

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

In the Matter of)
)
Microbe Guard, Inc.) **Docket No. FIFRA-05-2006-0010**
)
Respondent)

Order to Show Cause

This proceeding arises under the authority of Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide (“FIFRA”), 7 U.S.C. 136l(a) and is governed by the Environmental Protection Agency (“EPA” or “Agency”) Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (“Rules of Practice”), 40 C.F.R. Part 22.

On February 16, 2006, EPA filed its Complaint against Microbe Guard, Inc. (“Respondent”), alleging violations of FIFRA. On March 20, 2006, Respondent, through counsel, filed its Answer. Thereafter, on April 12, 2006, the Court issued its Prehearing Order, requiring the parties to make their initial prehearing exchanges by June 12, 2006. *See* 40 C.F.R. § 22.19. EPA timely filed its prehearing exchange. However, there is no record that Respondent filed its prehearing exchange.¹

Section 22.17(a) of the Rules of Practice provides that a party may be found to be in default “upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the [Court].” 40 C.F.R. § 22.17(a). Furthermore, Section 22.19(g) states that where a party fails to exchange prehearing information, “the [Court] may, in [its] discretion . . . [i]ssue a default order under § 22.17(c).” 40 C.F.R. § 22.19(g). When the Court finds that default has occurred, Section 22.17(c) requires that the Court issue a default order against the defaulting

¹ On June 14, 2006, Respondent’s counsel informed the Court’s staff that on June 13, 2006, the prehearing exchange was sent via commercial carrier. However the document, entitled, “Respondent’s Memorandum in Opposition to the Complaint,” neither complied with the Court’s Prehearing Order nor the Rules of Procedure because, among other deficiencies, it did not list anticipated witnesses, nor copies of the documents and exhibits it intended to introduce at the hearing. The Court’s staff advised Respondent’s Counsel that the failure would necessitate filing a motion seeking relief for its failure to comply with the Prehearing Order together with a motion seeking an extension of time to file the prehearing exchange. On June 21, 2006, Mr. Hanratty informed the Court’s staff that the motions would be filed on June 22, 2006. However, to date there is no record that Respondent’s motions have been filed.

party “unless the record shows good cause why a default order should not be issued.” 40 C.F.R. § 22.17(c).

Accordingly, the Respondent is ordered to show good cause, by July 5, 2006, for its failure to submit the required prehearing exchange and why a default order should not be issued against it, together with a motion seeking a short extension of time to file its prehearing exchange.² Respondent’s Counsel is reminded that representatives must be familiar with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, as set forth at 40 C.F.R. Part 22.

So ordered.

William B. Moran
United States Administrative Law Judge

Dated: June 28, 2006
Washington, DC

²Although there is no indication that this matter may settle, no consent agreement may be filed in lieu of complying with this Order and no consent agreement should be approved until this Order is resolved.

In the Matter of *Microbe Guard, Inc.*, Respondent
Docket No. FIFRA-05-2006-0010

CERTIFICATE OF SERVICE

I certify that a true copy of **Order to Show Cause**, dated June 28, 2006 was sent this day in the following manner to the addressees listed below:

Original and one copy by Pouch Mail to:

Sonja Brooks-Woodard
Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

Copy sent by Pouch Mail and Facsimile sent to:

Mark Palermo
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

Copy sent by Certified Mail and Regular Mail and Facsimile to:
K. Gerald Hanratty, Esq.
6901 East Fish Lake Road
Suite 132
Maple Grove, MN 55369

Knolyn Jones
Legal Staff Assistant

Dated: June 28, 2006