



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

2008 AUG 26 PM 2:25

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: FIFRA-08-2008-0020

IN THE MATTER OF:)
)
ACM-TEXAS, L.L.C.) FINAL ORDER
)
RESPONDENT)

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 26th DAY OF August, 2008.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Docket No. FIFRA-08-2008-0020

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:

ACM-Texas, LLC.,
1419 W. 29th Street
Loveland, CO,

Respondent.

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CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, ACM-Texas, LLC., by their undersigned representatives, hereby consent and agree as follows:

1. On July 3, 2008, Complainant issued a Complaint alleging certain violations of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). 7 U.S.C. § 136. The Complaint proposed a civil penalty for the violation alleged therein.

2. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.

3. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or this Consent Agreement.

4. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

5. Respondent consents and agrees to pay a civil penalty in the amount of **eleven thousand seven hundred dollars (\$11,700)** in eight (8) penalty installment payments of **one thousand four hundred sixty-two dollars and fifty cents (\$1,462.50)** in the manner described below:

- a. The first penalty installment payment of \$1,462.50 is due on or before October 15, 2008. The second penalty installment of \$1,462.50 is due on or before January 15, 2009. The third penalty installment of \$1,462.50 is due on or before April 15, 2009. The fourth penalty installment of \$1,462.50 is due on or before July 15, 2009. The fifth

penalty installment of \$1,462.50 is due on or before October 15, 2009. The sixth penalty installment of \$1,462.50 is due on or before January 15, 2010. The seventh penalty installment of \$1,462.50 is due on or before April 15, 2010. The eight and final penalty installment of \$1,462.50 is due on or before July 15, 2010. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. The date the payment is made is considered to be the date of the deposit ticket (standard form 215) issued by the Mellon Bank. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

- b. Respondent shall make these **eight** installment payments by remitting a cashier's or certified check, including the name and docket number of this case (ACM-Texas, LLC.; Docket No. FIFRA-08-2008-0020), for the specified amount, payable to "Treasurer, United States of America," to:

Regular Mail:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

For payments sent in a manner other than by regular mail or for payments other than by check, please see the instructions in attachment 1 entitled "Collection Information."

A copy of the check shall be sent simultaneously to:

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

- c. In the event a payment is not received by the specified due date, interest on the remaining unpaid balance accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1st late day, 30 days of interest accrues). Respondent agrees and consents that if Respondent fails to pay the penalty amount on the due dates set forth above, any unpaid balance thereof, shall become due and owing by the

Respondent, or EPA, in its sole discretion, may waive all or part of such acceleration and or such interest payment.

- d. In addition, in the event an installment payment is not received by the due date specified in this Consent Agreement, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the final order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

6. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.

7. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

8. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

9. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.

10. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

11. Each party shall bear its own costs and attorney fees in connection with this matter.

12. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

In the Matter of: ACM-Texas, LLC.
Docket No.: FIFRA-08-2008-0020

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,

Date: 8/26/08

By: Matthew Cohn
David J. Janik, Director
Matthew Cohn, Supervisory Enforcement Attorney
Legal Enforcement Program

Date: 8/25/2008

By: Mark A.R. Chalfant
Mark A.R. Chalfant, Director
Technical Enforcement Program

Date: 8/25/2008

By: Eduardo Quintana
Eduardo Quintana
Senior Enforcement Attorney
Legal Enforcement Program

In the Matter of: ACM-Texas, LLC.
Docket No.: FIFRA-08-2008-0020

ACM-Texas, LLC.,
Respondent.

Date: 8/2/08

By: R. A. McClellan, CEO

Name: R. A. McClellan, CEO

**ATTACHMENT 1
COLLECTION INFORMATION**

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York NY 10045

Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental Protection Agency "

OVERNIGHT MAIL:

U.S. Bank

1005 Convention Plaza

Mail Station SL-MO-C2GL

St. Louis, MO 63101

Contact: Natalie Pearson

314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

Contact - Jesse White 301-887-6548

ABA = 051036706

Transaction Code 22 - checking

Environmental Protection Agency

Account 310006

CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.

This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter sfo 1.1 in the search field

Open form and complete required fields.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **ACM-TEXAS, LLC.; DOCKET NO.: FIFRA-08-2008-0020** was filed with the Regional Hearing Clerk on August 26, 2008.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Eduardo Quintana, Senior Enforcement Attorney, U. S. EPA - Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document were placed in the United States mail certified/return receipt requested on August 26, 2008, to:

Robert McCreless
ACM-Texas, LLC.
1419 W. 29th Street
Loveland, CO 80538

E-mailed to:

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MSD-0002)
Cincinnati, OH 45268

August 26, 2008



Tina Artemis
Paralegal/Regional Hearing Clerk

