

**Penalty Calculation Narrative**  
**Kevin Larsen**

1. To ensure uniform and consistent enforcement response and application of the statutory penalty criteria in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA developed the July 2, 1990 Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (1990 Policy).

2. Kevin Larsen is covered under FIFRA section 14(a) (1), i.e., a commercial applicator, dealer, retailer or other distributor or others not included in FIFRA section 14(a)(2) [e.g., private applicators] since he was not a certified applicator in December 2004 when he applied the restricted use pesticide Furadan 4F (EPA Reg. No. 279-2876).

3. According to the policies identified in paragraph 1, the appropriate enforcement response for a violation of FIFRA section 12(a)(2)(F), use of a restricted use pesticide by an uncertified person, and for a violation of section 12(a)(2)(G), use of a registered pesticide in a manner inconsistent with its labeling, is a civil penalty.

4. The Montana Department of Agriculture documented that Kevin Larsen applied Furadan 4F (EPA Reg. No. 279-2876) to grain in December 2004 to kill rodents and other pests. At the time of this application, Mr. Larsen was not a certified applicator.

5. Furadan 4F (EPA Reg. No. 279-2876) is a restricted use pesticide (RUP) registered for use as an insecticide/nematicide. Under the heading "**Environmental Hazards**" on the pesticide label, is the warning that the product is toxic to fish, birds, and other wildlife. The label also states "use of this product for baiting or in bait stations is strictly prohibited and can result in criminal and civil penalties under federal law".

6. FIFRA section 14(a)(4) requires EPA to consider the appropriateness of a civil penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation.

7. Following the guidance in the 1990 Policy, EPA calculated a proposed civil penalty using the following process. First, the gravity of the offense is identified using Appendix A of the 1990 Policy which identifies violations of both FIFRA section 12(a)(2)(F) and 12(a)(2)(G) as gravity level 2.

8. Second, according to the 1990 Policy, EPA determined the size of the business category for the respondent. The penalty for Kevin Larsen has been calculated using the Category III size of business (gross revenues less than \$ 300,000) with the understanding that the proposed penalty would be recalculated if information becomes available that shows this assumption to be incorrect.

9. Third, EPA used the above gravity and size of business components and the Civil Penalty Matrix for FIFRA section 14(a) (1) violations on page 19 of the 1990 Policy to determine

the dollar amount of the proposed penalty. Violations with level 2 gravity and in Business Category III are assessed a penalty of \$3,900 for each violation (The penalty amounts shown in the 1990 Civil Penalty Matrix have been increased by the Debt Collection Improvement Act of 1996 with the most recent adjustment becoming effective March 15, 2004).

10. The 1990 Policy then directs that the actual circumstances of the violation be considered using gravity adjustment criteria listed in Appendix B of that document. The penalty amounts determined from the matrix can be adjusted either upward or downward depending on the specifics of the case known to EPA at the time of the penalty calculation. The following gravity adjustment values were used to evaluate Kevin Larsen's violations of FIFRA section 12(a) (2) (F) and 12(a)(2)(G):


- (a) The pesticide applied by Kevin Larsen was assigned a value of 2 for toxicity using the criteria in the 1990 Policy since Furadan 4F (EPA Reg. No. 279-2876) is a Restricted Use Pesticide.
- (b) The human harm adjustment was assigned a value of 3 to reflect an unknown harm to human health. Although no human harm was reported, the manner in which the pesticide was misapplied presented a potential danger to humans.
- (c) The environmental harm adjustment was assigned a value of 5 since there was a loss of wildlife.
- (d) Region 8 has no record of previous FIFRA violations in which a Civil Complaint was issued to Kevin Larsen during the past 5 years so compliance history was assigned a value of 0.
- (e) These violations by Kevin Larsen were considered by EPA to have been the result of negligence since the label clearly states that the pesticide is to be applied only by a certified applicator or personnel under their direct supervision and that the pesticide should not be used for baiting. Culpability was, therefore, assigned a value of 2.

The above factors resulted in a total gravity adjustment value of 12.

11. Using a Gravity Adjustment Value of 12, Table 3 in Appendix C of the 1990 Policy sets the penalty adjustment at 0% resulting in a penalty of \$3,900 for each count or a total penalty of \$7,800.

12. Finally, EPA attempts to take into consideration what effect the total calculated penalty of \$ 7,800 would have on Kevin Larsen's ability to continue in business and ability to pay the proposed penalty. However, based on the limited financial data available, no adjustment to the proposed penalty was considered warranted at this time. Adjustments of the proposed penalty can be made at a later date should information warranting such a change become available.

13. In summary, EPA arrived at a penalty of \$ 7,800 for Kevin Larsen for one count of violating FIFRA section 12(a)(2)(F), application of the restricted use pesticide, Furadan 4F, by an uncertified person, and one count of violating FIFRA section 12(a)(2)(G), use of a registered pesticide in a manner inconsistent with its labeling (use of the insecticide Furadan 4F as a rodenticide).

  
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**RESPONDENT:**

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<b>Appendix A</b>	Counts 1	Counts 2	
1. Statutory Violation	12(a)(2)(F)	12(a)(2)(G)	
2. FTTS Code	2FA	2GA	
3. Violation Level	2	2	
<b>Table 2</b>			
4. Violator Category §14(a)(1) or §14(a)(2)	14(a)(1)	14(a)(1)	
5. Size of Business Category	III	III	
6. Base Penalty (Table 1)	\$3,900	\$3,900	
<b>Appendix B</b>			
7. Gravity Adjustments			
a. Pesticide Toxicity	2	2	
b. Human Harm	3	3	
c. Environmental Harm	5	5	
d. Compliance History	0	0	
e. Culpability	2	2	
Total Gravity (Add 7a- 7e)	12	12	
<b>Table 3</b>			
g. Percent Adjustment	0%	0%	
h. Dollar Adjustment	0	0	
6. Final Penalty (6 - 7h)	\$3,900	\$3,900	
<b>9. Total Penalty</b>	\$7,800		