



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

AUG 17 2017

REPLY TO THE ATTENTION OF:

LC-17J

VIA EMAIL

Mr. Edward K. Miller  
Vice President of Agronomy  
Mid-Wood, Inc.  
12965 Defiance Pike  
Cygnet, Ohio 43413

emiller@mid-wood.com

Re: Consent Agreement and Final Order In the Matter of Mid-Wood, Inc. Docket  
Number FIFRA-05-2017-0050

Mr. Miller:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on August 17, 2017 with the Regional Hearing Clerk.

The civil penalty in the amount of \$16,191.00 is to be paid in the manner described in paragraphs 47-48. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Abigail Wesley".

Abigail Wesley  
Pesticides and Toxics Compliance Section

cc: Robert H. Smith (C-14J)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Mid-Wood, Inc.  
Cygnet, Ohio

Respondent.



Docket No. FIFRA-05-2017-0050

Proceeding to Assess a Civil Penalty  
Under Section 14(a) of the Federal  
Insecticide, Fungicide, and Rodenticide  
Act, 7 U.S.C. § 136l(a)

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Mid-Wood, Inc., a corporation doing business in the State of Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO,

and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

**Statutory and Regulatory Background**

10. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

11. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines the term “produce” as to manufacture, prepare, compound, propagate, or process any pesticide, or to package, repackage, label, relabel or otherwise change the container of any pesticide. Also see 40 C.F.R. § 167.3.

12. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines the term “producer” as a person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide. Also see 40 C.F.R. § 167.3.

13. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” as “any insect, rodent, nematode, fungus, weed, or any other pestilential or aquatic plant or animal life or virus, bacteria, or other micro-organism which is a pest of agriculture, horticulture, or animal husbandry, or which is a pest of man, and which the Administrator [of the EPA] declares to be a pest” under Section 25(c)(1) of FIFRA. Also 40 C.F.R. § 152.5.

14. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, among other things, “any substance or mixture of substances intended for preventing, destroying,

repelling, or mitigating any pest.” Also see 40 C.F.R. § 152.3.

15. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), defines the term “establishment” as any site where a pesticide or pesticidal product is produced, or held, for distribution or sale. See also 40 C.F.R. § 167.3.

16. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to distribute or sell” to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

17. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines a “label” as written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

18. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” as all labels and other written, printed or graphic matter accompanying the pesticide at any time or to which reference is made on the label or in literature accompanying the pesticide.

19. Pursuant to its authority under Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), the EPA has promulgated regulations governing the registration of pesticide-producing establishments at 40 C.F.R. Part 167.

20. 40 C.F.R. § 167.20(a) states, any establishment where pesticidal product is produced must be registered with the EPA.

21. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), states, no person shall produce any pesticide unless the establishment in which it is produced is registered with EPA.

22. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), in pertinent part, requires any producer operating a registered pesticide-producing establishment to inform 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.

23. 40 C.F.R. § 167.85(c), requires the producer to obtain, complete and submit annually a pesticide reporting form supplied by EPA. The applicable form, “EPA Form 3540-16, *Pesticide Report for Pesticide-Producing and Device-Producing Establishments* (hereafter referred to as “Report”) requires, *inter alia*, identification of the establishment; identification of the company; authorized signature and signature date; and specific pesticide production information. In addition, the “*Instructions for Completing EPA Form 3540-16 Pesticide Report for Pesticide-Producing and Device-Producing Establishments*” provides additional detail regarding information required on the Form.

24. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), defines a pesticide as “misbranded” if its label does not bear the registration number assigned under section 7 to each establishment in which it was produced.

25. 40 C.F.R. § 156.10(a) states, every pesticide product shall bear a label containing the information specified by FIFRA and the regulations in 40 C.F.R. Part 156.

26. 40 C.F.R. § 156.10(a)(v) states, the contents of a label must show clearly and prominently the producing establishment number as prescribed in paragraph (f) of 40 C.F.R. § 156.10.

27. 40 C.F.R. § 156.10(f) states, the producing establishment registration number preceded by the phrase “EPA Est.” of the final establishment at which the product was produced may appear in any suitable location on the label or immediate container. It must appear on the wrapper or outside container of the package if the EPA establishment registration number on the

immediate container cannot be clearly read through such wrapper or container.

28. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it is unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136(e).

29. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person in any State to distribute or sell to any person a pesticide which is adulterated or misbranded.

30. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty by EPA of not more than \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461 note, and its implementing regulations at 40 C.F.R. Part 19, increased this amount to \$18,750 for each offense occurring after November 2, 2015.

#### **Factual Allegations and Alleged Violations**

31. Respondent is a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

32. Respondent is a “producer” as that term is defined under Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

#### **Mid-Wood, Inc. - Tiffin**

33. At all times relevant to this Complaint, Respondent owned or operated a facility located at 799 State Route 365, Tiffin, Ohio (Mid-Wood Tiffin facility).

34. At all times relevant to this Complaint, the establishment was not registered under Section 7 of FIFRA, 7 U.S.C. § 136e.

35. During calendar year 2016, Respondent produced and distributed and/or sold, from the Mid-Wood Tiffin facility, a quantity of “Roundup PowerMax,” EPA Registration Number (EPA Reg. No.) 524-549 and “Acuron,” EPA Reg. No. 100-1466

36. Respondent violated Section 7(a) of FIFRA, 7 U.S.C. § 136e(a) and 40 C.F.R. § 167.20(a) by producing pesticides at the unregistered establishment identified in Paragraph 33.

37. Respondent’s production of two pesticides at an unregistered establishment constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

38. Respondent distributed or sold “Roundup PowerMax,” EPA Reg. No. 524-549 and “Acuron,” EPA Reg. No. 100-1466, during calendar year 2016, with a label or labeling that did not bear the registration number assigned under Section 7 to each establishment in which it was produced.

39. Respondent violated Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), by distributing or selling pesticide products with labels or labeling that did not bear the registration number assigned under Section 7 to each establishment in which it was produced.

40. Respondent’s distribution or sale of two pesticides that are misbranded constitutes unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

**Mid-Wood, Inc. – Tontogany, Ohio**

41. At all times relevant to this Complaint, Respondent owned or operated a facility located at 18675 Wall Street, Tontogany, Ohio (Mid-Wood Tontogany facility).

42. At all times relevant to this Complaint, the Mid-Wood Tontogany facility, identified above in Paragraph 41, was registered as an active EPA Pesticide-Producing Establishment, identified by EPA Establishment Number (EPA Est. No.) 064961-OH-003.

43. Respondent’s annual report for calendar year 2016, submitted to EPA, on or about



February 24, 2017, failed to contain the EPA Est. No. 64961-OH-003, assigned to the Mid-Wood Tontogony facility, as required by 40 C.F.R. § 167.85(c).

44. Respondent's failure to comply with Section 7(c) of FIFRA and 40 C.F.R. § 167.85, constitutes a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

45. Respondent's violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), and Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a)

#### **Civil Penalty**

46. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$16,191. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

47. Within 30 days after the effective date of this CAFO, Respondent must pay a \$16,191.00 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
Post Office Box 979077  
St. Louis, Missouri 63197-9000

or for checks sent by express mail, send a certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077 U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

48. Respondent must send a notice of payment, that (1) states Respondent's name and the case docket number and (2) includes a copy of the cashier's or certified check, to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Abigail Wesley (LC-17J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard.  
Chicago, Illinois 60604

Robert H. Smith (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

49. This civil penalty is not deductible for federal tax purposes.

50. If Respondent does not pay timely the civil penalty, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). Respondent agrees that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

51. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15

handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

### **General Provisions**

52. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

53. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

54. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

55. This CAFO is a final order for purposes of EPA's FIFRA Enforcement Response Policy.

56. This CAFO constitutes a Final Order pursuant to Section 22.31 of the Consolidated Rules.

57. The terms of this CAFO shall apply to and be binding upon Respondent, its officers, directors, servants, employees, agents, successors and assigns.

58. Each person signing this CAFO certifies that he or she has the authority to sign this CAFO for the party whom he or she represents and to bind that party to its terms.

59. Each party agrees to bear its own costs and attorneys' fees in this action.

60. This CAFO constitutes the entire agreement between the parties.

61. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-

mail at the following valid e-mail addresses: smith.roberth@epa.gov (for Complainant) and emiller@mid-wood.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

62. The effective date of this CAFO shall be the day it is filed with the Regional Hearing Clerk as required by § 22.18(b)(3) of the Consolidated Rules.

**In the Matter of:  
Mid-Wood, Inc.**

**Mid-Wood, Inc., Respondent**

July 27, 2017  
Date

Edward K. Miller  
Edward K. Miller  
Vice President of Agronomy  
Mid-Wood, Inc.



**In the Matter of:  
Mid-Wood, Inc.**

**United States Environmental Protection Agency, Complainant**

Aug 11, 2013  
Date

Brigid Lavery  
Brigid Lavery  
Acting Director  
Land and Chemicals Division  
United States Environmental Protection Agency  
Region 5





**In the Matter of:**  
**Mid-Wood, Inc.**  
**Docket No. FIFRA-05-2017-0050**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

8/15/2017  
Date

Debra K. Lualaba  
for Ann Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5



In the matter of: Mid-Wood, Inc.  
Docket Number: **FIFRA-05-2017-0050**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing ***Consent Agreement and Final Order***, which was filed on, August 17, 2017 this day in the following manner to the addressees:

Copy by Email to  
Respondent:

Edward K. Miller  
emiller@mid-wood.com

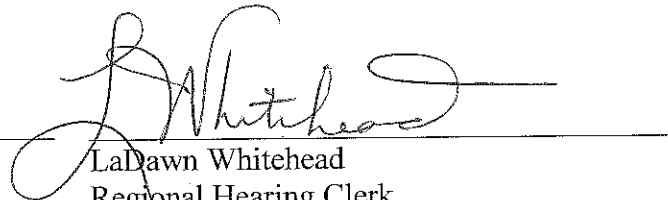
Copy by e-mail to  
Attorney for Complainant:

Robert H. Smith  
smith.roberth@epa.gov

Copy by e-mail to  
Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated: August 17, 2017



LaDawn Whitehead

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5

