

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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FEB 17 2009

In the Matter of: )  
)  
Porter Hybrids, Inc. )  
)  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. FIFRA-05-2008-0010

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**ORDER TO SHOW CAUSE**

Complainant, by lawful delegation, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency (EPA) Region 5, has moved for entry of a Default Order against Respondent, Porter Hybrids, Inc., for its failure to file an Answer in this matter.

Complainant initiated this administrative action by filing a Complaint on March 3, 2008, alleging that Respondent violated Section 12(a)(2)(L) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136j(a)(2)(L) and EPA regulations promulgated pursuant thereto. Complainant filed an Amended Complaint on October 6, 2008. Respondent has not filed an Answer as required by 40 C.F.R. § 22.15. On December 15, 2008, Complainant moved for the entry of a Default Order finding all of the facts in the Amended Complaint admitted and assessing a civil penalty in the amount of \$1,000 against Respondent.

This proceeding is governed by the Consolidated Rules of Practice, 40 C.F.R. Part 22. Section 22.17(a) of the Consolidated Rules provides in part:

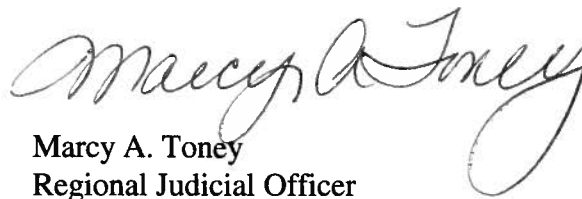
(a) *Default.* A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint. . . . Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations. . . .

(c) *Default order.* When the Presiding Officer finds that a default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. The relief proposed in the complaint or in the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act.

In view of the gravity and consequences of a default, Respondent Porter Hybrids, Inc. is ORDERED, on or before **March 10, 2009**, to show cause why it should not be held in default and to answer the Complaint. **Failure on the part of Respondent to file a timely response to this Order could subject it to assessment of the full amount of the proposed civil penalty of \$1,000.**

SO ORDERED.

Dated: February 17, 2009

  
Marcy A. Toney  
Regional Judicial Officer

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CERTIFICATE OF SERVICE

I certify that the foregoing Order to Show Cause, dated February 17, 2009, was sent this day in the following manner:

Original hand delivered to:

Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Copy hand delivered to  
Attorney for Complainant:

Christine M. Liszewski  
U. S. Environmental Protection  
Agency, Region 5  
Office of Regional Counsel  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Copy by U.S. Certified Mail  
Return Receipt Requested to:

L.D. Kirk, President  
Porter Hybrids, Inc.  
1683 N. State Route 134  
Wilmington, OH 45177

Dated: 2/17/09

By:   
Darlene Weatherspoon  
Administrative Assistant