



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2008 JUL -3 AM 11:42

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

DOCKET NO.: FIFRA-08-2008-0013

IN THE MATTER OF:	)	
	)	
<b>DEUEL COUNTY CENEX,</b>	)	
375 Main Ave./ P.O. Box 430	)	
Toronto, SD 57286	)	<b>FINAL ORDER</b>
	)	
EPA Est. #58807-SD-001,	)	
	)	
<b>RESPONDENT</b>	)	

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 3<sup>rd</sup> DAY OF July, 2008.

  
 \_\_\_\_\_  
 Elyana R. Sutin  
 Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2008 JUL -3 AM 11:42

Docket No. FIFRA\_08-2008-0013

In the Matter of: )  
)  
Deuel County Cenex. ) COMBINED COMPLAINT AND  
375 Main Ave./ P.O. Box 430 ) CONSENT AGREEMENT  
Toronto, SD 57286 )  
EPA Est. # 58807-SD-001, )  
)  
Respondent. )

Complainant, United States Environmental Protection Agency ("EPA"), Region 8, and Respondent, Deuel County Cenex, by their undersigned representatives, hereby consent and agree as follows:

**A. JURISDICTION**

1. This Combined Complaint and Consent Agreement ("Consent Agreement") is issued to Deuel County Cenex ("Respondent") for a violation of FIFRA § 12(a)(2)(L), 7 U.S.C. § 136j(a)(2)(L).
2. The undersigned EPA officials issue this Consent Agreement under the authority vested in the Administrator of EPA by section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).
3. This section authorizes EPA to bring an action under section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for civil administrative penalties against Respondent who has violated a requirement or prohibition of FIFRA.
4. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Consent Agreement is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

**B. ALLEGED VIOLATION**

1. Respondent is a "person" within the meaning of section 2(s) of FIFRA, 7 U.S.C. § 136(s), and therefore subject to regulation.
2. Respondent is a "producer" as defined by section 2(w) of FIFRA, 7 U.S.C. § 136(w).

3. FIFRA § 7(c)(1), 7 U.S.C. § 136e(c)(1), requires all registered pesticide producers to file an annual report "...of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides...." Further, regulations promulgated pursuant to FIFRA section 7 require such annual report to be filed on or before March 1 for the preceding calendar year. 40 C.F.R. § 167.85(d).
4. EPA reviewed its records and determined that Respondent did not submit the "Pesticide Report for Pesticide-Producing and Device-Producing Establishments" pursuant to section 7 FIFRA, 7 U.S.C. § 136(e) for calendar year 2007, by March 1, 2008. Respondent is therefore in violation of section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).
5. Upon consideration of the nature, circumstances, extent and gravity of the violation and Respondent's ability to continue in business, the size of Respondent's business, prior history of compliance, degree of culpability, lack of economic benefit resulting from the violations, its good faith and immediate effort to comply once informed of the violations, other matters as justice may require, and upon consideration of the entire record herein, EPA offers this Consent Agreement under its expedited enforcement procedures in order to settle the violation based upon the findings noted above, for the total civil penalty amount of **\$1,000**.

### **C. CIVIL PENALTY**

1. The Respondent signing below admits that EPA has jurisdiction over the subject matter alleged in this Consent Agreement. neither admits nor denies the specific factual allegations contained in this Consent Agreement. and consents to the assessment of the penalty as stated in section B.5., above.
2. Respondent consents and agrees to pay a civil penalty in the amount of ONE THOUSAND dollars (\$1,000.00) in the manner described below in this paragraph:
  - a. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer that adopts this Consent Agreement. 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. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case (**Deuel County Cenex; Docket No. FIFRA-08-2008-0013**), for the above-described amount, payable to "Treasurer, United States of America." to:

(via REGULAR MAIL):

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

(via WIRE TRANSFERS):

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 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"

(via OVERNIGHT MAIL):

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Ms. Natalie Pearson (Tel.: 314-418-  
4087)

(via ACH (also known as REX or remittance express)):

Automated Clearinghouse (ACH) for receiving US currency:

PNC Bank  
ABA: 051036706  
Account Number: 310006  
CTX Format Transaction Code 22 - checking  
Environmental Protection Agency  
808 17<sup>th</sup> Street NW  
Washington DC 20074  
Contact: Jesse White, 301-887-6548

(via 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](http://WWW.PAY.GOV).

Enter "sfo 1.1" in the search field. Open form and complete required fields.

A copy of the check shall be sent simultaneously to:

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

- c. In the event payment is not received by the specified due date, interest 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).
- d. In addition, 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.

**D. TERMS AND CONDITIONS**

1. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in this Consent Agreement.
2. 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.

3. Nothing in this Consent Agreement shall be construed as a waiver by EPA 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.
4. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the party he/she represents to the terms and conditions of this Consent Agreement.
5. Each party shall bear its own costs and attorneys fees in connection with this matter.
6. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this Consent Agreement pursuant to 40 C.F.R. § 22.15. By signing and returning of this Consent Agreement to EPA, the Respondent waives the opportunity for a hearing pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.
7. 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 violation alleged in the Consent Agreement
8. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
9. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.
10. 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.

In the Matter of: Deuel County Cenex (Toronto, SD)  
Docket No: FIFRA-08-2008-0013  
(Continued)

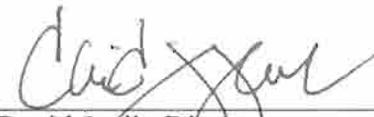
UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8, Office of Enforcement,  
Compliance and Environmental Justice,

Complainant.

Date: \_\_\_\_\_

By:   
Mark Chalfant, Director  
Technical Enforcement Program

Date: JUL - 1 2008

By:   
David Janik, Director  
Legal Enforcement Program

Date: 6/24/2008

By:   
Eduardo Quintana, Senior Attorney  
Legal Enforcement Program

In the Matter of: Deuel County Cenex (Toronto, SD)  
Docket No: FIFRA\_08-2008-0013  
(Continued)

Deuel County Cenex,  
Respondent.

By:

Name, Title:

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT/FINAL ORDER** in the matter of **DEUEL COUNTY CENEX, DOCKET NO.: FIFRA-08-2008-0013** was filed with the Regional Hearing Clerk on July 3, 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 was placed in the United States mail certified/return receipt requested on July 3, 2008, to:

Harry Mewherter, General Manager  
Deuel County Cenex,  
375 Main Ave./ P.O. Box 430  
Toronto, SD 57286

E-mailed to:

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

July 3, 2008



Tina Artemis  
Paralegal/Regional Hearing Clerk

