



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2011 JAN 10 AM 11:59

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: FIFRA-08-2010-0018

IN THE MATTER OF:

MIDWEST FERTILIZER, INC.

RESPONDENT

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)  
)  
)

FINAL ORDER

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 Fina Order.

SO ORDERED THIS 10<sup>th</sup> DAY OF January, 2011.

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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EPA REGION VIII  
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Docket No. FIFRA-08-2010-0018

In the Matter of: )  
)  
Midwest Fertilizer, Inc., ) **CONSENT AGREEMENT**  
)  
Respondent. )

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Midwest Fertilizer, Inc., by their undersigned representatives, hereby consent and agree as follows:

1. On September 30, 2010 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 **three thousand dollars (\$3,000)** in three (3) penalty installment payments of **one thousand dollars (\$1,000)** in the manner described below:

- a. The first penalty installment payment of \$1,000 is due on or before February 15, 2011. The second penalty installment of \$1,000 is due on or before June 15, 2011. The third and final penalty installment of \$1,000 is due on or before November 15, 2011. 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 U.S. 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 **three** installment payments by remitting a cashier's or certified check, including the name and docket number of this case (Midwest Fertilizer, Inc.; Docket No. FIFRA-08-2010-0018 ), 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 1<sup>st</sup> 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. 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 31<sup>st</sup> 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 121<sup>st</sup> 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.

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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: Midwest Fertilizer, Inc.**  
**Docket No.: FIFRA-08-2010-0018**

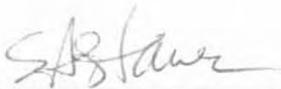
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UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,

Date: 1/10/11

By:   
Michael T. Risner, Director  
David J. Janik, Supervisory Enforcement Attorney  
Legal Enforcement Program

Date: 1/6/11

By:   
Sandra A. Stavnes, Director  
Technical Enforcement Program

Date: 1/4/2011

By:   
Eduardo Quintana  
Senior Enforcement Attorney  
Legal Enforcement Program

**In the Matter of: Midwest Fertilizer, Inc.**  
**Docket No.: FIFRA-08-2010-0018**

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Midwest Fertilizer, Inc.,  
Respondent.

Date: 12-28-10

By: Vice-President

Name: Edith A. Schneider

**ATTACHMENT 1**  
**COLLECTION INFORMATION**

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**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 17<sup>th</sup> 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

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Open form and complete required fields.

## CERTIFICATE OF SERVICE

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The undersigned certifies that the original of the attached, **CONSENT AGREEMENT/FINAL ORDER** in the matter of **MIDWEST FERTILIZER, INC.; DOCKET NO.: FIFRA-08-2010-0018** was filed with the Regional Hearing Clerk on January 10, 2011.

Further, the undersigned certifies that a true and correct copy of the documents were 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 documents were placed in the United States mail certified/return receipt requested on January 10, 2011 to:

Edith Schneider  
Midwest Fertilizer, Inc.  
26237 302<sup>nd</sup> Street  
Kilgore, NE 69216

E-mailed to:

Elizabeth Whitsel  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

January 10, 2011

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

