbranding—its strength or purity fell below the professed standard of quality as expressed on its labeling and labels failed to bear a net content statement.

The defendant entered a plea of guilty to counts 3, 5, 6, 9 and 12. The remaining counts were dismissed.

A fine of $2,300.00 was levied.

1604. In Re: Holder Corp., EPA Region III, December 11, 1974. (I.F.&R. No. III-48C, I.D. Nos. 93543, 93550, 93551, and 93555.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E); 136(q)(1)(G); 136(q)(1)(A); 136(q)(2)(C)(v); and

136(q)(2)(C)(iii). The action pertained to a product held for distribution or sale on January 11, 1974, at Holder Corp., Huntington, West Virginia. The pesticides involved were **CABELL'S SEVIN 50-W, RHODO ROACH RIDDER, CABELL'S TOMATO DUST,** and **NEW KLANE;** the charge was misbranding—lack of adequate warning or caution statement on labels, lack of assigned registration number on labels, lack of net content statement on labels and labels bore false or misleading claims.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $1,500.00.

1605. In Re: Eastern Shore Labs, Inc., EPA Region III, January 2, 1975. (I.F.&R. No. III-44C, I.D. No. 104280.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E) and 136(q)(1)(A). The action pertained to a product held for distribution or sale on September 25, 1973, at Eastern Shore Labs, Inc., Laurel, Delaware. The pesticide involved was **NEW ESL QUAT 20;** the charge was misbranding—labels bore false or misleading claims.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $3,500.00.

1606. In Re: Amchem Products, Inc., EPA Region III, January 9, 1975. (I.F.&R. No. III-59C, I.D. No. 117548.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E) and 136(q)(1)(F). The action pertained to a product held for distribution or sale on April 4, 1974, at Amchem Products, Inc., Ambler, Pennsylvania. The pesticide involved was **EMULSAMINE 2,4,5-T;** the charge was misbranding—labels failed to bear adequate directions for use.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $1,000.00.

1607. In Re: Commercial & Industrial Prods. Co., EPA Region III, January 24, 1975. (I.F.&R. No. III-53C, I.D. Nos. 93583, 93584 and 93585.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135a(a)(1); 135b; 136j(a)(1)(E); and 136(q)(1)(A). The action pertained to a product held for distribution or sale on January 22, 1974, at Commerical & Industrial Prods. Co., Childs, Pennsylvania. The pesticides involved were **CIPCO PINE A-TROL, CIPCO PINE OIL DISINFECTANT COEF. 5,** and **PYNOCIDE PINE ODOR DISINFECTANT;** charges included nonregistration and misbranding—labels bore false or misleading claims.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $500.00.

1608. In Re: Standard Chlorine of Delaware Co., Inc., EPA Region III, March 21, 1975. (I.F.&R. No. III-58C, I.D. No. 119127.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135a(a)(1); 135b; 136j(a)(1)(E); 136(q)(1)(G); 136(q)(2)(A); and 136(q)(2)(C)(i). The action pertained to a shipment made on February 27, 1974, from Delaware City, Delaware, to Woburn, Massachusetts. The pesticide involved was **PARADICHLOROBENZENE 300 612;** charges included nonregistration and misbranding—lack of warning or caution statement on labels, lack of adequate ingredient statement on labels, and lack of statement on labels giving the name and address of the producer, registrant, or person for whom manufactured.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $1,400.00.

1609. In Re: CMC, Inc., d/b/a Cumberland Manufacturing Co., EPA Region IV, February 12, 1975. (I.F.&R. No. IV-90-C, I.D. No. 116369.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135a(a)(1). The action pertained to a shipment made on April 10, 1974, from Nashville, Tennessee, to Quincy, Flordia. The pesticide involved was **SWAN CITRONELLA OIL;** the charge was nonregistration.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $1,800.00.

1610. In Re: Monsey Products Company, EPA Region IV, February 13, 1975. (I.F.&R. No. IV-105-C, I.D. No. 110431.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135(a)(1); 135b; 136j(a)(1)(E); 136(q)(1)(G); and 136(q)(2)(A). The action pertained to a shipment made on September 11, 1974, from Rock Hill, South Carolina, to Athens, Georgia. The pesticide involved was **GUARDSEAL CREOSOTE WOOD PRESERVING COMPOUND (DARK);** charges included nonregistration and misbranding—lack of warning or caution statement and lack of adequate ingredient statement on labels.

The Final Order Upon Default assessed a civil penalty of $480.00.

1611. In Re: M. J. Daly Company, Inc., EPA Region IV, March 6, 1975. (I.F.&R. No. IV-96-C, I.D. No. 115502.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C.

135a(a)(1) and 135b. The action pertained to a shipment made on May 8, 1974, from Ludlow, Kentucky, to Cincinnati, Ohio. The pesticide involved was **DARK CREOSOTE WOOD PRESERVATIVE;** the charge was nonregistration.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $2,000.00.

1612. In Re: Old South Sales Company, EPA Region IV, March 6, 1975. (I.F.&R. No. IV-101-C, I.D. No. 116539.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135a(a)(1) and 135b. The action pertained to a shipment made on April 22, 1974, from Andalusia, Alabama, to Chattanooga, Tennessee. The pesticide involved was **OLD HICKORY RAT & MOUSE BAIT PROLIN;** the charge was nonregistration.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $120.00.

1613. In Re: Gold Kist, Inc., EPA Region IV, March 7, 1975. (I.F.&R. No. IV-106-C, I.D. Nos. 116777 and 116778.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E) and 136(c)(1). The action pertained to products held for distribution or sale on May 8, 1974, at Gold Kist, Inc., Cordele, Georgia. The pesticides involved were **GO GETTUM** and **ONE-SHOT Z-P DUST;** the charge was adulteration—strength or purity fell below the professed standard of quality as expressed on its labeling.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $3220.00.

1614. In Re: O. M. Scott & Sons Company, EPA Region V, November 13, 1974. (I.F.&R. No. V-202C, I.D. No. 94070.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E); 136(q)(1)(A) and 136(c)(1). The action pertained to a product held for distribution or sale on August 24, 1973, at O. M. Scott & Sons Company, Marysville, Ohio. The pesticide involved was **SCOTTS HALTS PLUS FOR ESTABLISHED LAWNS;** charges included adulteration and misbranding—strength or purity of product fell below the professed standard as represented in labeling.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $1250.00.

1615. In Re: Amway Corporation, EPA Region V, December 20, 1974. (I.F.&R. No. V-11C, I.D. No. 87313.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135a(a)(1); 136j(a)(1)(E); and 136(q)(1)(A). The action pertained to a shipment made on May 10, 1973, from Ada, Michigan, to Madison, Wisconsin. The pesticide involved was **AMWAY GERMICIDAL CONCENTRATE;** charges included claims differed from those made in connection with the registration of the product and misbranding—labels bore false or misleading safety claim.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $500.00.

1616. In Re: Chesebrough-Ponds, Inc., EPA Region V, December 31, 1974. (I.F.&R. No. V-203C, I.D. No. 102294.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135a(a)(1); 135b; 136j(a)(1)(E); 136(q)(1)(G); and 136(q)(1)(F). The action pertained to shipments made on July 26 and August 23, 1973,

from Monticello, Indiana, to Kansas City, Missouri. The pesticide involved was **ANTISEPTIC AND GERMICIDE TINCTURE SOLUTION 1:750;** charges included nonregistration and misbranding—inadequate precautionary statement and directions for use on labels.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $1875.00.

1617. In Re: Copesan Services, Inc., EPA Region V, December 31, 1974. (I.F.&R. No. V-204C, I.D. No. 94319.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E) and 136(q)(1)(A). The action pertained to a product held for distribution or sale on August 29, 1973, at Copesan Services, Inc., Milwaukee, Wisconsin. The pesticide involved was **WIL-KIL READY-TO-USE RAT AND MOUSE BAIT;** the charge was misbranding—product was not fully effective for purposes claimed.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $250.00.

1619. In Re: Ventron Corporation, EPA Region V, December 31, 1974. (I.F.&R. No. V-209C, I.D. No. 116501.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135a(a)(1); 135b; 136j(a)(1)(E); 136(q)(1)(G); and 136(q)(2)(A). The action pertained to a shipment made on March 20, 1973, from Chicago, Illinois, to Louisville, Kentucky. The pesticide involved was **G-4 TECHNICAL;** charges included nonregistration and misbranding—inadequate precautionary statements and lack of ingredient statement.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $2500.00.

1619. In Re: Century Industries Corporation, EPA Region V, January.13, 1975. (I.F.&R. No. V-59C, I.D. Nos. 93578 and 104527.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135a(a)(1); 135b; 136j(a)(1)(E); 136(q)(2)(A); 136(q)(1)(G); and 136(q)(1)(F). The action pertained to shipments made on December 8, 1972, and February 14, 1973, from New Waterford, Ohio, to Montgomeryville and Cheltenham, Pennsylvania. The pesticides involved were **GIRARD LIQUID CRESOTE OIL** and **CENTURY 5% PENTA WOOD PRESERVER;** charges included nonregistration and misbranding—lack of an ingredient statement, lack of adequate caution or warning statement, and lack of adequate directions for use on labels.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $2,000.00.

1620. In Re: Chemed Corporation, EPA Region V, January 13, 1975. (I.F.&R. No. V-210-C, I.D. No. 115469.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E) and 136(q)(1)(G). The action pertained to a product held for distribution or sale on March 13, 1974, at DuBois Chemicals, Div. of Chemed Corp., Sharonville, Ohio. The pesticide involved was **DUBOIS CL-9 SANITIZER;** the charge was misbranding—inadequate precautionary statements on labels.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $720.00.

1621. In Re: Science Products Company, Inc., EPA Region V, January 13, 1975. (I.F.&R. No. V-79C, I.D. Nos. 87352 and 93649.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E); 136(q)(1)(A) and 136(c)(1). The action pertained to shipments made on January 19 and April 23, 1973, from Chicago, Illinois, to Florence, Kentucky, and St. Paul, Minnesota. The pesticide involved was **SCIENCE GLADIOLUS AND BULB DUST**; charges included adulteration and misbranding—in one instance the strength or purity fell below the professed standard of quality expressed on its labeling and in the other instance the strength or purity exceeded the professed standard of quality expressed on its labeling.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $1000.00.

1622. In Re: Great Lakes Biochemical Co., Inc., EPA Region V, January 17, 1975. (I.F.&R. No. V-51C, I.D. Nos. 93903 and 93907.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135a(a)(1); 136j(a)(1)(E) and 136(q)(1)(A). The action pertained to products held for distribution or sale on July 25, 1973, at Great Lakes Biochemical Co., Inc., Milwaukee, Wisconsin. The pesticides involved were **ALGIMYCIN PLL-C** and **ALGIMYCIN GLB-X**; charges included claims differed from those made in connection with the registration of the product and misbranding—labels bore false or misleading safety claim.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $500.00.

1623. In Re: Twinoak Products, Inc., EPA Region V, January 17, 1975. (I.F.&R. No. V-207C, I.D. No. 114960.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E) and 136(q)(1)(G). The action pertained to a product held

for distribution or sale on February 27, 1974, at Twinoak Products, Inc., Batavia, Illinois. The pesticide involved was **120 DAY AUTOMATIC BOWL CLEANER;** the charge was misbranding—inadequate precautionary statements on labels.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $1800.00.

1624. In Re: Physicians and Hospitals Supply Company, EPA Region V, January 20, 1975. (I.F.&R. No. V-75C, I.D. No. 94396.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C..136j(a)(1)(E); 136(q)(1)(G); 136(q)(1)(F); 136(q)(1)(A); and 136(q)(2)(C)(v). The action pertained to a product held for distribution or sale on September 20, 1973, at Physicians and Hospitals Supply Company, Minneapolis, Minnesota. The pesticide involved was **CREDOL;** the charge was misbranding—lack of adequate caution statement on labels, lack of adequate directions for use on labels, lack of assigned registration number on labels and labels bore a false or misleading safety statement.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $2500.00.

1625. In Re: Lenter Enterprises, Inc., EPA Region V, February 10, 1975. (I.F.&R. No. V-82C, I.D. No.. 117178.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135a(a)(1); 135b; 136j(a)(1)(E); and 136(q)(1)(A). The action pertained to a shipment made on March 21, 1974, from Bloomfield Hills, Michigan, to Decatur, Georgia. The pesticide involved was **WAX PATIO TORCH;** charges included nonregistration and misbranding—labels bore a false registration number implying that the product was registered.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $300.00.

1626. In Re: S. C. Johnson and Sons, Inc., EPA Region V, February 18, 1975. (I.F.&R. No. V-098C, I.D. No. 87191.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E) and 136(q)(1)(A). The action pertained to a product held for distribution or sale on July 23, 1973, at S. C. Johnson and Sons, Inc., Racine, Wisconsin. The pesticide involved was **JOHNSON'S KNOCK-OUT BACTERICIDE #1;** the charge was misbranding—labeling bore a false or misleading safety claim.

The Default Order assessed a civil penalty of $750.00.

1627. In Re: Velsicol Chemical Corporation, EPA Region V, February 26, 1975. (I.F.&R. No. V-220C, I.D. No. 111476.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E); 136(q)(1)(G) and 136(q)(2)(A). The action pertained to a shipment made on June 3, 1974, from Marshall, Illinois, to Casa Grande, Arizona. The pesticide involved was **TECHNICAL CHLORDANE LIGHT;** the charge was misbranding—inadequate precautionary statements and lack of ingredient statement.

The Default Order assessed a civil penalty of $4800.00.

1628. In Re: Mihelich Nurseries, EPA Region V, March 7, 1975. (I.F.&R. No. V-055C, I.D. No. 97890.)

This was a civil action charging the respondent wigh violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E) and 136(q)(1)(G). The action pertained to a product held for distribution or sale on August 22, 1973, at Mihelich Nurseries,

Warren, Michigan. The pesticide involved was **CLOVER KILL;** the charge was misbranding—inadequate precautionary statements on labels.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $630.00.

1629. In Re: New Plant Life Division, Charles O. Finley and Company, Inc., EPA Region V, March 7, 1975. (I.F.&R. No. V-094C, I.D. No. 115421.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E) and 136(q)(1)(G). The action pertained to a product held for distribution or sale on April 9, 1974, at New Plant Life Division, Charles O. Finley and Company, Inc., La Porte, Indiana. The pesticide involved was **NEW PLANT LIFE INSECTICIDE AND LEAF SHINE;** the charge was misbranding—inadequate precautionary statements on labels.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $500.00.

1630. In Re: Stauffer Chemical Company, EPA Region VI, March 13, 1975. (I.F.&R. No. VI-23C, I.D. No. 90948.)

This civil penalty proceeding was settled by hearing. The following is Administrative Law Judge Frederick W. Denniston's Initial Decision.

By complaint, filed April 10, 1974, pursuant to 40 C.F.R. 168.30, Environmental Protection Agency, Region VI (Complainant) alleged there was reason to believe that Stauffer Chemical Company (Respondent) had violated the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended [7 U.S.C. 135–135k; as amended, 86 Stat. 973, 7 U.S.C. 136–136y (1972)]. Specifically, it was alleged that on or about April 13, 1973, Respondent shipped the product "**CHLORDANE 8-E**" from Houston, Texas, to Shreveport,

Louisiana, and that the claims on the product's label did not conform to the registered label, in violation of 7 U.S.C. 135a(a)(1). A civil penalty assessment of $1,900.00 was proposed.

By amended complaint, filed August 15, 1974, accepted by Order of September 4, 1974, the proposed assessment was increased to $2,900.00.

By Answer, filed May 10, 1974, and amended Answer, dated September 24, 1974, Satuffer denied the alleged violation and requested a formal hearing, which was held in Houston, Texas, on October 9, 1974, at which Stauffer was represented by Gary Ford, Attorney, of Westport, Connecticut, and complainant was represented by Harless Benthul and Stan Curry, Attorneys, of Dallas, Texas. Proposed Findings and Briefs, pursuant to 40 C.F.R. 168.45, were filed by complainant and respondent, and replies were filed on February 6, 1975.

Situs of Hearing: Initially, a controversy arose as to the location of the hearing which Stauffer had requested. Stauffer first requested that the hearing be held in Richmond, California, where it maintains offices. When advised that it would appear that Houston, Texas, was the proper site for the hearing, it then requested the hearing be held in Westport, Connecticut, where its corporate headquarters are located. Thereupon, the Notice of Hearing, dated September 6, 1974, specifying Houston, Texas, as the place of hearing was issued. By Motion, dated September 30, 1974, Stauffer objected to Houston, Texas, as the place of hearing, citing Section 14(a)(3) of FIFRA which specifies that hearings in this type of case must be held in the "county, parish, or incorporated city of the residence of the person charged." Certification of the Hearing Order to the Regional Administrator for decision was requested. In the Motion, it was contended the "residence" of Stauffer, is Wilmington, Delaware, as it was incorporated in that state (although a hearing at that city was not specifically requested). The Motion for a Certification was denied by Order of October 4, 1974. The reasons for such denial are therin stated and are reaffirmed hereby. Respondent did not renew objection to the hearing site in its Proposed Findings and Brief.

FINDING OF FACT

A. *Stipulated Facts*

1. On or about April 13, 1973, Stauffer (Respondent) shipped the product **"CHLORDANE 8-E"** from Houston, Texas, to Sheveport, Louisiana, consigned to Planters Seed Company.

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

3. The claims which appear on the label on said sample of shipment, which relate to control of cut worms and mole crickets, do not appear on the registered label [Reg. No. 476–875].

4. The dosage rates for termite control which appear on the sample label differ from those on the registered label.

5. The claims made on the sample label regarding control of mole crickets and cut worms, which do not appear on the registered label, would be acceptable to EPA, and in the application of the Civil Penalty Assessment Schedule in effect at the time of the issuance, Complainant referred to Section 2(B) [claims would be acceptable] rather than Section 2(A) [claims unacceptable] in the category "Labeling Violations." Stated otherwise, the product would be effective in the control of cut worms and mole crickets if those claims had been made as part of Stauffer's registration.

6. Respondent, Stauffer Chemical Company, is a corporation incorporated under the laws of the State of Delaware, with its principal office located in Westport, Connecticut, and manufactures a number of pesticides.

B. *Additional Facts*

7. Mr. Edward Bunch, an employee of the Pesticide Registration Division of EPA and its predecessor U.S. Department of Agriculture, for many years, conducted tests of termite preparations at the Beltsville Research Center of USDA for eleven or twelve years and

subsequently reviewed labeling for registration and enforement cases.

8. Bunch prepared the Enforcement Case Review (EPA Ex. No. 9) which led to this proceeding. He found the sample label did not conform to the registered label in that it bore claims for cut worms and mole crickets that do not appear on the registered label; in addition, the termite directions of the sample label do not provide a dosage rate of 1 gallon per linear foot for deep trenches, also appearing on the registered label.

9. The dosage rate on the sample label for termites would not be effective for deep trenches, but would be effective for shallow trenches of 15" to 18" deep. The greater amount of dirt from the deeper trenches, which must be saturated, requires enough liquid to accomplish that. The deep trenches require four gallons per five linear feet, slightly less than one gallon per foot, rather than the one-half gallon per foot stated on the sample label.

10. The registered label specifies a rate of one gallon per linear foot for a 30" trench, which represents the regular laboratory policy for dosage rates of this type. A Department of Agriculture pamphlet on Subterranean Termites (Home and Garden Bulletin No. 64) specifies a similar treatment, as does a bulletin put out by Velsicol, the manufacturer of Chlordane.

11. A Summary of Registered Agricultural Pesticide Chemical Uses, issued by the U.S. Department of Agriculture lists dosages for many agricultural crops but does not include termite control.

12. EPA is in the process of preparing, but has not completed, a compendium of pesticides including the dosage rates for termite control, but permanent record cards are maintained containing this information for EPA use which have not been communicated to registrants.

13. Mr. Terrell Hunt of the Pesticides Enforcement Division of EPA explained the methods by which the Agency's civil penalty assessment schedule was constructed, to include the statutory factors

of (1) size of business of the person charged, (2) his ability to continue in business, and (3) the gravity of the violation. The application of the schedule to the facts of this case indicate assessment for a Category III firm (gross sales in excess of $1,000,000.00 a year), for labeling violations, Section Two (2) (B) — claims would be acceptable — of $600 to $900; for Section Three, (2)(D)(2) — Partially Inefficacious (Economic Fraud) — the assessment would be from $2,300.00 to $2,700.00, or together, the range would be from $2,700.00, or together, the range would be from $2,700.00 (the amount proposed) to $3,600.00.

14. John Saylor, Stauffer's Labeling Registrar, supplied data from the company files on the registration of the product in issue and a related product.

15. By letter of July 14, 1971, EPA approved the registration of **STAUFFER CHLORDANE 8-E,** USDA Reg. No. 476–875 in response to a company submission dated April 28, 1971. The approval was conditioned on stated modification being made in the label. The formula of the approved product was 71.4 percent Chlordane Technical and 24 percent Xylene Range Aromatic Solvent, and 4.6 percent Inert Ingredients.

16. By letter of July 13, 1971, EPA also approved the registration of **STAUFFER CHLORDANE 8-E** USDA Reg. No. 476–493, in response to a company submission dated April 28, 1971. The approval was conditioned on stated modifications being made in the label. The formula of this product was somewhat similar, consisting of 72.3 percent Chlordane Technical, 22.3 percent Petroleum Hydrocarbon Solvent, and 5.4 percent Inert Ingredients. The principal difference between the two products is in the solvent utilized, but as to each eight pounds of technical Chlordane per gallon, is provided. Stauffer has the two products because in California and the West it can buy the petroleum hydrocarbon solvent at a lower price than xyelene, whereas in the East and Southwest the reverse is true. In its regionalized operations, Stauffer marketed the two products in the same manner, i.e., the Reg. 476–493 product is distributed in the West Coast area and the product here in issue Reg. No. 476–875 is distributed in the East and Southwest.

18. In the shipment here in issue, from Houston, Texas, to Shreveport, Louisiana, the label was printed in Weslaco, Texas, in the Southwest sales and manufacturing region. The person in charge of the printing apparently took a West Coast label and its crop and insect clains, which differed from the eastern U.S. claims, and erroneously had it printed and they were applied to the shipment here in issue from Stauffer's former plant and warehouse in Houston, a facility which is being phased out.

19. The West Coast label, which had been approved by EPA, contained a dosage rate in termites of half a gallon per linear foot in a trench 1 to 2 feet deep. It also provided that for buildings with deep footings, trenches should be 30" deep, but no mention was made of an increased dosage rate.

20. By letter of June 17, 1974, subsequent to the filing of the present complaint, EPA requested that Stauffer revise the label for Reg. No. 476–493 (the West Coast product) to "provide for a dosage rate of 1/2 gallon per linear foot for trenches up to 15 inches deep and 1 gallon per linear foot for trenches exceeding this depth. A 30" trench should be provided for buildings with deep footings."

21. After the EPA complaint was filed, Stauffer took corrective measures and sent out 44 Mail-O-Grams to its distributors, made a number of telephone calls, printed new labels, relabeled 315 5-gallon cans, and 2793 1-gallon cans, incurred freight costs for the return of the products for relabeling and reshipping to distributors, for which it incurred an estimated cost of $1,782.51 for corrective measures. The responsibility for printing labels has now been consolidated into the Richmond, California, office to prevent further mistakes such as here occurred.

CONCLUSIONS

The fact of violation in this proceeding is uncontested. The sole question is whether the act committed may be viewed as two offenses for which two separate penalties may be imposed, and hence, the proper total penalty to assess. Additionally, Stauffer argues that, under the facts, no penalty should be imposed.

Both complainant and respondent treat the violation as falling under Section 3(a)(1) of the 1947 FIFRA (7 U.S.C. 135) as continued in effect by Section 4(b) of the Federal Environmental Pesticide Control Act of 1972 (PL. 92–516, 86 Stat. 973). That Section reads in pertinent part, as follows:

> Sec. 3a It shall be unlawful for any person to ... ship ... any of the following:
>
> (1) Any economic poison which is not registered pursuant to the provisions of Section 4 of this Act, *or any economic poison if any of theclaims made for its use differ in substance from the representations made in connection with its registration,* or if the composition of an economic poison differs ... [underscoring supplied to significant language]

Each of the offenses alleged by complainant falls within the underscored clause. While the construction of the Act suggests that the underscored clause constitutes a single statutory offense — and both of the alleged offenses fall wholly within the clause — it need not here be decided if the two elements of the underscored clause constitute a single statutory offense.[1] In any event, the peculiar facts of this case, as set out below, justify the conclusion that, in effect, only a single penalty is appropriate.

Stauffer had two properly approved registrations for a product of the same name and generally of similar content, one distributed on the West Coast and the other in the Southwest and East Coast, the latter product being here involved. An employee in printing a supply of labels for the East Coast product somehow garbled portions of the text of the approved West Coast label into that used on the label for the East Coast product. These labels were thereupon affixed to the shipment here in question, resulting in the acknowledged violation. After learning of the error, Stauffer took corrective action, including recall and relabeling of stocks in the hands of distributors.

The West Coast label, which called for a dosage rate of 1/2 gallon per linear foot, had EPA approval, although subsequent to the institution of this proceeding, it advised Stauffer to amend the dosage of the West Coast product for termite use to that of the East

Coast. That the "error" of EPA in accepting the 1/2 gallon dosage rate for the West Coast product, in spite of the obvious weight of authority that the 1 gallon (or 4/5 gallon) rate is necessary in deep trenches, and its subsequently requested correction, somehow contributed to Stauffer's offense, as urged in its proposed findings is wholly without merit. Accordingly, its proposed findings Nos. 7 and 14 are rejected.

Also, Stauffer's proposed finding No. 13 concerning EPA's failure to have published a compendium of uses and dosage rates, is rejected because, while factually correct, it has no bearing on the present issue.

With regard to the mistaken addition to the label of the cutworm and mole cricket usage and dosage (from its West Coast label), EPA had already approved it for the West Coast label and has stipulated that it would have been accepted for the East Coast label, had it been submitted. As heretofore found, the civil assessment schedule takes into account the several factors of appropriateness as to related size of business, effect on the ability to continue in business, and the gravity of the violation. In considering the "gravity" factor it has also been held that there are elements of gravity of harm and of misconduct to be considered. Compare *Amvac Chemical Corporation,* I.F.&R. Docket No. IX-4C.[2] In this instance, there is neither potential harm nor misconduct involved and, even if considered a separate offense from the termite dosage rate discussed below, it would appear appropriate to assign a zero penalty. Moreover, it is noted that the item in the Civil Assessment Penalty Code which serves as the basis of the $600.00 penalty proposed, appears under the grouping. "Section Two: Unwarranted Statements with Respect to Product Safety." Complainant does not explain or justify the classification of this act as relating to product safety.[3]

Accordingly, there will be considered only the appropriateness of the penalty to be assessed for the offense as to the inadequate dosage rate for termite treatment in deep trenches. This offense is properly classified as "Section Three: Directions for Use ... 2. Directions for use Materially differed from those accepted in connection with products Registration ... Inefficacious (Economic Fraud) ... 2.

Partial." For this the penalty proposed in the former schedule is $2,300.00 to $2,700.00, [4] and the complaint proposed the bottom of that range.

Buyers of the product involved herein, had they observed the instructions in deep trench application, would have been subjected to economic fraud because the applications would have been inefficacious and, hence, wasted. Further, having gone to the expense of such treatment, extensive damage might result before the inefficacy of the treatment was discovered. Hence, the infraction is of a serious nature. In this case, however, the record does not disclose that any actual usage occurred, that the company took remedial action promptly, and that the violation was a result of mistake in printing the label rather than intended desire to defraud.

Under the circumstances, the penalty assessed herein is determined by applying a 40 percent reduction (an authority now vested in regional enforcement offices of EPA by the New Civil Penalty Assessment Schedule.)

The proposed Findings and Conclusions of the parties have been considered herein and, to the extent they are inconsistent with the foregoing, they are denied.

PROPOSED FINAL ORDER[5]

Pursuant to Section 14 (a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 973; 7 U.S.C. 136 1(a)(1), a civil penalty of $1,380.00 is assessed against Stauffer Corporation for violations of the said Act which have been established on the basis of the amended complaint herein, filed August 15, 1974.

Frederick W. Denniston
Administrative Law Judge

[1] It is noted that had reliance been placed on the 1972 amended FIFRA Act (86 Stat. 975; 7 U.S.C. 136), the two "offenses" would apparently fall under separate provisions, i.e., additional claims not registered (Sec. 12(a)(1)(B), and inadequate directions for use Sec. 12(a)(1)(E) and Sec. 2(q)(F)).

[2] Initial Decision July 11, 1974; adopted by Final Order of October 31, 1974.

[3] The more recent Guidelines, published July 18, 1974, 39 F.R. 27711, specifies the same classification with some modification of the assigned penalties.

[4] While no financial or gross sales data was submitted of record, Stauffer has not questioned its classification as having sales in excess of $1,000,000.00 annually.

[5] Unless appeal is taken by the filing of exceptions pursuant to 40 C.F.R. 168.51, or the Regional Administrator elects to review the initial decision on his own motion, the order may become the final order of the Regional Administrator.

Correction of Initial Decision

By Motion filed April 2, 1975, Complainant has called attention to an error in the quotation of section 3(a)(1) of the 1947 version of the Federal Insecticide, Fungicide, and Rodenticide Act. Accordingly, on page 9 the quotation in the Initial Decision dated March 13, 1975, is corrected to read as follows:

> Section 3(a) It shall be unlawful for any person to ... ship ... any of the following:
>
> (1) Any economic poison which is not registered pursuant to the provisions of Section 4 of this Act, *or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration,* or if the composition of an economic poison differs .... [underscoring supplied to significant language]

With respect however, to the suggested change in the text of the decision following the quotation, this request is denied as the typographical omission referred to did not change the Presiding Officer's interpretation stated in the context of the decision.

In view of the correction made, and in the event the parties view the Initial Decision differently because of that change, the date for the filing of exceptions pursuant to section 168.51 of the rules is extended until April 22, 1975.

In all other respects the Initial Decision as corrected is reaffirmed.

Frederick W. Denniston
Administrative Law Judge

April 8, 1975

1631. In Re: Chemola Corporation, EPA Region VI, May 14, 1975. (I.F.&R. No. VI-21C, I.D. No. 90750.)

This civil penalty proceeding was settled by hearing. The following is Administrative Law Judge Frederick W. Denniston's Initial Decision and EPA, Region VI Regional Administrator's Final Order.

INITIAL DECISION

Preliminary Statement

1. By complaint filed March 14, 1974, the Director, Enforcement Division, Environmental Protection Agency (EPA), Region VI, alleged that on September 14, 1973, Chemola Corporation (Chemola) held for sale the product "Desco Weed Killer," and that analysis of a sample of that product taken on that date, contained 4.13 percent Sodium Chlorate and 2.43 percent Sodium Metaborate, instead of the 18.5 percent and 10 percent respectively, of those chemicals as claimed on its label. Consequently, adulteration of the product, prohibited by Section 12(a)(1)(E), of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (86 Stat.973; 7 U.S.C. 136j(a)(1)(E) was alleged. A civil penalty of $1500.00 was proposed to be assessed.

2. By Answer, filed April 1, 1974, Chemola denied the allegations and requested a hearing. Hearing was held in Houston, Texas, on October 11, 1974, at which Complainant (EPA) was represented by Stan Curry and Harless Benthul, of the EPA Regional Staff, and Respondent, by Russell T. Van Keuren, of Houston. Proposed Findings and Briefs were filed January 13, 1975, and a reply was filed by complainant on January 29, 1975.

3. Respondent markets a product known as "Desco Weed Killer." It is a pesticide within the meaning of FIFRA and its label is registered with EPA as No. 546–1. According to its registered label its active ingredients are 18.5 percent Sodium Chlorate and 10.0 percent Sodium Metaborate (or expressed as elemental boron, 1.644 percent). Samples of the product taken in the course of an EPA inspection on September 14, 1973, were analyzed and found to contain an average of 4.13 percent of Sodium Chlorate and 2.43 percent of Sodium Metaborate. It is Respondents' contention that

inadvertently it had supplied samples of its product ordinarily sold in concentrated form, with a dilution ready for application.

Findings of Fact

1. Ralph Jones and James Halliday, EPA employees inspected Respondents' place of business in Houston, Texas, on September 14, 1973. Jones identified himself to the secretary of receptionist who directed him to Herman Kressee, Jr., the Technical Director of Respondent, as the one in charge.

2. Kressee arranged for an employee to bring a one-gallon can of the product to the front of the building; Kressee then gave the sample to Jones, who had Halliday compare the label on the can with a copy of the registered label. Prior to that review a Notice of Inspection form was filled out by Halliday and given to Mr. Kressee.

3. Because Jones ordinarily collects samples from the parent stock himself, he asked to see the lot from which the sample was taken. Kressee took Jones to the rear and asked an employee named Dean where the sample had originated. Dean indicated a 55 gallon drum and said the material was from it. The drum was the only one having a label on it, although there were five or six drums in close proximity. A hurried inspection indicated the label on the drum was the same as on the sample delivered to Jones in the office.

4. Jones then returned to the reception area where a Receipt for Samples form was issued to Kressee which read "1/1 gal metal can of Desco Weed Killer, Reg. No. 546–1. No Batch Numbers." Further, a Notice of Inspection was issued to Kressee, which stated the reason for the Inspection was "For the purpose of inspecting and obtaining samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices." The sample taken was identified, sealed, and transmitted to the Bay St. Louis Laboratory.

5. The analysis, the results of which are unquestioned, indicated only 4.13 percent Sodium Chlorate (77.7 percent deficient) and 2.43 percent Sodium Metaborate (75.7 percent deficient).

6. Prior to the inspection visit on September 14, 1973, EPA had received no reports of deficiency in the product nor had it had been reported as a danger to the environment, and the EPA inspectors made no check of the history of the product. The prior practice of the predecessor agency, Department of Agriculture, had been to get a list of customers and to check samples at destination.

7. Jones could not recall whether the drum he was shown bore indications that it had been sealed. He indicated, however, that the drum was stacked over another drum and that it was the only drum with the Desco label.

8. Prior to July, 1973, inspections of the type here were made only at dealers or distributors after movement had been made in interstate commerce, but on that date inspections of manufacturing plants were commenced. In this case, no follow-up inspections were made of consumers or of the efficacy of the product.

9. The Report of Analysis showing the deficiencies in ingredients in the samples, dated December 18, 1973, was supplied to Chemola Corp., but nothing was heard from it by EPA until March 19, 1974, after the formal complaint initiating this proceeding was filed. Normally, a prompt response is recieved from the recipients of unsatisfactory reports.

10. The civil penalty proposed is $1,500.00. This was determined by the application of an assessment schedule distributed by EPA to the Regions on October 2, 1973, intended to give account to the standards set out in Section 14(a)(3) of FIFRA, and to insure uniform assessments. These standards include size of business and ability to continue in business, and the gravity of the violation. In applying these schedules, EPA considered the company as falling in a size II firm, with sales between $200,000.00 to $1,000,000.00 gross sales a year; and the analytical test results, as being in the category "chemical deficiency — B. Partially ineffective," for which a range of assessment of $1,500.00 to $1,900.00 is provided. The penalty proposed is the minimum of that range.

11. About two years prior to the inspection in this case, inspectors from the U.S. Department of Agriculture inspected Respondents place of business and checked its label but did not take samples indicating, rather, that samples would be taken at its customers of recent months.

12. The barrel from which the sample was taken was in an inconvenient location in the manufacturing area due to the fact that a fire had required file cabinets and other paraphernalia to be stored in space ordinarily used for manufacturing purposes. The drum was not moved from the pile in the presence of Kressee and Jones, but Dean presented Kressee with an unlabeled 1 gallon can which he said had come from the drum. After Jones inspected the label on the drum, Kressee instructed Dean to put a label on the sample and bring it to the office. Dean then went into the print shop, obtained a label and affixed it to the can. Dean had also gone into the shipping department where all kinds of samples are kept; Kressee contends he saw Dean take the sample can from those shelves.

13. Chemola sells the product in concentrated form which is recommended for dilution of one gallon of concentrate to foru gallons of water. Kressee had personally observed that such properly diluted Desco used around the plant had been efficacious.

14. According to Kressee, some Chemola salesmen, for convenience, carry the product in already diluted form. Accordingly, if the sample was diluted four to one, and was then diluted again in accordance with the label instructions, it would be at sixteen to one, at which it would not kill weeds. Kressee did not originally assume the sample had been diluted because not all of the salesmen used the diluted form; however, he considered it entirely possible and even probable "it was a diluted sample and that it could well be" the diluted variety.

15. While Kressee was concerned when he received the Report of Analysis of the sample in late December 1973 or January 1974 he discussed it only with the Chemola Chief Chemist and requested the latter to determine whether any understrength products had been manufactured or shipped in order that a full explanation might be

given later to EPA. He did not, however, discuss it with Mr. Shaw the President of Chemola, nor did he think it necessary to take the matter up with EPA, as he did not know what EPA would do and the Report did not say to respond to it.

16. Chemola was merged into Hi-Port Industries of Highland, Texas, as of April 1974 and Chemola does not now exist as a separate corporation. The President of Chemola, Herman Shaw, is now President of the Successor Hi-Port industries. Chemola's total sales were $620,000, and net profit of $5,700 in 1972, and $905,000, with net profit of $18,839 in 1973. Sales of Desco Weed Killer in 1973 were $25,074, on which net sales were $18,021.68, involving six customers. With the merger, Desco Weed Killer has been eliminated from its line and sales discontinued.

17. None of Chemola's regular six customers for Desco Weed Killer has ever complained of the product. Shaw considers the product would be ineffective if diluted 16 to 1 and he would expect to have heard complaints from its customers.

18. Julian Dean, the individual who supplied the sample to Kressee is no longer with Chemola, his services having been involuntarily terminated in February, 1974, and his present whereabouts are not known to Shaw.

Conclusions

The essential facts are undisputed. Chemola's representative, Kressee, gave the EPA inspectors what was represented by Kressee to be a sample held for sale of DESCO Weed Killer. Analysis of that sample indicated it was substantially deficient in chemical content. Chemola contends, however, that the sample delivered was a diluted sample intended for salesmen's demonstrations, and not a product held for sale. The record does not, however, support this contention.

Chemola makes much of the fact that in a prior inspection by EPA's predecessor, no samples were taken and they were advised such would be done at the customers place of business. The EPA Inspector, Jones, stated, however, that since July, 1973, inspection

had been made at points of production. Accordingly, the prior practice is of no significance.

Chemola also contends that becuase Mr. Kressee was in a hurry, the "sloppy method of this inspection" is explainable. While it would undoubtedly have been better practice for Jones to have drawn the sample himself under these circumstances, there is no absolute requirement that this be done. Kressee directed the obtaining of the sample and delivered it to Jones labeled and with the representation and intent that it was their product held for sale.

Moreover, Chemola would fault the EPA chemist who analyzed the sample for not requiring an efficacy test which it contends would have indicated its effectiveness. As pointed out in Complainant's Reply Brief, the chemist was only to chemically analyze the sample submitted which was done, and the accuracy of his results were stipulated by Chemola.

Of the five proposed findings by Respondent, three deal with alleged failures of Complainant to test for efficacy, to verify the results by obtaining further samples from Chemola's customers, and to alert its analytical chemist as to the directions for use. All three proposed findings are rejected as irrelevant to the issues in the complaint and not required under the statute. Accordingly, proposed findings No. 2, 3 and 4 are rejected. Its proposed finding No. 1 that the sample was not "packaged, labeled, and ready for shipment" as defined in Section 9(a) of FIFRA, is not supported by the record and is refuted by the specific statement of witness Kressee that "I fully expected to give them and did feel assured I had given them a sample of the material that represented what was sold" (Tr. p. 94). In any event, the prohibited acts are defined in Section 12 of the Act. Proposed Finding No. 1, accordingly, is also rejected. Finally, Finding No. 5, would fault the inspectors for failing to provide a sample that "they knew" had actually come from a previously unopened drum. This finding must also be rejected in the light of the specific representations of witness Kressee.

The Proposed Finding of Fact submitted by Complainant have essentially been accepted in their entirely herein.

Accordingly, it is concluded that Chemola Corporation, on September 14, 1973, held for sale the product Desco Weed Killer. EPA Registration No. 546–1, as alleged in the complaint, in violation of Section 12(a)(1)(E) of the Federal Insecticide, Fungicide, and Rodenticide Act [86 Stat. 973; 7.U.S.C. 136j(a)(1)(E)].

Proposed Penalty Respondent has not questioned the size of the proposed $1,500.00 assessment, which was established by reference to an agencywide shedule which takes into account the size of the business and the nature of the violation. There is no question that Chemola (or its sucessor) can continue in business after payment of the assessment. With regard to the gravity of the violation, it is apparent that, while economic harm would result from the sale of the adulterated product, no health hazard was created by the violation. Moreover, there are no known instances of violations by this company and no complaints have been registered by customers. Accordingly, the proposed assessment of $1,500.00, is appropriate.

Proposed Final Order[1]

Pursuant to Section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 186 Stat. 973; 7 U.S.C. 136 1(a)(1), a civil penalty of $1,500.00 is assessed against Chemola Corporation, for violations of the said Act which have been established on the basis of the complaint herein filed March 14, 1974.

Frederick W. Denniston
Administrative Law Judge

February 27, 1975

[1] Unless appeal is taken by the filing of exceptions pursuant to 40 C.F.R. 168.51, or the Regional Administrator elects to review the initial decision on his own motion, the order may become the final order of the

Regional Administrator.

FINAL ORDER

Preliminary Statement

1. By Complaint filed March 14, 1974, the Director, Enforcement Division Environmental Protection Agency (EPA), Region VI, alleged that on September 14, 1973, Chemola Corporation (Chemola) held for sale the product "Desco Weed Killer" and that anlaysis of a sample of that product, taken on that date, contained 4.13 percent Sodium Chlorate and 2.43 percent Sodium Metaborate, instead of the 18.5 percent and 10 percent, respectively, of those chemicals as claimed on its label. Consequently, adulteration of the product, prohibited by Section 12(a)(1)(E) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) [86 Stat. 973; 7 U.S.C. 136j(a)(1)(E)] was alleged. A civil penalty of $1,500.00 was proposed to be assessed.

2. By Answer filed April 1, 1974, Chemola denied the allegations and requested a hearing. Hearing was held in Houston, Texas, on October 11, 1974, at which Complainant (EPA) was represented by Stan Curry and Harless Benthul of the EPA regional staff, and Respondent by Russell T. Van Keuren of Houston. Proposed Findings and Briefs were filed January 13, 1975, and a reply was filed by Complainant on January 29, 1975.

3. On March 24, 1975, Respondent filed its appeal of the Initial Decision to the Regional Administrator, and on April 3, 1975, Complainant's reply to Repondent's appeal was similary filed.

4. Respondent markets a product known as "Desco Weed Killer." It is a pesticide within the meaning of FIFRA and its label is registered with EPA as No. 546–1. According to its registered label, its active ingredients are 18.5 percent Sodium Chlorate and 10.0 percent Sodium Metaborate (or expressed as elemental boron, 1.644 percent). Samples of the product taken in the course of an EPA inspection on September 14, 1973, were analyzed and found to contain an average of 4.13 percent of Sodium Chlorate and 2.43 percent

of Sodium Metaborate. It is Respondent's contention that inadvertently it had supplied samples of its product ordinarily sold in concentrated form, with a dilution ready for application.

Findings of Fact

1. Ralph Jones and James Halliday, EPA employees, inspected Respondent's place of business in Houston, Texas, on September 14, 1973. Jones identified himself to the secretary or receptionist, who directed him to Herman Kressee, Jr., the technical director of Respondent, as the one in charge.

2. Kressee arranged for an employee to bring a one-gallon can of the product to the front of the building; Kressee then gave the sample to Jones, who had Halliday compare the label on the can with a copy of the registered label. Prior to that review, a Notice of Inspection form was filled out by Halliday and given to Mr. Kressee.

3. Because Jones ordinarily collects samples from the parent stock himself, he asked to see the lot from which the sample was taken. Kressee took Jones to the rear and asked an employee named Dean where the sample had originated. Dean indicated a 55-gallon drum and said the material was from it. The drum was the only one having a label on it, although there were five or six drums in close proximity. A hurried inspection indicated the label on the drum was the same as on the sample delivered to Jones in the office.

4. Jones then returned to the reception area where a Receipt for Samples form was issued to Kressee which read: "1/1 gal metal can of Desco Weed Killer, Reg. No. 546–1. No Batch Numbers." Further, a Notice of Inspection was issued to Kressee which stated the reason for the inspection was "for the purpose of inspecting and obtaining samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices." The sample taken was identified, sealed and transmitted to the Bay St. Louis laboratory.

5. The analysis, the results of which are unquestioned, indicated only 4.13 percent Sodium Chlorate (77.7 percent deficient) and 2.43 percent Sodium Metaborate (75.7 percent deficient).

6. Jones could not recall whether the drum he was shown bore indications that it had been sealed. He indicated, however, that the drum was stacked over another drum and that it was the only drum with the Desco label.

7. Prior to July 1973, inspections of the type here were made only at dealers or distributors after movement had been made in interstate commerce, but on that date inspections of manufacturing plants were commenced. In this case, no follow-up inspections were made of consumers or of the efficacy of the product.

8. The Report of Analysis showing the deficiencies in ingredients in the Samples, dated December 18, 1973, was supplied to Chemola but nothing was heard from it by EPA until March 19, 1974, after the formal Complaint initiating this proceeding was filed.

9. The civil penalty proposed is $1,500.00. This was determined by the application of an assessment schedule distributed by EPA to the Regions on October 2, 1973, intended to give account ot the standards set out in Section 14(a)(3) of FIFRA and to insure uniform assessments. These standards include size of business and ability to continue in business, and the gravity of the violation. In applying these schedules EPA considered the company as falling in a size II firm, with gross sales between $200,000 to $1,000,000 a year; and the analytical test results as being in the category "chemical deficiency — B. Partially ineffective," for which a range of assessment of $1,500 to $1,900 is provided. The penalty proposed is the minimum of that range.

10. The barrel from which the sample was taken was in an inconvenient location in the manufacturing area due to the fact that a fire had required file cabinets and other paraphernalia to be stored in spece ordinarily used for manufacturing purposes. The drum was not moved from the pile in the presence of Kressee and Jones, but Dean presented Kressee with an unlabeled one-gallon can which he said

had come from the drum. After Jones inspected the label on the drum, Kressee instructed Dean to put a label on the sample and bring it to the office. Dean then went into the print shop, obtained a label and affixed it to the can. Dean had also gone into the shipping department where all kinds of samples are kept; Kressee contends he saw Dean take the sample can from those shelves.

11. Chemola sells the product in concentrated form which is recommended for dilution of one gallon of concentrate to four gallons of water. Kressee had personally observed that such properly diluted Desco used around the plant had been efficacious.

12. According to Kressee, some Chemola salesmen, for convienience, carry the product in already diluted form. Accordingly, if the sample was diluted four to one and was then diluted again in accordance with the label instructions, it would be at sixteen to one, at which it would not kill weeds. Kressee did not originally assume the sample had been diluted because not all of the salesmen used the diluted form; however, he considered it entirely possible and even probable "it was a diluted sample and that it could well be" the diluted variety.

13. While Kressee was concerned when he received the Report of Analysis of the sample in late December 1973 or January 1974, he discussed it only with the Chemola chief chemist and requested the latter to determine whether any understrength products had been manufactured or shipped in order that a full explanation might be given later to EPA. He did not, however, discuss it with Mr. Shaw, the president of Chemola, nor did he think it necessary to take the matter up with EPA as he did not know what EPA would do and the report did not say to respond to it.

14. Chemola was merged into Hi-Port Industries of Highland, Texas, as of April 1974 and Chemola does not now exist as a separate corporation. The president of Chemola, Herman Shaw, is now president of the sucessor Hi-Port Industries. Chemola's total sales were $620,000, and net profit of $5,700 in 1972, and $905,000, with net profit of $18,839 in 1973. Sales of Desco Weed Killer in 1973 were $25,074 on which net sales were $18,021.68, involving

six customers. With the merger, Desco Weed Killer has been eliminated from its line and sales discontinued.

15. Julian Dean, the individual who supplied the sample to Kressee, is no longer with Chemola, his services having been involuntarily terminated in February 1974, and his present whereabouts are not known to Shaw.

Conclusions

The essential facts are undisputed. Chemola's representative, Kressee, gave the EPA inspectors what was represented by Kressee to be a sample held for sale of Desco Weed Killer. Analysis of that sample indicated it was substantially deficient in chemical content. Chemola contends, however, that the sample delivered was a diluted sample intended for salesmen's demonstrations and not a product held for sale. The record does not, however, support this contention.

Chemola makes much of the fact that in a prior inspection by EPA's predecessor no samples were taken and they were advised such would be done at the customer's place of business after shipment. The 1972 amendments to FIFRA expand federal jurisdiction to intrastate pesticides; therefore, in July 1973 EPA began a procedure whereby pesticide samples are collected at the production point rather than the retail establishment to insure protection of the public from unsafe or ineffective pesticides. This procedure was observed by the inspectors at Respondent's plant on the date in question. Previous inspections by EPA's predecessor at Respondent's plant involved primarily the gathering of information which would reveal where interstate samples might be collected from customers of the Respondent. The two procedures were entirely different and were conducted for different purposes.

Chemola also contends that because Mr. Kressee was in a hurry the "sloppy method of this inspection" is explainable. While it would undoubtedly have been better practice for Jones to have drawn the sample himself under these circumstances, there is no absolute requirement that this be done. Kressee directed the obtaining of the

sample and devivered it to Jones, labeled and with the representation and intent that it was their product held for sale.

Moreover, Chemola would fault the EPA chemist who analyzed the sample for not requiring an efficacy test, which it contends would have indicated its effectiveness. As pointed out in Complainant's Reply Brief, the chemist was only to chemically analyze the sample submitted, which was done, and the accuracy of his results were stipulated by Chemola.

Of the five proposed findings by Respondent, three deal with alleged failures of Complainant to test for efficacy, to verify the results by obtaining further samples from Chemola's customers, and to alert its analytical chemist as to the directions for use. All three proposed findings are rejected as irrelevant to the issues in the Complaint and not required under the statute. Accordingly, Proposed Findings Nos. 2, 3 and 4 are rejected. Its Proposed Finding No. 1, that the sample was not "packaged, labeled, and ready for shipment," as defined in Section 9(a) of FIFRA, is not supported by the record and is refuted by the specific statement of witness Kressee that "I fully expected to give them and did feel assured I had given them a sample of the material that represented what was sold" (Tr. p. 94). In any event, the prohibited acts are defined in Section 12 of the Act. Proposed Finding No. 1, accordingly, is also rejected. Finally, Proposed Finding No. 5 would fault the inspectors for failing to provide a sample that "they knew" had actually come from a previously unopened drum. This finding must also be rejected in light of the specific representations of witness Kressee, and the testimony by witness Jones (Tr. p. 26) that he "did not observe it" in response to the question as to whether or not the seal was still on the drum when he viewed it. Respondent's ten proposed findings of fact and conclusions of law contained in the appeal of March 24, 1975, are likewise rejected inasmuch as they do not add to the arguments and findings previously made. Where EPA inspectors take a sample that turns out adverse to the interests of the manufacturer, it is possible for the argument to be advanced that the sample was inaccurately taken and that the manufacturer should not be held responsible since its representatives had no opportunity to supervise submission of the sample to EPA and thus be assured of its accuracy as a sample;

however, since the manufacturer in this case did completely manage and handle submission of the sample, they cannot later disavow the representations made to EPA as to its accuracy.

The Proposed Findings of Fact submitted by Complainant have essentially been accepted in their entirety herein.

Accordingly, it is concluded that Chemola Corporation, on September 14, 1973, held for sale the product "Desco Weed Killer," EPA Registration No. 546–1, as alleged in the Complaint, in violation of Section 12(a)(1)(E) of the Federal Insecticide, Fungicide, and Rodenticide Act [86 Stat. 973; 7 U.S.C. 136j(a)(1)(E)].

The penalty assessed below was established by reference to an Agency-wide schedule which takes into account the size of the business and the nature of the violation. There is no question that Chemola (or its successor) can continue in business after payment of the assessment. With regard to the gravity of the violation, it is apparent that while economic harm would result from the sale of the adulterated product, no health hazard was created by the violation. Moreover, there are no known instances of violations by this company and no complaints have been registered by customers. Accordingly, the proposed assessment of $1,500.00 is considered appropriate.

Final Order

Pursuant to Section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended [86 Stat. 973; 7 U.S.C. 1361(a)(1)], and upon consideration of the above Findings of Fact and Conclusions of Law, and of the entire record herein, after evaluating the gravity of the violation and appropriateness of the penalty proposed, it is this 14 day of May, 1975.

ORDERED that the Respondent, Chemola Corporation, pay a civil penalty in the amount of one thousand five hundred dollars ($1,500.00.) within sixty (60) days of receipt of this Order, said penalty to be paid by cashier's or certified check payable to the United States of America and forwarded to the Regional Hearing Clerk, Environmental Protection Agency, Region VI, 1600 Patterson,

Suite 1100, Dallas, Texas 75201. Said penalty is assessed against Chemola Corporation for violations of the said Act which have been established on the basis of the Complaint herein filed March 14, 1974.

George J. Putnicki
for Regional Administrator
EPA, Region VI

1632. In Re: James Varley & Sons, EPA Region VII, November 19, 1974. (I.F.&R. No. VII-68C, I.D. Nos. 93882 and 102492.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E); 136(q)(1)(G) and 136(q)(1)(A). The action pertained to shipments made on March 28 and July 13, 1973, from St. Louis, Missouri, to Sioux City, Iowa, and Detroit, Michigan. The pesticides involved were **HARRIS RUST-GO CLEANER FOR PORCELAIN, ENAMEL AND METALS** and **BEAVER BUG OUT FOGGER INSECTICIDE;** the charge was misbranding—lack of adequate warning or caution statement on labels and labels bore a false or misleading safety claim.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $2898.00.

1633. In Re: Norden Laboratories, Inc., EPA Region VII, January 7, 1975. (I.F.&R. No. VII-78C, I.D. Nos. 102677 and 112509.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135a(a)(1); 135b; 136j(a)(1)(E); 136(q)(1)(A); and 136(q)(1)(G). The action pertained to a shipment made on July 11, 1974, from Lincoln,

Nebraska, to North Kansas City, Missouri, and to a product held for distribution or sale on or about October 9, 1973, at Norden Laboratories, Inc., Lincoln, Nebraska. The pesticides involved were **MITOX OINTMENT** and **LINSPRAY CONTAINS LINDANE;** charges included nonregistration, composition of the product differed significantly from that represented in connection with its registration, and misbranding—lack of adequate warning or caution statements on labels.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $5,500.00.

1634. In Re: Adco, Incorporated, EPA Region VII, January 9, 1975. (I.F.&R. No. VII-81C, I.D. Nos. 91593, 91595, 91597, 91598, and 116372.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E); 136(q)(1)(G) and 136(q)(1)(F). The action pertained to shipments made on June 12 and October 17, 1973, from Sedalia, Missouri, to Griffin, Georgia, and to a product held for distribution or sale on December 14, 1973, at Adco, Incorporated, Sedalia, Missouri. The pesticides involved were **ADCO OFLYO DESTROYS, ADCO PET SHAMPOO, ADCO KLENSE CONCENTRATE, WEEVIL-GO FOOD INSECTICIDE MILL SPRAY,** and **ADCO JET CONCENTRATED SURFACE MILL SPRAY;** the charge was misbranding—lack of adequate warning or caution statement on labels and lack of adequate directions for use on labels.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $5,160.00.

1635. In Re: PBI-Gorden Corporation, EPA Region VII, January 28, 1975. (I.F.&R. No. VII-84C, I.D. No. 112824.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C.

136(q)(1)(A) and 136j(a)(1)(E). The action pertained to a product held for distribution or sale on June 3, 1974, at PBI-Gordon Corporation, Kansas City, Kansas. The pesticide involved was **GORDON'S NEW LAST MEAL RAT AND MOUSE KILLER;** the charge was misbranding—the product would not be effective in killing rats and mice when used as directed on labeling.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $1,680.00.

1636. In Re: Economy Products, Inc., EPA Region VII, January 29, 1975. (I.F.&R. No. VII-62C, I.D. No. 113889.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E); 136(q)(1)(G); 136(q)(1)(A); 136(c)(1); 136(q)(1)(F); 136(q)(2)(A)(i); 136(q)(2)(C)(i); 136(q)(2)(C)(iv); and 136(n). The action pertained to a shipment made on August 2, 1973, from Shenandoah, Iowa, to Denver, Colorado. The pesticide involved was **BEST 4 SERVIS BRAND TOXAPHENE;** charges included adulteration and misbranding—strength or purity of product fell below the professed standard of quality as represented on its labeling, labels bore false or misleading safety claims, and labels failed to bear adequate warning or caution statement, adequate directions for use, ingredient statement, name and address of producer, and the assigned registration number.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $500.00.

1637. In Re: Farmland Industries, Inc., EPA Region VII, February 12, 1975. (I.F.&R. No. VII-80C, I.D. Nos. 87533, 112126, 112180, 112222, 112527, 112673, and 112680.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135a(a)(1); 136(c)(1); 136j(a)(1)(E); 136(q)(1)(A); 136(q)(1)(F); and

136(q)(1)(G). The action pertained to shipments made on October 15, 1973, March 18, 1974, and April 24, 1974, from North Kansas City, Missouri, to Des Moines, Iowa, and Omaha, Nebraska, and to products held for distribution or sale on November 19, 1973, and May 20 and 21, 1974, at Farmland Industries, Inc., North Kansas City, Missouri. The pesticides involved were **COOP MALATHION DUST 4%; 5% SEVIN DUST; COOP BEEF CATTLE SPRAY EMULSIFIABLE CONCENTRATE; TOXAPHENE EMULSION CONCENTRATE; COOP LINDANE EMULSION CONTAINING 5% LINDANE; COOP WEED-OUT 2,4-D AMINE 4 POUND;** and **COOP METHOXYCHLOR "50" WETTABLE POWDER AND DUST BASE;** charges included nonregistration, claims differed from those represented during registration, adulteration and misbranding—strength or purity fell below the professed standard of quality as represented on its labeling and lack of adequate warning or caution statement on labels.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $18,000.00.

1638. In Re: Patterson Chemical Co., EPA Region VII, February 12, 1975. (I.F.&R. No. VII-83C, I.D. No. 112145.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135a(a)(1). The action pertained to a shipment made on or about June 3, 1974, from Kansas City, Missouri, to Council Bluffs, Iowa. The pesticide involved was **PATTERSON'S 5% SEVIN DUST;** the charge was claims for the product differed in substance from the representations made in connection with its registration.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $950.00.

1639. In Re: Promico, Inc., EPA Region VII, February 12, 1975. (I.F.&R. No. VII-86C, I.D. Nos. 112177 and 112178.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E); 136(q)(1)(A) and 136(c)(1). The action pertained to products held for distribution or sale on May 23, 1974, at Promico, Inc., Eagle Grove, Iowa. The pesticides involved were **LAND O LAKES FELCO FLY-GON BLOCK MEDICATED** and **KATTLE KANDY BAR FLY HI BOOT BLOCK MEDICATED;** charges included adulteration and misbranding—its strength or purity fell below the professed standard of quality as expressed on its labeling.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $3,000.00.

1640. In Re: Dymon, Inc., EPA Region VII, February 13, 1975. (I.F.&R. No. VII-76C, I.D. Nos. 112483 and 112486.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E); 136(q)(1)(A) and 136(c)(1). The action pertained to products held for distribution or sale on June 12, 1974, at Dymon, Inc., Kansas City, Kansas. The pesticides involved were **VITREOUS BOWL CLEANER** and **CHLOROXY NO. 8;** charges included adulteration and misbranding—its strength or purity fell below the professed standard of quality as expressed on its labeling.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $2,000.00.

1641. In Re: Kesco Sales Fairway, Inc., EPA Region VII, February 13, 1975. (I.F.&R. No. VII-91C, I.D. No. 105749.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135a(a)(1); 135b; 136j(a)(1)(E); and 136(q)(1)(A). The action pertained to a shipment made on or about September 3, 1974, from Shawnee Mission, Kansas, to Blue Springs, Missouri. The pesticide involved was **BUGMASTER MODEL H CRYSTALS;** charges in-

cluded nonregistration and misbranding— labels bore a false or misleading registration number implying that the product was registered.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $500.00.

1642. In Re: Royal Bond, Inc., EPA Region VII, March 12, 1975. (I.F.&R. No. VII-93C, I.D. No. 114306.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E); 136(q)(1)(A) and 136(c)(1). The action pertained to a product held for distribution or sale on September 10, 1974, at Royal Bond, Inc., St. Louis, Missouri. The pesticide involved was **STERILE DISINFECTANT CLEANER DEODORIZER VIRUCIDE FUNGICIDE;** charges included adulteration and misbranding—its strength or purity fell below the professed standard of quality as expressed on its labeling.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $1,080.00.

1643. In Re: Springfield Water Conditioning, EPA Region VII, March 12, 1975. (I.F.&R. No. VII-75C, I.D. No. 112496.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E); 136(q)(1)(A) and 136(c)(1). The action pertained to a product held for distribution or sale on June 26, 1974, at Springfield Water Conditioning, Springfield, Missouri. The pesticide involved was **HY-TEST SODIUM HYPOCHLORITE;** charges included adulteration and misbranding—its strength or purity fell below the professed standard of quality as expressed on its labeling.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $280.00.

1644. In Re: Schall Chemical, Inc., EPA Region VIII, August 5, 1974. (I.F.&R. No. VIII-4C, I.D. No. 90630.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E); 136(q)(1)(A) and 136(c)(1). The action pertained to a shipment made on May 11, 1973, from Monte Vista, Colorado, to Albuquerque, New Mexico. The pesticide involved was **4% MALATHION DUST;** charges included misbranding and adulteration—strength or purity fell below the professed standard or quality as expressed on its labeling under which it was sold.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $1500.00.

1645. In Re: American Fertilizer and Chemical Company, Inc., EPA Region VIII, August 28, 1974. (I.F.&R. No. VIII-8C, I.D. No. 102070.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E); 136(q)(1)(A) and 136(q)(1)(F). The action pertained to a product held for distribution or sale on February 27, 1974, at American Fertilizer and Chemical Company, Inc. Henderson, Colorado. The pesticide involved was **PHILLIPS 66 MILLER KILLER;** the charge was misbranding—product was overformulated and label did not bear adequate directions for use.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $2500.00.

1646. In Re: Lystads, Inc., EPA Region VIII, October 7, 1974. (I.F.&R. No. VIII-5C, I.D. No. 92688.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E); 136(q)(1)(A) and 136(c)(1). The action pertained to a

product held for distribution or sale on October 22, 1973, at Lystads, Inc., Grand Forks, North Dakota. The pesticide involved was **STERISOL SANITIZER;** charges included adulteration and misbranding—strength or purity fell below the professed standard of quality as expressed on its labeling under which it was held for sale.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $1200.00.

1647. In Re: Franklin Laboratories, Inc., A Division of American Home Products, Inc., EPA Region VIII, December 4, 1974. (I.F.&R. No. VIII-10C, I.D. No. 102072.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E); 136(q)(1)(A) and 136(q)(1)(G). The action pertained to a product held for distribution or sale on or about March 21, 1974, at Franklin Laboratories, Inc., Denver, Colorado. The pesticide involved was **SPINOSE EAR TICK TREATMENT;** the charge was misbranding—product was overformulated and the label did not bear adequate caution statements.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $2,000.00.

1648. In Re: Balcom Chemicals, Inc., EPA Region VIII, December 5, 1974. (I.F.&R. Nos. VIII-7C and VIII-11C, I.D. Nos. 102039 and 112608.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135a(a)(1); 135b; 136j(a)(1)(E); 136(q)(1)(F); and 136(q)(1)(A). The action pertained to a product held for distribution or sale on January 30, 1974, at Balcom Chemicals, Inc., Greeley, Colorado. The pesticides involved were **SURE KILL DIELDRIN EMULSIFIABLE CONCENTRATE** and **50 PARATHION EM INSECTICIDE;** charges included nonregistration, adulteration and misbranding—inadequate

directions for use and another substance had been substituted wholly or in part for the named ingredient.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $2200.00.

1649. In Re: Pueblo Chemical and Supply Company, EPA Region VIII, January 17, 1975. (I.F.&R. No. VIII-12C, I.D. No. 112608.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E) and 136(q)(1)(A). The action pertained to a product held for distribution or sale on March 6, 1974, at Pueblo Chemical and Supply Company, Pueblo, Colorado. The pesticide involved was **SURE KILL DIELDRIN EMULSIFIABLE CONCENTRATE;** the charge was misbranding—labels bore a false or misleading statement regarding the safety of the product.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $1200.00.

1650. In Re: R & M Exterminators, EPA Region X, January 28, 1975. (I.F.&R. No. X-16C, I.D. No. 93099.)

This was a civil action charging the respondent with violating the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136j(a)(1)(E) and 136(q)(1)(A). The action pertained to a product held for distribution or sale on January 29, 1974, at R & M Exterminators, Tyler, Washington. The pesticide involved was **FIELD RODENT BAIT;** the charge was misbranding—product was not effective when used as directed on labeling.

The respondent signed a Consent Agreement. The Final Order assessed a civil penalty of $700.00.

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