IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.
	)	
MIDWEST CAN COMPANY, LLC,	)	Judge
	)	
Defendant.	)	

CONSENT DECREE

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WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint in this action, concurrently with this Consent Decree, alleging that Defendant, Midwest Can Company, LLC, violated Section 111 of the Clean Air Act ("Act"), 42 U.S.C. § 7411(e);

WHEREAS, the Complaint against Defendant alleges that Defendant violated environmental regulations pertaining to portable fuel containers ("PFCs"), located at 40 C.F.R. Part 59, Subpart F ("Subpart F"), by failing to comply with certain Subpart F requirements, including failing to provide complete information in applications for certificates of conformity and selling PFCs that did not meet certain Subpart F requirements;

WHEREAS, Defendant sent a compliance assurance plan to EPA documenting its processes and procedures for complying with applicable environmental requirements;

WHEREAS, Defendant denies the allegations in the Complaint and does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint; and whereas Defendant reserves all defenses and all rights and remedies, legal and equitable, available to it in any action by a non-party pertaining to the Act, or any other federal, state, or local statute, rule, or regulation;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b), (c) and 1395(a), because Defendant is located in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section(s) 183(e)(6) and 111(e) of the Act.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership of the PFC Business, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least fifteen (15) Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with written notice that the proposed transferee is aware of the requirements of this Decree, to EPA, and DOJ and the United States Attorney for the Northern District of Illinois, in accordance with Section XIII (Notices). Any attempt to transfer ownership of the PFC Business without complying with this Paragraph constitutes a violation of this Decree.

5. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

"Complaint" means the complaint filed by the United States in this action;

"Consent Decree" or "Decree" means this Decree as signed and entered by the court as final judgment pursuant to Section XXI;

"Date of Lodging" means the date this Consent Decree is filed for lodging with the Court.

"Day" means a calendar day unless expressly stated to be a business day. In computing any period of time for a deadline under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period runs until the close of business of the next business day;

"Defendant" means Midwest Can Company, LLC, a Delaware LLC;

"DOJ" means the United States Department of Justice and any of its successor departments or agencies;

"EPA" means the United States Environmental Protection Agency and any of its successor departments or agencies;

"Effective Date" means the definition provided in Section XIV.

"Paragraph" means a portion of this Decree identified by an Arabic numeral;

"Parties" means the United States and Defendant;

"PFC" means a portable fuel container as defined in 40 C.F.R. § 59.680.

"PFC Business" means Defendant's business operation of developing, certifying, manufacturing, and selling PFCs for entry into the U.S. stream of commerce.

"Section" means a portion of this Decree identified by a Roman numeral;

"State" means the State of Illinois.

"United States" means the United States of America, acting on behalf of EPA;

IV. CIVIL PENALTY

8. Within 30 Days after the Effective Date, Defendant shall pay the sum of $1,700,000.00 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

9. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the DOJ account, in accordance with instructions provided to Defendant by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the District of Illinois after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Defendant shall use to identify

all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Jerry Burris
President & CEO
Midwest Can Company, LLC
10800 W. Belmont Avenue
Franklin Park, IL 60131
Jerry.Burris@midwestcan.com

on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ and EPA in accordance with Section XIII (Notices).

10. At the time of payment, Defendant shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to DOJ via email or regular mail in accordance with Section XIII; and (iii) to EPA in accordance with Section XIII. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States of America v. Midwest Can Company, LLC* (N.D. Ill.), and shall reference the civil action number, CDCS Number and DOJ case number 90-5-2-1-12397.

11. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section IV (Civil Penalty) or Section VII (Stipulated Penalties) in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

12. To confirm the validity and accuracy of Defendant's emission testing program, Defendant shall conduct two PFC emission tests in accordance with the procedures in Paragraph 13. The first emission test shall be completed not later than twelve (12) months after the Effective Date. The second emission test must be completed no sooner than twelve (12) months

and no later than twenty-six (26) months following the submission of the test report required by Paragraph 16 for the first emission test.

13. Defendant shall comply with the following procedures for the emission tests required by Paragraph 12.

a. Defendant must conduct emission tests for each sized PFC covered under emission family GMDCPPFCS001. If at the time of either emission test required by Paragraph 12, the certification for GMDCPPFCS001 has expired, then Defendant shall conduct emission testing for the emission family that represents the largest volume of sales for the Defendant in the month during which the test commences.

b. For each of the two tests required by Paragraph 12, Defendant must test at least four PFCs of each size PFC within an emission family. One of each size category will be used as the reference container per 40 C.F.R. § 59.653(c). For example, if an emission family includes PFCs of multiple sizes (a 1.0-gallon, 2.0-gallon, 5.0-gallon, and 6.0-gallon), then Defendant must test three 1.0-gallon PFCs, three 2.0 gallon PFCs, three 5.0-gallon PFCs, and three 6.0-gallon PFCs, and use one additional PFC of each size category as the reference container.

c. The PFCs tested in the emissions test must be selected randomly as provided in Paragraph 14.

d. Emissions tests must be conducted at a test laboratory selected in accordance with Paragraph 15.

e. Emission tests must follow the test procedures set forth in 40 C.F.R. § 59.653, including the requirement that the applicable spout must be attached, except when specifically identified within the regulation. The spout may not be replaced or substituted during the emission test.

14. Selection of PFCs for Emissions Test. Defendant shall label one hundred (100) PFCs of each size category with numbers ranging from 1 to 100. The one hundred labeled PFCs must include PFCs manufactured on at least five different days. Defendant shall then use a random number generator to select four PFCs from each size category. Defendant shall maintain records evidencing the list of one hundred (100) PFCs for each size category and the four randomly-selected numbers of each size PFC to be tested during the emission test. Such records shall include photographs, videos, and notes demonstrating the process by which Defendant has selected the PFCs and ensured the same PFCs are used during the emission tests.

15. Selection of Test Laboratory. The emission tests required by Paragraph 12 shall be conducted at the following test laboratories, in accordance with the following procedures.

a. Defendant shall conduct the first emission test required under Paragraph 12 of this Decree at SGS Laboratories and the second emission test required under Paragraph 12 of this Decree at a different testing laboratory.

b. Defendant shall, no later than ninety (90) Days prior to the commencement of the second emission test required by Paragraph 12, submit to EPA a written statement providing the following information for at least two proposed test laboratories:

(1) the qualifications of the laboratory, including its name, affiliation, address, and experience in conducting emission testing for PFCs;

(2) a description of previous contracts or financial relationships of the proposed test laboratory and Defendant;

(3) a list of all PFC products that will be tested during the emission test required by Paragraph 12;

(4) a description of the test methods and equipment that will be used at the laboratory, and

(5) a template for the report required by Paragraph 16.

c. Within thirty (30) Days after EPA receives Defendant's proposal, EPA will notify Defendant in writing whether it approves or disapproves the test laboratories proposed by Defendant under subparagraph b. immediately above. If EPA does not respond within that time, then Defendant shall conduct the second emission test at the first of the two proposed laboratories. If EPA disapproves both proposed test laboratories, Defendant must propose at least one different test laboratory to EPA, along with the information required by the preceding paragraph, by no later than thirty (30) Days after Defendant receives EPA's determination disapproving the laboratories. If EPA disapproves one, but not both, of the test laboratories, Defendant may proceed with the test laboratory that has not been disapproved by EPA. EPA's decision to disapprove any of Defendant's proposed test laboratories is not subject to judicial review. If the Parties are unable to agree on a test laboratory after Defendant has proposed at least three different test laboratories, Defendant may invoke the Dispute Resolution process in Section IX of this Consent Decree to resolve the selection of the test laboratory.

d. In the event that Defendant wishes to use a testing laboratory other than the one listed in paragraph a. above, then no later than ninety (90) Days prior to the commencement of the emission test required by Paragraph 12, Defendant shall submit to EPA a written statement providing the information identified in (b)(1) through (5) above for the alternative test laboratory.

e. The communications between EPA and Defendant required by this

Paragraph may be exchanged via electronic mail (e-mail).

16. Test Report.

a. Within thirty (30) Days of completing each emission test required by Paragraph 12, Defendant shall submit to EPA a test report that includes the following:

(1) Detailed description of the test methods and equipment used, and a step-by-step description of how the procedures in 40 C.F.R. §§ 59.650, 59.652 and 59.653 were followed;

(2) Details related to conformance with the test specifications, including digital records of temperatures of all chambers where the PFCs were maintained with dates certified by the testing lab. Records must clearly identify that the test laboratory maintained compliance with the procedures;

(3) Certified statement and supporting documentation that each element of the 40 C.F.R. § 69.653 test procedure was satisfied for the emission test;

(4) Results from the spout actuation and inversion steps following the end of slosh testing and the preconditioning soak, as required by 40 C.F.R. § 59.653(a)(4) for each tested PFC;

(5) Results from the diurnal test run required by 40 C.F.R. § 69.653(d) for each tested PFC; and

(6) All lab notes and logbooks related to this test, generated by either the test laboratory or the Defendant.

b. The test report required by this paragraph shall be submitted to EPA in accordance with Section XIII (Notices) and also to EPA's Office of Transportation and Air Quality as follows:

Cleophas Jackson
GECC Center Director
2000 Traverwood Drive
Ann Arbor, MI 48105
734-214-4824

c. If any PFC fails any portion of the emission testing required under this Decree, Defendant shall take the following steps:

(1) Within fifteen (15) days of receiving notice of any test failure as referenced in this subparagraph c., Defendant shall conduct an analysis of the failure to determine its cause and make engineering, operational or other changes sufficient to correct the problem that gave rise to the failure.

(2) Within fifteen (15) days of making any changes referenced in the immediately preceding subparagraph, or, if no changes are made, then within fifteen (15) days of the analysis referenced in the preceding paragraph, Defendant shall submit a written report to the EPA providing its analysis and all changes made to correct the problem that gave rise to the failure.

(3) Defendant shall include a copy of any report prepared in accordance with this Paragraph to the EPA Office of Transportation and Air Quality upon submittal of its next application for a certificate of conformity under 40 C.F.R. Part 59, subpart F.

17. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section VIII (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VI. ADDITIONAL REPORTING REQUIREMENTS

18. In addition to the test reports required by Paragraph 16 to be submitted after the completion of the emissions tests required by Paragraph 12, Defendant shall also submit a Final Compliance Report to EPA and DOJ within 90 Days of submitting the second test report required by Paragraph 16(a), except as otherwise provided in this Paragraph, at the addresses set forth Section XIII (Notices). The Final Compliance Report shall describe with specificity and by reference to the applicable Consent Decree paragraph all activities undertaken to complete full satisfaction of the requirements of the Consent Decree. The report shall contain a statement that Defendant is in substantial and material compliance with all requirements of the Consent Decree. If a written report is required under Paragraph 16(c)(2) following the second emission test, then the Final Compliance Report shall be submitted 90 Days after submitting the written report required under Paragraph 16(c)(2).

19. Whenever any violation of this Consent Decree or any other event affecting Defendant's performance under this Decree may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA by email to as soon as possible, but no

later than 24 hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

20. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

21. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

22. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

23. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

24. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all

applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

25. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Defendant shall pay a stipulated penalty of $20,000 per Day for each Day that the payment is late.

26. Compliance Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Section V (Compliance Requirements):

Penalty Per Violation Per day	Period of Noncompliance
$1,000	1st through 14th Day
$5,000	15th through 30th Day
$15,000	31st Day and beyond

27. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each failure to submit, by the specified deadlines, any required reports required in Sections V and VI hereof:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th Day
$5,000	15th through 30th Day
$15,000	31st Day and beyond

28. Transfer of Ownership. If Defendant fails to: (a) provide a copy of this Consent Decree to any proposed transferee; (b) provide written notice to the United States at least 15 Days prior to any transfer of any portion of the PFC Business; or (c) provide to EPA a written notice that transferee is aware of the requirements of this Decree as required by Paragraph 4, Defendant shall pay a stipulated penalty of $20,000 per occurrence.

29. Except as provided in Paragraph 28, stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

30. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

31. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

32. Stipulated penalties shall continue to accrue as provided in Paragraph 29, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

33. Defendant shall pay stipulated penalties owing to the United States in the manner set forth in Paragraph 9 and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

34. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

35. The payment of penalties and interest, if any, shall not alter in any way Defendant's obligation to complete the performance of the requirements of this Consent Decree.

36. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendant's violation of this Decree or applicable law, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

VIII. FORCE MAJEURE

37. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this

Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

38. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice by telephone to EPA within 72 hours of when Defendant first knew that the event might cause a delay. Within fourteen (14) Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

39. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

40. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

41. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 37 and 38. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

42. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute

under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

43. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends DOJ and EPA a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall last for 30 Days after the date of the Notice of Dispute is received by DOJ and EPA, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

44. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending DOJ and EPA a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

45. The United States will send Defendant its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position is binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

46. Judicial Dispute Resolution. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

47. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

48. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 44 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 44, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

49. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 32. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

50. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. obtain documentary evidence, including photographs and similar data; and

d. assess Defendant's compliance with this Consent Decree.

51. Upon request, Defendant shall provide EPA or its authorized representatives splits of any samples taken by Defendant. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

52. Until five (5) years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in

electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

53. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, Defendant may make no claim of privilege or protection regarding: (1) any testing data that Defendant is required to create or generate pursuant to this Consent Decree; or (2) the final version of any report that Defendant is required to create or generate pursuant to this Consent Decree.

54. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to

any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

55. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

56. This Consent Decree resolves:

(1) Civil claims of the United States through the Date of Lodging for the violations alleged in the Complaint filed in this action; and

(2) Civil Clean Air Act claims arising under 40 CFR §§ 59.607(a), 59.622(b), and 59.623 (failure to provide true and complete information in a certificate of conformity application); and 59.603, 59.622(d) (failure to use good engineering judgment) through the Date of Lodging with respect to EPA emission family GMDCPPFCS001.

57. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 56. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's PFC Business, whether related to the violations addressed in this Consent Decree or otherwise.

58. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 56.

59. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7401, et seq., or with any other provisions of federal, State, or local laws, regulations, or permits.

60. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

61. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XII. COSTS

62. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIII. NOTICES

63. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent by mail or email (with a preference for email), addressed as follows:

As to DOJ by email (preferred):	eescdcopy.enrd@usdoj.gov Re: DJ # 90-5-2-1-12397; and Nigel.cooney@usdoj.gov Re: USAO No. 2019V02052
As to DOJ by mail:	EES Case Management Unit Environment and Natural Resources Division U.S. Department of Justice P.O. Box 7611 Washington, D.C. 20044-7611 Re: DJ # 90-5-2-1-12397; and United States Attorney's Office Northern District of Illinois 219 South Dearborn St., 5th Floor Chicago, Illinois 60604 Re: USAO No. 2019V02052
As to EPA by email:	burke.shaun@epa.gov
As to EPA by mail:	Director Air Enforcement Division U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, N.W. Mail Code 2242A Washington, D.C. 20460

As to Defendant by email:	rappoldb@gtlaw.com; Jerry.Burris@midwestcan.com
As to Defendant by mail:	Bernadette Rappold, Esq. GREENBERG TRAURIG LLP 2101 L Street N.W. Washington, DC 20037 Jerry W. Burris President & CEO Midwest Can Company, LLC 10800 W. Belmont Avenue Franklin Park, IL 60131

64. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

65. Notices submitted pursuant to this Section shall be deemed submitted upon mailing or transmission by email, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

66. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that Defendant hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XV. RETENTION OF JURISDICTION

67. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders

modifying this Decree, pursuant to Sections IX and XVI, or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

68. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

69. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 48, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

70. After Defendant has completed the requirements of Section V (Compliance Requirements) and Section VI (Reporting Requirements) and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

71. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be

terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

72. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section IX. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until 45 Days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

73. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

74. Each undersigned representative of Defendant and the United States Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

75. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any

applicable Local Rules of this Court including, but not limited to, service of a summons. Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree, in which case, Defendant's answer would be due 30 Days following the Court's order.

XX. INTEGRATION

76. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXI. FINAL JUDGMENT

77. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

XXII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

78. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of those obligations required by Sections V and VI of this Consent Decree, is restitution or required to come into compliance with law.

Dated and entered this __ day of __________, 20__

____
UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

JONATHAN D. BRIGHTBILL
Principal Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

JOHN R. LAUSCH, Jr.
United States Attorney

Jan. 19, 2021
Date

By: Nigel B. Cooney

NIGEL B. COONEY
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-1996
nigel.cooney@usdoj.gov

FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY:

SUSAN BODINE

Digitally signed by SUSAN BODINE
Date: 2021.01.18 10:04:20 -05'00'

____
Date

SUSAN PARKER BODINE
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

OF COUNSEL:
Providence Spina
Attorney-Advisor
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 2242A
Washington, D.C. 20460

FOR MIDWEST CAN COMPANY, LLC:

1/13/2021
Date

JERRY BURRIS
President & CEO
Midwest Can Company, LLC
10800 W. Belmont Avenue
Franklin Park, Illinois 60131