



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET  
DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2012 SEP 18 PM 12:43

FILED  
EPA REGION 8  
SEP 18 2012

DOCKET NO.: FIFRA-08-2012-0014

IN THE MATTER OF:

KENNECOTT UTAH COPPER LLC.

12000 West 2100 South  
Magna, UT 84044

Est. No. 57874-UT-001

Respondent

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FINAL ORDER

Pursuant to 40 C.F.R. §22.18 and 22.13(b), of EPA's Consolidated Rules of Practice, the Combined Complaint and 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.

The Parties are hereby **ORDERED** to comply with all of the terms of this **Order**, effective immediately upon receipt by Parties of this **Order**.

SO ORDERED THIS 18<sup>th</sup> Day of September, 2012

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2012 SEP 18 PM 12:43

Docket No. FIFRA-08-2012-0014

REC'D ACTION VICE  
SEP 21 4 04 PM 2012

In the Matter of: )  
)  
Kennecott Utah Copper LLC )  
12000 West 2100 South )  
Magna, UT 84044 )  
Est. No. 57874-UT-001, )  
)  
Respondent. )

COMBINED COMPLAINT AND  
CONSENT AGREEMENT

Complainant, the U.S. Environmental Protection Agency (EPA), Region 8, and Respondent, Kennecott Utah Copper LLC, by their undersigned representatives, hereby consent and agree as follows:

**A. JURISDICTION**

1. This Combined Complaint and Consent Agreement (consent agreement) is issued to Kennecott Utah Copper LLC, (Respondent) for an alleged violation of section 12(a)(2)(L) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 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 the EPA by section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).
3. This section authorizes the 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 the 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 section 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. The EPA reviewed its records and determined that Respondent did not submit the "Pesticide Report[s] for Pesticide-Producing and Device-Producing Establishments" pursuant to section 7 of FIFRA, 7 U.S.C. § 136e for calendar year 2010, by March 1, 2011; and for calendar year 2011, by March 1, 2012. Respondent is therefore in violation of section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

5. On or about May 1, 2009, Respondent changed its name and/or ownership from Kennecott Utah Copper Corporation to Kennecott Utah Copper LLC. As of the date of this filing, Respondent has not reported to the EPA its change in name and/or ownership pursuant to section 7 of FIFRA, 7 U.S.C. § 136e, and 40 C.F.R. § 167.20(d). Respondent is therefore in violation of section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

6. Upon consideration of the nature, circumstances, extent and gravity of the violations 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, the EPA offers this consent agreement under its expedited enforcement procedures in order to settle the violations based upon the findings noted above, for the total civil penalty amount of **\$2,640**.

### **C. CIVIL PENALTY**

1. The Respondent signing below admits that the 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.6., above.

2. Respondent consents and agrees to pay a civil penalty in the amount of two-thousand, six-hundred and forty dollars (**\$2,640.00**) in the manner described below:

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 U.S. 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 (**Kennecott Utah Copper LLC; Docket No. FIFRA-08-2012-0014**), for the above-described amount, payable to "Treasurer, United States of America" to:

(via REGULAR and OVERNIGHT MAIL) can be used for USPS, UPS, or FED EX:

US Bank  
Government Lockbox 979077  
US EPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

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

(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 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 31st 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 121st 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 the complaint, or this consent agreement.
2. This consent agreement, upon incorporation into a final order, applies to and is binding upon the 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 the 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 the 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 resolution of the United States' claim for civil penalties for the specific violations alleged in the complaint.
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.
11. Respondent agrees to submit to the EPA a report reflecting Respondent's current name and/or ownership as required by section 7 of FIFRA, 7 U.S.C. § 136e, and 40 C.F.R. § 167.20(d), within 30 calendar days from the date written on the Final Order.

**In the Matter of: Kennecott Utah Copper LLC (Magna, UT)**  
**Docket No: FIFRA-08-2012-0014**  
**(Continued)**

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

**Complainant**

SEP 17 2012

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

By: \_\_\_\_\_



Darcy O'Connor, Acting Director,  
Technical Enforcement Program  
UIC-FIFRA-OPA  
Office of Enforcement, Compliance and  
Environmental Justice (8-ENF-UFO)  
U.S. Environmental Protection Agency,  
Region 8

SEP 17 2012

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

By: \_\_\_\_\_



James H. Eppers, Supervisory Attorney,  
Legal Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice  
U.S. Environmental Protection Agency,  
Region VIII

In the Matter of: Kennecott Utah Copper LLC (Magna, UT)  
Docket No: FIFRA-08-2012-0014  
(Continued)

Kennecott Utah Copper LLC,  
Respondent

Date: 9-10-12

By: Lynn Carday Yates  
Name, Title: Lynn Carday Yates, VP Legal



## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT, CONSENT AGREEMENT AND FINAL ORDER** in the matter of **KENNECOTT UTAH COPPER LLC.; DOCKET NO.: FIFRA-08-2012-0014**, was filed with the Regional Hearing Clerk on September 18, 2012.


Further, the undersigned certifies that a true and correct copy of the document was delivered to Eduardo Quintana, 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 on September 18, 2012, to:

Lynn Cardey-Yates, VP Legal  
12000 West 2100 South  
Magna, UT 84044

And emailed to:

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

September 18, 2012

  
Tina Artemis  
Paralegal/Regional Hearing Clerk