

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR



IN THE MATTER OF)
)
ANABEC, INC.,) DOCKET NO. FIFRA-02-2009-5261
)
)
RESPONDENT)

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2009 MAR 24 AM 11:14
REGIONAL HEARING
MILWAUKEE

ORDER SEEKING CLARIFICATION AND DIRECTING SETTLEMENT CONFERENCE

As you previously have been notified, I have been designated by the March 20, 2009 Order of the Chief Administrative Law Judge to preside in the above captioned matter.^{1/} This proceeding arises under the authority of Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 1361(a), and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-.32. The parties are advised to familiarize themselves with both the applicable statute(s) and the Rules of Practice.

United States Environmental Protection Agency ("EPA") policy, found in the Rules of Practice at Section 22.18(b), 40 C.F.R. § 22.18(b), encourages settlement of a proceeding without the necessity of a formal hearing. The benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding.

Although the record indicates that the parties have been in contact with each other, there has been no settlement. The parties are directed to hold a settlement conference on this matter on or

^{1/} In response to an inquiry from this office, both parties declined to participate in the Alternate Dispute Resolution ("ADR") process offered by this office.

before **April 16, 2009**, to attempt to reach an amicable resolution of this matter. See Section 22.4(c)(8) of the Rules of Practice, 40 C.F.R. § 22.4(c)(8). Complainant shall file a status report regarding such conference and the status of settlement on or before **April 27, 2009**.

Respondent, in its one-sentence letter Answer, did not request a hearing but did deny all allegations set forth in the Complaint.

As noted above, this matter is governed by the Rules of Practice, 40 C.F.R. §§22.1-22.32. Section 22.15(b) of the Rules of Practice provides, in pertinent part, that the answer to a complaint shall state whether a hearing is requested. However, subsection (c) of Section 22.15 further provides that if the respondent does not request a hearing, a hearing may be held by the Administrative Law Judge if issues appropriate for adjudication are raised in the answer. See *In re Green Thumb Nursery, Inc.*, FIFRA Appeal No. 95-4a, 6 E.A.D. 782, 786-94 (EAB, Mar. 6, 1997).

In view of Respondent's failure to state whether a hearing is requested, Respondent is directed to clarify its position as to whether a hearing before an Administrative Law Judge is requested. Such clarification statement by Respondent shall be filed on or before **April 10, 2009**.

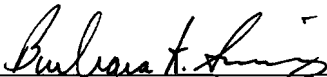
The original and one copy of all pleadings, statements and documents (with any attachments) required or permitted to be filed in this Order (including a ratified Consent Agreement and Final Order) shall be filed with the Regional Hearing Clerk, and copies (with any attachments) shall be sent to the undersigned and all other parties. The parties are advised that E-mail correspondence with the Administrative Law Judge is not authorized. See Section 22.5(a) of the Rules of Practice, 40 C.F.R. § 22.5(a).

The statements and information required by this Order to be sent to the Presiding Judge, as well as any other further pleadings, if sent by mail, shall be addressed as follows:

The Honorable Barbara A. Gunning
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Hand-delivered packages transported by Federal Express or another delivery service which x-rays their packages as part of their routine security procedures, may be delivered directly to the Offices of the Administrative Law Judges at 1099 14th Street, NW, Suite 350, Washington, DC 20005.

Telephone contact may be made with my legal staff assistant, Mary Angeles at (202) 564-6281. The facsimile number is (202) 565-0044.



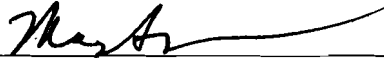
Barbara A. Gunning
Administrative Law Judge

Dated: March 23, 2009
Washington, DC

**In the Matter of *Anabec, Inc.*, Respondent.
Docket No. FIFRA-02-2008-5120**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Seeking Clarification**, dated March 23, 2009, was sent this day in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Karen Maples
Regional Hearing Clerk
US EPA, Region II
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by Pouch Mail to:

Lee Spielmann, Esq.
Assistant Regional Counsel
US EPA, Region II
290 Broadway, 16th Floor
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Copy by Regular Mail to:

David G. Sarvadi, Esq.
Amy L. Blackwood, Esq.
Keller & Heckman, LLP
1001 G Street, NW
Washington, DC 20001

Dated: March 23, 2009
Washington, D.C.