

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2017 APR 11 AM 8:31

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 Renner Boulevard
Lenexa, Kansas

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
) Docket No. FIFRA-07-2016-0011
MIDWEST SERVICE COMPANY)
) EXPEDITED SETTLEMENT
Respondent) AGREEMENT AND FINAL ORDER
)

EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER

1. The U.S. Environmental Protection Agency (“EPA”) alleges that Midwest Service Company, (“Respondent”) failed to comply with Section 7(c) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136e(c) for its facility, Midwest Service Company, EPA Establishment No. 056955-NE-001 in Tekamah, Nebraska.

2. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating a registered pesticide-producing establishment to inform the EPA of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which it is producing, which it has produced during the past year, and which it has sold or distributed during the past year. The information required by this paragraph shall be kept current and submitted to the Administrator annually as required by such regulations as the Administrator may prescribe. The regulation found at 40 C.F.R. § 167.85(d) requires such pesticides report to be filed annually on or before March 1, even if the producer has produced no pesticidal products for that reporting year.

3. Respondent has failed to comply with Section 7(c) of FIFRA, 7 U.S.C. § 136(c), and with the regulations found at 40 C.F.R. § 167.85(d) in that it did not file the 2013 annual pesticides report for the above facility by March 1, 2014, and the 2014 annual pesticides report for the above facility by March 1, 2015, as required.

4. The EPA is authorized to enter into this Expedited Settlement Agreement and final Order (“Agreement”), and this proceeding for the assessment of a civil penalty is simultaneously commenced and concluded, pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l and 40 C.F.R. § 22.13(b).

5. In signing this Agreement, Respondent: (a) admits that Respondent is subject to the requirements in Paragraph 2 (above); (b) admits that the EPA has jurisdiction over

Respondent and Respondent's conduct as alleged herein; (c) neither admits nor denies the factual allegations contained herein; (d) consents to the assessment of this penalty; and (e) waives any right to contest the allegations contained herein, and its right to appeal the proposed Final Order attached hereto.

6. By its signature below, Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that to the best of Respondent's knowledge, it is presently in compliance with all requirements of FIFRA, 7 U.S.C. 136 *et seq.*, and all regulations promulgated thereunder. Respondent has now submitted its 2014 annual pesticides report.

7. EPA and Respondent agree that settlement of this matter for a civil penalty is in the public interest. Respondent certifies that it has sent a Cashier's or certified check (payable to the "United States Treasury") in the amount of eight hundred dollars (\$800.00) in payment of the full penalty amount to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The docket Number of this ESA is FIFRA-07-2016-0011, and must be included on the check.

This original ESA and a copy of the check must be sent by certified mail to:

Brandon Boatman (TOPE)
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

8. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

9. The EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by Respondent of FIFRA, or any other federal statute or regulation, of this Agreement.

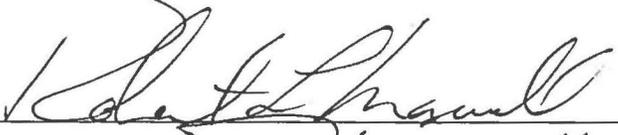
10. Upon signing and returning this Agreement to the EPA, Respondent waives the opportunity for a hearing or appeal pursuant to FIFRA.

11. Each party shall bear its own costs and fees, if any.

12. This Agreement authorized by the EPA's execution of the Final Order attached hereto constitutes a final order under 40 C.F.R. Part 22.

13. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. 22.31(b), is effective upon filing.

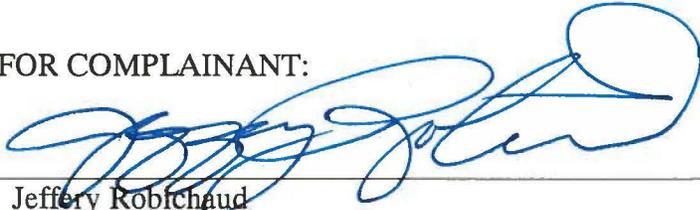
FOR RESPONDENT:

 Date: 10/27/16

Name (Print): Robert L Maxwell

Title (Print): PRES.

FOR COMPLAINANT:



Jeffery Robichaud
Acting Director
Water, Wetlands and Pesticides Division
EPA Region 7

Date:

4/10/17



Erin Weekley
Office of Regional Counsel
EPA Region 7

Date:

3.20.17

I hereby ratify the ESA and incorporate it herein by reference. It is so ORDERED.

Karina Borrromeo

Karina Borrromeo
Regional Judicial Officer

Date: April 11, 2017

FIFRA CIVIL PENALTY CALCULATION WORKSHEET
ENFORCEMENT RESPONSE POLICY for FIFRA - Reference

RESPONDENT: Midwest Service Company
 ADDRESS: 649 South Highway 75
 Tekamah, MO 68061

Prepared By: Brandon Boatman

	Count 1			
Appendix A				
1. Statutory Violation	7(c)			
2. FTTS Code	N/A			
3. Violation Level	2 nd Violation			
Appendix C - Table 2 - Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	14(a)(1)			
5. Size of Business Category	II			
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$3,300.00			
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	N/A			
7b. Human Harm	N/A			
7c. Environmental Harm	N/A			
7d. Compliance History	N/A			
7e. Culpability	N/A			
7f. Total Gravity Adjustment Value (add items 7a - 7e)	N/A			
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment	-75%			
7h. Dollar Adjustment	-\$2,475.00			
8. Final Penalty** (Rounded to nearest 100)	\$800.00			
Combined Total Penalty (total of all columns for line 8, above)	\$800.00			

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.

**NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE
ENVIRONMENTAL LEGAL PROCEEDINGS**

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 C.F.R. 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

IN THE MATTER Of Midwest Service Company, Respondent
Docket No. FIFRA-07-2016-0011

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

weekley.erin@epa.gov

Copy via First Class Mail to Respondent:

Robert L. Maxwell, President
Midwest Service Company
649 S HWY 75
Tekamah, Nebraska 68061

Dated: 4/11/17


Kathy Robinson
Hearing Clerk, Region 7