

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2020-0032
)	
Form-A-Feed, Inc.)	Proceeding to Assess a Civil Penalty
Stewart, Minnesota)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
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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, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.

3. The Respondent is Form-A-Feed, Inc., a corporation incorporated in the State of Wisconsin and doing business in the State of Minnesota and Wisconsin.

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 “producer” as a person who manufactures, prepares, compounds, propagates, or processes any pesticide or active ingredient used in producing a pesticide.

12. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), defines the term “establishment” as any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.

13. 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.

14. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c) 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. In addition, § 136e(c) provides that the required information shall be kept current and submitted to the Administrator annually, as required by regulations prescribed by the Administrator.

15. 40 C.F.R. § 167.85(a) and (b) adds requirements for reporting: devices produced at registered pesticide-producing establishments; the name and address of the establishment; and an estimate of the amount of pesticide product to be produced during the current year.

16. 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.

17. 40 C.F.R. § 167.85(d) requires the pesticide-production reports to be filed annually on or before March 1, even if the producer has not produced any pesticidal products for that reporting year.

18. 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).

19. The Administrator of EPA may assess a civil penalty against any distributor who violates any provision of FIFRA of up to \$20,288 for each offense that occurred after November

2, 2015 pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

21. The Respondent is a “producer” as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

22. At all times relevant to the CAFO, Form-A-Feed, Inc., owned or operated a place of business located at 740 Bowman Street, Stewart, Minnesota 55385.

23. At all times relevant to this CAFO, Respondent’s facility, identified in paragraph 22, above, was an EPA registered establishment, where pesticides were produced, identified by EPA Establishment Number (EPA Est. No.) 62899-MN-1.

24. At all times relevant to the CAFO, Form-A-Feed, Inc. owned or operated a place of business located at 156 High Street, New Richmond, Wisconsin 54017.

25. At all times relevant to this CAFO, Respondent’s facility, identified in paragraph 24, above, was an EPA registered establishment, where pesticides were produced, identified by EPA Est. No. 32240-WI-1.

26. Respondent’s annual report for calendar year 2018, for EPA Est. No. 62899-MN-1, located in Stewart, Minnesota, has not been submitted to EPA, as required by 40 C.F.R § 167.85(d) and Section 7(c) of FIFRA.

27. Respondent’s annual report for calendar year 2018, for EPA Est. No. 32240-WI-1, located in New Richmond, Wisconsin, has not been submitted to EPA, as required by 40 C.F.R § 167.85(d) and Section 7(c) of FIFRA.

28. 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).

29. Respondent's failure to submit an annual report for calendar year 2018 for two EPA registered establishments (EPA Est. Nos. 62899-MN-1 and 32240-WI-1), constitutes two separate unlawful acts pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

Civil Penalty

30. 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 \$13,600.00. 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 Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements, dated May 2010.

31. Within 30 days after the effective date of this CAFO, Respondent must pay a \$13,600.00 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

For checks sent by express mail by sending a cashier's or 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

The check must note on its face the name "Form-A-Feed, Inc.," and the docket number of this

CAFO.

32. Respondent must send a notice of payment that states Respondent's name and the case docket number 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
whitehead.ladawn@epa.gov

Abigail Wesley (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604
wesley.abigail@epa.gov

Jeffrey A. Cahn (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
Cahn.Jeff@EPA.Gov

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

34. 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). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

35. 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

36. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Cahn.Jeff@EPA.Gov (for Complainant), and jarvis@formafeed.com (for Respondent).

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

38. 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.

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

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

41. The terms of this CAFO bind Respondent, its successors and assigns.

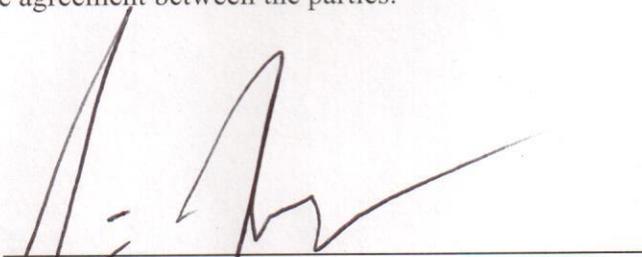
42. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

43. Each party agrees to bear its own costs and attorney fees, in this action.

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

Form-A-Feed, Inc., Respondent

April 3, 2020
Date


Jarvis Haugeberg
Vice President Operations
Form-A-Feed, Inc.

United States Environmental Protection Agency, Complainant

04/14/2020

Date

**MICHAEL
HARRIS**

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MICHAEL HARRIS
Date: 2020.04.14
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Michael D. Harris
Director
Enforcement and Compliance Assurance Division

In the Matter of:
Form-A-Feed, Inc.
Docket No. FIFRA-05-2020-0032

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.

04/15/2020

Date

ANN COYLE
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COYLE
Date: 2020.04.15
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Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5