

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

October 16, 1997

Frederick Huff, Esq.
Law Offices of Frederick Huff
The Equitable Building
730 Seventeenth Street
Suite 850
Denver, Colorado 80202

Re: Microbial Technology, Inc.,

Docket No. RCRA-(3008)-VIII-93-05

Dear Mr. Huff:

This is in response to your motion to reopen the above docket for the purpose of declaring the "judgment" void and to order a refund of the penalty paid by Microbial Technology pursuant to a consent agreement. After reviewing your filings and the response of Region VIII, it is apparent that only the Regional Administrator of Region VIII has the authority to consider matters arising about a consent agreement issued in that region.

Under the Agency's Rules of Practice, Administrative Law Judges do not have authority to alter orders or agreements which have been approved or issued by other agency officials on behalf of the Administrator. Consent agreements are not considered or approved by Administrative Law Judges. This is in contrast to the authority Federal District Court judges have over settlement agreements. Federal judges issue consent orders following settlements and under the Federal Rules have limited authority to consider matters arising about their consent orders after they are issued. Rule of Practice § 22.18 grants to the Regional Administrators the sole authority to approve consent agreements at this agency. A Regional Administrator has the authority, in preparing a consent agreement, to "require that the parties to the settlement appear before him to answer inquiries relating to the consent agreement or consent order." The Rules of Practice are silent about whether a Regional Administrator may reopen and reconsider a consent agreement three years after it has been approved. Because the Rules of Practice delegate to the

Region VIII Administrator the authority to review and approve consent agreements, he presumably has the authority to decide, in the first instance, whether a consent agreement he approved may be reopened. Because of this, I am forwarding the filings in this matter to William Yellowtail, Region VIII Administrator, along with a copy of this letter.

Sincerely,

Edward J. Kuhlmann

Administrative Law Judge

cc

William Yellowtail, Region VIII Administrator

David J. Janik, Esq.

Tina Artemis, Regional Hearing Clerk