



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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

VIA CERTIFIED MAIL
Article No. 7005 0390 0000 4845 4982

March 29, 2007

Ref:8Enf-L

Kevin Larsen
Larsen Farms
391A Rock Springs Road
P.O. Box 76
Reserve, Montana 59258

Dear Mr. Larsen:

Enclosed is an administrative complaint, seeking penalties for violations of the Federal Insecticide Fungicide and Rodenticide Act, ("FIFRA"), 7 U.S.C. §§ 136 to 136y. In March of 2005, inspectors from the Montana Department of Fish, Wildlife and Parks; the Montana Department of Agriculture; and the Fort Peck Tribes Office of Environmental Protection noted that Furadan, a restricted use pesticide, was used in a manner inconsistent with its labeling. After the inspection, it was determined that you were did not have certification to apply a restricted use pesticide. This Complaint has been filed because of those violations.

If you or a representative would like to discuss the complaint or any of the other documents enclosed in this letter, please call me at 303-312-6924.

Sincerely,

A handwritten signature in black ink, appearing to read "Eduardo Quintana".

Eduardo Quintana,
Senior Enforcement Attorney

Enclosures:

1. Complaint
2. CROP
3. FIFRA ERP
4. SBREFA Information Sheet

cc. Tim Osag, 8Enf-L



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2007 MAR 29 PM 2:50

Docket No. **FIFRA-08-2007-0002**

EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
Kevin Larsen)
Larsen Farms)
391A Rock Springs Road)
P.O. Box 76)
Reserve, Montana 59258,)
)
Respondent)

**PENALTY COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

INTRODUCTION (JURISDICTION)

1. This civil administrative enforcement action is authorized by Congress in section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. section 136/(a). The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 C.F.R. part 22, a copy of which is enclosed.

2. The undersigned EPA officials have been properly delegated the authority to issue this action.

3. EPA alleges that Respondent has violated FIFRA by using a restricted use pesticide in a manner inconsistent with its label and by applying a restricted use pesticide at a time when Respondent was not certified to use that type of pesticide. EPA proposes the assessment of a civil penalty, as more fully explained below. FIFRA authorizes the assessment of a civil penalty for violations of the Act. 7 U.S.C. section 136/(a).

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge (ALJ) to disagree with (1) any fact stated (alleged) by EPA in the complaint, or (2) the appropriateness of the proposed penalty.

5. To disagree with the complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wyncoop Street; Denver, Colorado 80202-1129) within 30 days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any

defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in your answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the specific penalty (\$7,800) proposed in the complaint. Such payment need not contain any response to, or admission of, the allegations in the complaint. Such payment constitutes a waiver of respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process. This payment shall be made by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," to:

U. S. EPA, Region 8
(Regional Hearing Clerk)
Mellon Bank
P. O. Box 360859M
Pittsburgh, PA 15251

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Eduardo Quintana at 1-800-227-8917; extension 6924, 303-312-6924, or the address below. ***Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.***

ALLEGATIONS

At all times pertinent to the complaint, the following general allegations apply:

8. Respondent, Kevin Larsen owns and/or operates the Larsen Farm (Farm) located at 391A Rock Springs Road, Reserve, Montana.

9. Respondent applied Furadan 4F, a restricted use pesticide (RUP or RUPs) near a grain bin at Respondent's Farm. Complainant believes that the date of the application was on or about December 17, 2004.

10. Furadan 4F (Furadan) is a RUP, EPA registration number EPA Reg. No. 279-2876. The active ingredient of Furadan is Carbofuran.

11. On March 1, 2005, the Montana Department of Fish, Wildlife and Parks (MFW&P) obtained a search warrant to collect evidence at Respondent's Farm.

12. On March 1, 2005, Derek Fagone of MFW&P executed the search warrant. During the inspection at Respondent's Farm, Mr. Fagone, Steve Jones, and Mike Herman all employees of the MFW&P, Shelly Mills of the Montana Department of Agriculture (MDA), Shelley Kirn and Wilfred Lambert both employees of the Fort Peck Tribes, Office of Environmental Protection (OEP), were present.

13. During the March 1, 2005 inspection, one dead pheasant, four dead raccoons, one dead domestic cat, and samples of soil, grain, and soybean mixture were collected. An empty container of Furadan was also collected.

14. The contents of the animals were analyzed at the request of the MDA and found to contain Carbofuran at various levels.

15. A grain sample taken near the Farm's grain storage bin was also found to contain Carbofuran.

16. Respondent is a "person" within the meaning of section 2(s) of FIFRA, and subject to the requirements of the statute and/or regulations.

17. Respondent was not a certified applicator at time of the application, therefore, Respondent is a "commercial applicator" within the meaning of sections 2(e)(3) and 14(a)(1) of FIFRA.

COUNT 1

18. FIFRA section 12(a)(2)(G) prohibits the use of registered pesticides in a manner inconsistent with its labeling.

19. The Furadan is a registered as an insecticide/nematicide.

20. The Furadan label states in bold caps "USE OF THIS PRODUCT FOR BAITING OF IN BAIT STATIONS IS STRICTLY PROHIBITED AND CAN RESULT IN CRIMINAL AND CIVIL PENALTIES UNDER FEDERAL LAW."

21. On or about December 17, 2004, Respondent poured the Furadan around a grain bin. That area around the grain bin was covered with grain, therefore pouring of the pesticide resulted in baiting the grain with Furadan.

22. Since Respondent poured Furadan in manner that resulted in the baiting of the grain outside of the grain bin, Respondent's application of Furadan constitutes a use of a registered pesticide in a manner inconsistent with its labeling, a violation of FIFRA section 12(a)(2)(G).

COUNT 2

23. FIFRA section 12(a)(2)(F) prohibits the use of RUPs by uncertified persons.

24. Furadan is a RUP.

25. At the time of the Furadan application Respondent was not a certified applicator within the meaning of FIFRA section 2(e)(1), and therefore, not certified to apply RUPs.

26. Since Respondent applied Furadan, a RUP, and was not certified at the time of the application, Respondent's Furadan application constitutes one violation of FIFRA section 12(a)(2)(F).

PROPOSED CIVIL PENALTY

27. For commercial applicators, FIFRA authorizes the assessment of a civil penalty of up to \$6,500, as mandated by the Debt Collection Improvement Act of 1996, for each offense of the Act. FIFRA requires EPA to consider the appropriateness of the penalty to the size of the business, the effect on the person's ability to continue in business, and the gravity of the violation. EPA has established policies that provide a rational and consistent method for applying statutory factors to the circumstances of specific cases. A narrative description of the reasoning behind the penalty proposed in this case is attached to this complaint, along with copies of the EPA policies. **For the FIFRA violation alleged in this complaint, EPA proposes a penalty of \$3,900 for Count 1 and a penalty of \$3,900 for Count 2, for a total proposed penalty of \$7,800.** The penalty narrative and calculation can be found in complainant's Exhibit Number 1.

28. The ALJ is not bound by EPA's penalty policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized in the statute. In this case, the maximum would be \$13,000.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the PENALTY COMPLAINT, AND NOTICE OF OPPORTUNITY FOR HEARING with Exhibits were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wyncoop Street; Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail to:

Kevin Larsen
Larsen Farms
391A Rock Springs Road
P.O. Box 76
Reserve, Montana 59258

3/29/07
Date

Judith M. Mc Ternau

To discuss settlement or ask any questions you may have about this process, please contact Eduardo Quintana, Enforcement Attorney, at 1-800-227-8917; ext. 6924, or at the address below.

United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice, Complainant
1595 Wynkoop Street (ENF-L)
Denver, CO 80202-1129

Date: 3/27/07

By: Elisabeth Evans
Elisabeth Evans, Director
Technical Enforcement Program

Date: 3/29/07

By: David J. Janik
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program

Date: 3/27/2007

By: Eduardo Quintana
Eduardo Quintana, Senior Enforcement Attorney
Legal Enforcement Program

shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with § 21.5, on any such statement.

(f) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(g) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in § 21.12(a).

(h) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§ 21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Sec. 22.1 Scope of this part.

22.2 Use of number and gender.

22.3 Definitions.

22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.

22.5 Filing, service, and form of all pleadings; business confidentiality claims.

22.6 Filing and service of rulings, orders and decisions.

22.7 Computation and extension of time.

22.8 Ex parte discussion of proceeding.

22.9 Examination of documents filed.

Subpart B—Pleadings and Appearances

22.10 Appearances.

22.11 Intervention and non-party briefs.

22.12 Consolidation and severance.

Subpart C—Preliminary Proceedings

22.13 Commencement of a proceeding.

22.14 Complaint.

22.15 Answer to the complaint.

22.16 Motions.

22.17 Default.

22.18 Quick resolution; settlement; alternative dispute resolution.

22.19 Prehearing information exchange; prehearing conference; other discovery.

22.20 Accelerated decision; decision to dismiss.

22.21 Assignment of Presiding Officer; scheduling the hearing.

22.22 Evidence.

22.23 Objections and offers of proof.

22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.

22.25 Filing the transcript.

22.26 Proposed findings, conclusions, and order.

22.27 Initial decision.

22.28 Motion to reopen a hearing.

22.29 Appeal from or review of interlocutory orders or rulings.

22.30 Appeal from or review of initial decision.

22.31 Final order.

22.32 Motion to reconsider a final order.

Subpart H—Supplemental Rules

22.33 [Reserved]

22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.

22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.

22.36 [Reserved]

22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.

22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.

22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

22.40 [Reserved]

22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substances Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.

22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.

22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.

22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(i) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.

22.46-22.49 [Reserved]

22.50 Scope of this subpart.

22.51 Presiding Officer.

22.52 Information exchange and discovery.

AUTHORITY: 7 U.S.C. 136(f); 15 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 3006-3(e), 6912, 6925, 6928, 6991e and 6992a; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 9609, and 11045.

Source: 64 FR 40176, July 23, 1999, unless otherwise noted.

Subpart A—General

§ 22.1 Scope of this part.

(a) These Consolidated Rules of Practice govern all administrative adjudicatory proceedings for:

- (1) The assessment of any administrative civil penalty under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136f(a));
- (2) The assessment of any administrative civil penalty under sections 113(d), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d) and 7547(d));
- (3) The assessment of any administrative civil penalty or for the revocation or suspension of any permit under section 105(a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a) and (f));
- (4) The issuance of a compliance order or the issuance of a corrective action order; the termination of a permit pursuant to section 3008(a)(3), the suspension or revocation of authority to operate pursuant to section 3005(e), or the assessment of any civil penalty under sections 3008, 9006, and 11005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6925(d), 6925(e), 6928, 6991e, and 6992a(d)), except as provided in part 24 of this chapter;
- (5) The assessment of any administrative civil penalty under sections 161(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647);
- (6) The assessment of any Class II penalty under sections 309(g) and 311(b)(6), or termination of any permit issued pursuant to section 402(a) of the Clean Water Act, as amended (33 U.S.C. 1319(e), 1321(b)(6), and 1342(a));
- (7) The assessment of any administrative civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609);
- (8) The assessment of any administrative civil penalty under section 32f of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA") (42 U.S.C. 11045);
- (9) The assessment of any administrative civil penalty under section

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22.31 Final order.

22.32 Motion to reconsider a final order.

Subpart A—General

Subpart G—Final Order

Subpart F—Appeals and Administrative Review

22.29 Appeal from or review of interlocutory orders or rulings.

22.30 Appeal from or review of initial decision.

Subpart G—Final Order

22.31 Final order.

22.32 Motion to reconsider a final order.

1st Page only

ENFORCEMENT RESPONSE POLICY
FOR THE
FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)

Office of Compliance Monitoring
Office of Pesticides and Toxic Substances
U.S. Environmental Protection Agency

July 2, 1990



U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers: <http://www.epa.gov/clearinghouse>

Pollution Prevention Clearinghouse
<http://www.epa.gov/opptintr/library/ppicindex.htm>

EPA's Small Business Ombudsman Hotline can provide a list of all the hot lines and assist in determining the hotline best meeting your needs:
(800) 368-5888

Emergency Planning and Community Right-To-Know Act
(800) 424-9346

National Response Center (to report oil and hazardous substance spills)
(800) 424-8802

Toxics Substances and Asbestos Information
(202) 554-1404

Safe Drinking Water
(800) 426-4791

Stratospheric Ozone and Refrigerants Information
(800) 296-1996

Clean Air Technology Center
(919) 541-0800

Wetlands Helpline
(800) 832-7828

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page
<http://www.epa.gov>

Small Business Assistance Program
<http://www.epa.gov/ttn/sbap>

Office of Enforcement and Compliance Assurance
<http://www.epa.gov/compliance>

Compliance Assistance Home Page
<http://www.epa.gov/compliance/assistance>

Office of Regulatory Enforcement
<http://www.epa.gov/compliance/civil/index.html>

Office of Site Remediation Enforcement
<http://www.epa.gov/compliance/cleanup>

Innovative Programs for Environmental Performance
<http://www.epa.gov/partners>

Small Business Ombudsman
www.sba.gov/ombudsman

