

IN THE MATTER OF
UNION CARBIDE CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2557. Complaint, Oct. 4, 1974—Decision, Oct. 4, 1974

Consent order requiring a New York City formulator and distributor of carbaryl insecticides, among other things to cease claiming that its agricultural insecticides are absolutely safe to use or absolutely safe to man or the environment. Further, respondent must place in all promotional material expressing or implying safety claims about agricultural insecticides, a statement reminding users that all pesticides are harmful if misused, and that they should only be used as directed.

Appearances

For the Commission: *Miriam A. Bender, Eric M. Rubin and Paul L. Chassy*

For the respondent: *Richard H. Gregory, Jr. New York, N.Y., James M. Johnstone and Bruce L. McDonald, Kirkland, Ellis & Rowe, Wash. D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Union Carbide Corporation, a corporation, hereinafter referred to as respondent, has violated provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. For the purposes of this complaint and the order attached hereto, the following definitions of terms shall apply:

(1) "Pesticide" refers to (a) any substance or mixture of substances, intended for preventing, destroying, repelling or mitigating any pest, and (b) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

(2) "Insecticide" refers to any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.

(3) "Carbaryl insecticide" refers to a synthetic organic insecticide belonging to the carbamate chemical class. Sevin and Sevimol are respondent's trade names for its carbaryl insecticide products.

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(4) "Phosphate and chlorinated hydrocarbon insecticides" refers to those insecticides belonging to the organic phosphorus and chlorinated hydrocarbon chemical classes.

(5) "Beneficial insects" refers to any insect having a favorable effect on plant life or the environment, such as a pollinator or predator of harmful pests.

(6) "Drift" refers to the capacity of a liquid spray, or any other pesticide particle released into the atmosphere, to move on air currents.

PAR. 2. Respondent, Union Carbide Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at Union Carbide Building, 270 Park Avenue in the city of New York, State of New York.

PAR. 3. Respondent is now, and for some time last past has been engaged in the production, formulation, advertising, offering for sale, sale and distribution of carbaryl insecticides designated as "SEVIN" and "SEVIMOL" to formulators and distributors for resale to the public.

PAR. 4. In the course and conduct of its business as aforesaid, respondent now causes, and for some time last past has caused the said products, when sold, to be transported from its place of business in one State of the United States to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its said business, and for the purpose of inducing the purchase of its carbaryl insecticides, respondent has made, and is now making, numerous statements and representations in advertisements inserted in broadcast and print media and in other promotional materials concerning the safety and efficacy of carbaryl insecticides.

PAR. 6. Typical and illustrative of the statements and representations in said advertising and promotional materials, disseminated as aforesaid, but not all inclusive thereof, are the following:

(1) Developed at Union Carbide, Sevin carbaryl insecticide gets rid of bugs without harming anything else. Like birds, fish or people. (Sevin doesn't build up in living tissue.)

(2) The absence of consumer complaints attests to the fact that SEVIN can be applied safely on a large scale.

(3) SEVIN is safer to handle and less of a hazard to birds, mammals and fish than phosphate or chlorinated hydrocarbon insecticides.

(4) Remember, SEVIN can be handled with safety and combines well with many aphicides. What's more you avoid drift and residue worries with SEVIN.

(5) * * * SEVIN is safe enough to combat insect problems without creating problems of drift and residues in treated crops.

(6) You can use SEVIMOL near streams, ponds, and pastures without drift problems. And, because SEVIMOL can also be used on cotton, soybeans, corn and beans, you have less worry of drift to nearby fields.

(7) SEVIN is safer, easy to handle, and convenient to apply as a dust, spray or fog on birds * * * as a spray in and on buildings * * * and as a dust in litter and dust-bath boxes.

(8) * * * It helps safen the spray mix when used under adverse growing conditions. SEVIMOL is economical and easy to mix * * *

(9) Growers and custom applicators know how easy it is to use SEVIN insecticide. It is relatively low in toxicity to man, and thus safer to handle than many phosphates and chlorinated-hydrocarbon pesticides. In addition, SEVIN does not create residue or drift problems when used properly, nor does it persist in the environment.

(10) Safer-to-handle SEVIN helps you avoid contamination of neighboring fields and streams.

(11) Sprays—phosphates and others— * * * [are] hard on many beneficial insects. Not to mention problems with drift and residues to nearby crops, populous areas and the environment in general. SEVIN carbaryl insecticide has a lot of the answers. SEVIN fights long and hard. But it fights *fair*. Unlike a lot of registered bollworm materials, dusts containing SEVIN and sulphur do not wipe out whole populations of beneficials at the risk of costly flare-ups of bollworms and other insects.

(12) As insecticide safety requirements continue to mount, SEVIN and SEVIMOL look better than ever. Here is what SEVIN and SEVIMOL can do for you:

* * *

Handle and apply formulations that are safer than most others.

You can apply without special protective clothing or equipment.

Recommended dosages are rarely phytotoxic to plants, and are virtually non-toxic to warm-blooded animals.

Where drift and residue present a problem in side-by-side crop and animal production, these insecticides are safer to use and offer excellent broad range efficacy against major corn insects.

* * *

Federal, state and local authorities welcome the use of these effective insecticides for use in protection of crops, shade trees, and forest, because they are virtually harmless to game birds, fish and wildlife.

(13) This season, pour it on!

* * * * *

Control. Convenience. *Confidence*.

* * * * *

In addition to the obvious benefits of a liquid formulation, SEVIMOL offers all the well-known advantages of SEVIN insecticide: broad-range *control*, relatively low toxicity to man, near-freedom from drift and residue problems, and rapid breakdown in the environment.

* * * What does all this control and convenience add up to? *Confidence*. Confidence that you're using the most modern insecticide you can buy. So, this season, pour it on!

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(14) Photographs of aerial and ground spraying of voluminous amounts of Sevin and Sevimol in the vicinity of unprotected human beings.

(15) Depiction of "A Simple Experiment" to test Sevimol's sticking power which shows a man placing his bare hand on a piece of paper sprayed with Sevimol.

PAR. 7. Through the use of said advertisements and promotional materials and others similar thereto not specifically set out herein, disseminated as aforesaid, respondent has represented and is now representing, directly or by implication, that:

(1) Sevin and Sevimol carbaryl insecticides are safe, non-toxic, hazard-free products with respect to beneficial insects, human beings, and the environment.

(2) Sevin and Sevimol will not drift or cause problems associated with drift.

(3) Sevin and Sevimol should be applied generously and be handled with confidence, convenience and ease, without fear of causing harmful side effects.

(4) Sevin and Sevimol are relatively more safe in all respects to birds, mammals and fish than all phosphate and chlorinated hydrocarbon insecticide products on the market.

(5) Sevin and Sevimol are relatively more safe in all respects to beneficial insects, human beings and the environment than many or most other insecticide products on the market.

(6) Use of Sevin and Sevimol is recommended and endorsed by the Federal Government.

PAR. 8. In truth and in fact:

(1) Sevin and Sevimol are not safe, non-toxic hazard-free products with respect to beneficial insects, human beings and the environment as represented by respondent. Labeling affixed to Sevin and Sevimol products specifically warns users to keep them out of reach of children and animals; that they are harmful if inhaled, swallowed or allowed to come in prolonged contact with skin; that they contaminate food, feed, water supplies, streams and ponds; and that they are highly toxic to honeybees.

(2) Sevin and Sevimol drift and cause many problems associated with drift.

(3) Sevin and Sevimol should not be applied generously and handled with confidence, convenience and ease, without fear of causing harmful side effects. In addition to those warnings set forth above, labeling affixed to Sevin and Sevimol products further advises that these products should be used only in strict accordance with label directions and

cautions, and that empty containers should be disposed of with particular care.

(4) Sevin and Sevimol are not relatively more safe in all respects to birds, mammals and fish than all phosphate and chlorinated hydrocarbon insecticide products on the market.

(5) Sevin and Sevimol are not relatively more safe in all respects to beneficial insects, human beings and the environment than many or most other insecticide products on the market.

(6) It is the policy of the Federal Government to prohibit as false or misleading any statement directly or indirectly implying that a pesticide is recommended or endorsed by the Federal Government.

Therefore, the statements and representations as set forth in Paragraph Six hereof, were, and are, deceptive acts or practices.

PAR. 9. By advertising Sevin and Sevimol carbaryl insecticides in a manner which substantially varies from and disregards instructions for use and warnings in labeling, respondent negates the import and purposes and detracts from the effectiveness of such instructions and warnings.

Therefore, the advertisements, other promotional materials, acts or practices referred to in Paragraph Nine above are unfair or deceptive acts or practices.

PAR. 10. In the further course and conduct of its business as aforesaid, respondent has advertised Sevin and Sevimol without disclosing in said advertising that such products are hazardous to human health. Knowledge of the hazards associated with the use of such products would enable and encourage consumers to exercise the proper degree of care in using them. Thus, respondents have failed to disclose a material fact which, if known to consumers, would be likely to affect their consideration of whether or not to purchase, and how to properly use, such products.

Therefore, the aforesaid advertisements, other promotional materials, acts or practices and the aforesaid failure to disclose material facts are deceptive or unfair acts or practices.

PAR. 11. Respondent's advertising of absolute, qualified, or comparative safety claims regarding pesticides with precautionary labeling is in itself deceptive and has the capacity and tendency to mislead a substantial portion of pesticide users into the erroneous and mistaken belief that they are handling safe products.

Therefore, the aforesaid advertisements, are deceptive or unfair acts or practices.

PAR. 12. In the course and conduct of its business as aforesaid and at all times mentioned herein respondent has been in substantial competi-

tion, in commerce, with corporations, firms and individuals in the sale of insecticide products of the same general kind and nature.

PAR. 13. The use by respondents of the said deceptive or unfair acts or practices has had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the said statements and representations were and are true and induce them into the purchase of substantial quantities of Sevin and Sevimol carbaryl insecticide by reason of said erroneous and mistaken belief.

PAR. 14. The aforesaid acts or practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted and now constitute unfair or deceptive acts or practices and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Union Carbide Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State

of New York, with its office and principal place of business located at 270 Park Avenue, in the city of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I. *It is ordered*, That respondent, Union Carbide Corporation, a corporation, its successors and assigns and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of any insecticide product with precautionary labeling which contains any active insecticidal ingredient(s) presently marketed by respondent or currently being field tested by respondent and which is intended for use by custom applicators and commercial growers to protect animals or food, forage, field or fiber crops by virtue of the capacity of its active ingredient(s) to kill insects (sometimes referred to hereinafter as "such products"), do forthwith cease and desist from:

A. Representing, directly or by implication, by print or broadcast advertising, or other promotional material, or by sales representatives' oral statements, that such products are absolutely or unqualifiedly safe, non-toxic or free of hazard for any use registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (hereinafter FIFRA) or any other approved use based upon evidence filed in connection with registration under FIFRA.

B. Representing, directly or by implication, by print or broadcast advertising or by other promotional material that such products are qualifiedly safe, non-toxic or free of hazard for any use registered under FIFRA or any other approved use based upon evidence filed in connection with registration under FIFRA; *Provided however*, That factual statements about such products regarding any use registered under FIFRA, any other approved use based upon evidence filed under FIFRA, the level of hazard or toxicity to products or species treated in accordance with such use(s) or residues resulting from such use(s) shall not be prohibited if:

(1) respondent prominently and in close conjunction thereto, includes a statement (except in broadcast advertisements not more than 30 seconds in length) denoting the existence of any specific caution or category thereof, other than directions for use (e.g., "Do not apply within 7 days of harvest"), which

appears on such product's labels, including but not limited to limitations on application due to regional or climatic variations; restrictions on subsequent use of treated crops, animals, or lands; and limitations due to consequent injury of specific species, *e.g.*, crop(s), animal(s), fish, bird(s), or beneficial insect(s); where such specific caution is relevant and material and without notice of which said factual statements would be untrue or misleading; and

(2) at the time of such representations, 1) such statements do not differ in substance from claims accepted in connection with registration under FIFRA, or 2) in the case of other statements not currently rejected as unsubstantiated in connection with registration under FIFRA, such other statements are substantiated by competent scientific tests or other objective materials which provide a reasonable basis for the representation(s) made, and the substantiation materials are either (i) available for public inspection or (ii) otherwise available to the FTC to determine compliance with this Order; and

(3) such factual statements do not use the word "safe," or any form thereof.

C. Representing, directly or by implication, by print or broadcast advertising or by other promotional material, that such products are relatively or comparatively safe, less toxic or freer of hazard, for any use registered under FIFRA, or any other approved use based upon evidence filed in connection with registration under FIFRA: *Provided however*, That comparative factual statements about such products regarding any use registered under FIFRA, any other approved use based upon evidence filed under FIFRA, the level of hazard or toxicity to products or species treated in accordance with such use(s) or residues resulting from such use(s) shall not be prohibited if:

(1) such factual statements compare the promoted insecticide with a specifically identifiable insecticide product, product form, or product group; and

(2) respondent prominently and in close conjunction thereto, includes a statement (except in broadcast advertisements not more than 30 seconds in length) denoting the existence of any specific caution or category thereof, other than directions for use (*e.g.*, "Do not apply within 7 days of harvest"), which appears on such product's labels, including but not limited to limitations on application due to regional or climatic variations; restrictions on subsequent use of treated crops, animals, or

lands; and limitations due to consequent injury of specific species, *e.g.*, crop(s), animal(s), fish, bird(s), or beneficial insect(s); where such specific caution is relevant and material and without notice of which said factual statements would be untrue or misleading; and

(3) at the time of such representations, 1) such statements do not differ in substance from claims accepted in connection with registration under FIFRA, or 2) in the case of other statements not currently rejected as unsubstantiated in connection with registration under FIFRA, such other statements are substantiated by competent scientific tests or other objective materials which provide a reasonable basis for the representation(s) made, and the substantiation materials are either (i) available for public inspection or (ii) otherwise available to the FTC to determine compliance with this Order; and

(4) such factual statements do not use the word "safe," or any form thereof.

II. With respect to representations not covered by the provisions of Section I of this order, it is ordered that Union Carbide Corporation, a corporation, its successors and assigns and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of such products, do forthwith cease and desist from:

A. Representing, directly or by implication, by print or broadcast advertising, by other promotional material, or by sales representatives' oral statements, that such products are absolutely safe, non-toxic or free of hazard to human beings, warm-blooded animals, birds, fish, beneficial insects, or the environment.

B. Representing, directly or by implication, by print or broadcast advertising or by other promotional material, that such products are qualifiedly safe, non-toxic or free of hazard to human beings, warm-blooded animals, birds, fish, beneficial insects, or the environment; *Provided however*, That factual statements which (i) describe physical, chemical, biological or toxicological characteristics of the promoted insecticide, or (ii) discuss the aforesaid characteristics and their effects on the environment, human beings, warmblooded animals, fish, birds, or beneficial insects shall not be prohibited if:

(1) the label(s) for such product(s) contains no relevant and required general or specific warning or caution regarding such characteristics or any effect caused by such characteristics;

Provided, nothing in this subsection shall prohibit:

(a) the dissemination of instructions for the proper use of such product(s); or

(b) factual statements which reproduce or discuss the substance of or reason(s) for any statement, warning or caution or direction for use found on the label of the promoted product(s) and are consistent with such statements, warnings, cautions, or directions for use; or

(c) factual statements regarding such characteristics or characteristics and their effects of insecticides in other than toxicity category I or toxicity category II; *Provided further*, That factual statements regarding the effects of any such characteristics, without an accompanying description of such characteristics, shall not be prohibited if: (i) the label(s) for such product(s) contains no relevant and required general or specific warning or caution regarding such characteristic(s) or effect(s) and (ii) the causal relationship between such characteristic(s) and the described effect(s) has not been substantiated by competent scientific tests or other objective materials known, or which through the exercise of reasonable diligence should be known, to respondent; and

(2) such factual statements are true and not misleading under normal circumstances and conditions under which the product could be expected to be used, *Provided further*, if circumstances and conditions of normal use exist in which said factual statements are untrue or misleading, respondent must describe, prominently and in close conjunction with said factual statements, specific circumstances and conditions for use in which said factual statements are true and not misleading; and

(3) at the time of such representations, 1) such statements do not differ in substance from claims accepted in connection with registration under FIFRA, or 2) in the case of other statements not currently rejected as unsubstantiated in connection with registration under FIFRA, such other statements are substantiated by competent scientific tests or other objective materials which provide a reasonable basis for the representation(s) made, and the substantiation materials are either (i) available for public inspection or (ii) otherwise available to the FTC to determine compliance with this Order; and

(4) respondent discloses, prominently and in close conjunction with any such factual statements concerning human safety

(except in broadcast advertisements not more than 30 seconds in length), any toxicological characteristics relating to human safety which are relevant and material and without the disclosure of which said factual statements would be untrue or misleading; and

(5) respondent discloses, prominently and in close conjunction with any other such factual statements (except in broadcast advertisements not more than 30 seconds in length), any hazardous collateral effects which are relevant and material and without the disclosure of which said factual statements would be untrue or misleading; and

(6) such factual statements do not use the word "safe," or any form thereof.

C. Representing, directly or by implication, by print or broadcast advertising or by other promotional material, that such products are relatively or comparatively more safe, less toxic or freer of hazard to human beings, warm-blooded animals, birds, fish, beneficial insects, or the environment than any other insecticide product(s); *Provided however*, That comparative factual statements which (i) describe physical, chemical, biological or toxicological characteristics of the promoted insecticide or (ii) in the case of insecticides in toxicity category I or toxicity category II, discuss the aforesaid characteristics and their effect on the environment, human beings, warm-blooded animals, fish, birds, or beneficial insects or (iii) in the case of insecticides in other than toxicity category I or toxicity category II, discuss the effect of such products on the environment, human beings, warm-blooded animals, fish, birds, or beneficial insects shall not be prohibited if:

(1) such factual statements compare the promoted insecticide with a specifically identifiable insecticide product, product form, or product group; and

(2) such factual statements are true and not misleading under normal circumstances and conditions under which the product could be expected to be used; *Provided further*, if circumstances and conditions of normal use exist in which said factual statements are untrue or misleading, respondent must describe, prominently and in close conjunction with said factual statements, specific circumstances and conditions of use in which said factual statements are true and not misleading; and

(3) at the time of such representations, 1) such statements do not differ in substance from claims accepted in connection with registration under FIFRA, or 2) in the case of other

statements not currently rejected as unsubstantiated in connection with registration under FIFRA, such other statements are substantiated by competent scientific tests or other objective materials which provide a reasonable basis for the representation(s) made, and the substantiation materials are either (i) available for public inspection or (ii) otherwise available to the FTC to determine compliance with this order; and

(4) respondent discloses, prominently and in close conjunction with any such factual statements concerning human safety (except in broadcast advertisements not more than 30 seconds in length), any toxicological characteristics relating to human safety in regard to which the promoted product is the more toxic and which are relevant and material and without the disclosure of which said factual statements would be untrue or misleading; and

(5) respondent discloses, prominently and in close conjunction with any other such factual statement (except in broadcast advertisements not more than 30 seconds in length), any hazardous collateral effects in regard to which the promoted product is the more hazardous and which are relevant and material and without the disclosure of which said factual statements would be untrue or misleading; and

(6) such factual statements do not use the word "safe," or any form thereof.

III. *It is further ordered*, That respondent, Union Carbide Corporation, a corporation, its successors and assigns and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of such products do forthwith cease and desist from making any representations, directly or by implication, or omitting any representations, by print or broadcast advertising or by other promotional material, which contradict, are inconsistent with, or detract from the effectiveness of any warning, caution or direction for use required to be set forth on the label of such product. *Provided*, That if any representations, directly or by implication, made by respondent, or the omission of representations by respondent, are in accord with the provisions of Sections I, II and IV of this order, they shall be considered as being in compliance with this section of the order.

IV. *It is further ordered*, That respondent, Union Carbide Corporation, a corporation, its successors and assigns and respondent's officers, representatives, agents, and employees, directly or through any corpo-

ration, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of such products do forthwith cease and desist from disseminating or causing the dissemination of:

A. Any print advertising or print promotional material which contains claims covered by Sections I or II for any such product unless it clearly and conspicuously includes in such print advertisement or print promotional material the following statement:
STOP! ALL PESTICIDES CAN BE HARMFUL TO HEALTH AND THE ENVIRONMENT IF MISUSED. READ THE LABEL CAREFULLY AND USE ONLY AS DIRECTED.

B. Any broadcast advertisement more than 30 seconds in length for any such product which contains claims covered by Sections I or II unless it clearly and conspicuously includes the following statement:

ALL PESTICIDES CAN BE HARMFUL TO HEALTH AND THE ENVIRONMENT IF MISUSED. READ THE LABEL CAREFULLY AND USE ONLY AS DIRECTED.

C. Any broadcast advertisement not more than 30 seconds in length for any such product which contains claims covered by Sections I or II unless it clearly and conspicuously includes the following statement:

ALL PESTICIDES CAN BE HARMFUL. READ THE LABEL. USE AS DIRECTED.

Provided, That in television advertisements not more than 10 seconds in length which contain no direct representations concerning product safety, the requirements of the term "clearly and conspicuously" shall in all cases be met by including the above statement in the video portion of the advertisement.

V. Nothing in this order shall be construed to apply to scientific articles published in recognized scientific or agricultural journals or government publications, or reprints thereof, or representations (other than print advertising or other promotional material) before public or governmental forums such as public hearings, scientific meetings, or to governmental agencies, agents, or employees responsible for the regulation or dissemination of information concerning insecticide products covered by this order.

VI. *It is further ordered,* That nothing in this order shall prohibit the dissemination of product labels (as defined by Section 2(p)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended), or reproductions thereof.

VII. For purposes of determining compliance with Sections I.B. (1), I.C.(2), II.B.(1) and III of this order, the term "label" shall include all written, printed or graphic matter on, or attached to, an insecticide product subject to this order. In the event general or specific warnings or cautions or directions for use required pursuant to registration under FIFRA do not appear on the label as defined in the preceding sentence, the term "label" shall also include the other "labeling" as defined by Section 2(p)(2) of FIFRA where said required general or specific warnings or cautions or directions for use do in fact appear. It is recognized that other matter, typically promotional material, will on occasion constitute "labeling" as defined by Section 2(p)(2) of FIFRA. Although such material may be subject to various Sections of this order, it shall not be deemed to be "label" as used in Sections I.B.(1), I.C.(2), II.B.(1) and III of this order.

VIII. *It is further ordered*, That for purposes of Section II.B. and Section II.C. of this order the terms "toxicity category I" and "toxicity category II" shall mean respectively the most toxic and next most toxic categories defined by Environmental Protection Agency Interpretation 18 of the regulations for the enforcement of FIFRA, 40 C.F.R. §162.116(b), in effect on April 1, 1973.

IX. *It is further ordered*, That this order shall become effective upon service, except that Sections I.B., I.C., II.B., II.C. and III of this order shall become effective at such time as and to the extent that a Trade Regulation Rule covering the advertising and promotion of products subject to this order, and containing terms at least as onerous as this order, becomes final and effective. *Provided*, That at all times subsequent to the date this order is served, claims which would be governed by Sections I.B., I.C., II.B., or II.C., if said sections were in effect, shall be deemed to be "claims covered by Sections I or II" for purposes of Section IV of this order.

X. *It is further ordered*, That should the Federal Trade Commission promulgate a Trade Regulation Rule or Industry Guide governing the advertising or promotion of products subject to this order, then any pertinent less comprehensive or less restrictive provisions of such rule or guide shall automatically replace any comparable provisions set forth herein which are effective on the date that such rule or guide becomes effective.

XI. *It is further ordered*, That the respondent forthwith distribute a copy of this order to each of its operating divisions engaged in the manufacture, sale, advertising, promotion or distribution of products subject to this order, and to all present and future employees of respon-

dent responsible for the advertising, promotion, distribution or sale of such products.

XII. *It is further ordered*, That the respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other changes in the corporation which may affect compliance obligations arising out of this order.

XIII. *It is further ordered*, That respondent corporation shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order, except that such report shall in the case of Sections I.B., I.C., II.B., II.C., and III be filed within sixty (60) days after their becoming effective against respondent corporation.

IN THE MATTER OF

HERCULES, INCORPORATED

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT