

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

2007 MAY 18 PM 2:16

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of)

Kevin Larsen and)
Larsen Farms,)

Respondents)

) Docket No. FIFRA-08-2007-0002

Order

This proceeding arises under the authority of Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA" or "the Act"), 7 U.S.C. § 136l(a). The purpose of this Order is to direct parties to exchange prehearing information in accordance with Rule 22.19 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (40 C.F.R. Part 22). The parties are directed to provide the following information:

By Complainant and Respondents:

1. Desired or required location of the hearing. *See* Rules 22.19(d) and 22.21(d).
2. A list of prospective witnesses, a brief summary of their anticipated testimony, and a copy of each document or exhibit to be proffered in evidence to the extent not covered by the specific requests below.

By Complainant:

1. Provide a legible copy of the EPA approved label for the restricted use pesticide Furadan.
2. Provide a copy of the search warrant, dated March 1, 2005, obtained by the Montana Department of Fish, Wildlife, and Parks ("MFW&P") to collect evidence at the Larsen Farm, Reserve, Montana, together with any affidavit which supported issuance of the warrant.
3. Provide a copy of the report inspection of Respondent's Farm conducted on March 1, 2005, together with any notes, sampling narratives, photographs, or other attachments to the inspection report.
4. Provide a copy of the results of tests on samples taken from dead animals found during the inspection which allegedly contained various levels of Carbofuran and of the tests on samples of grain taken by the Farm's grain storage bin area which also allegedly contained Carbofuran.


5. Does any application of Furadan to spilled grain constitute "baiting"?
6. State the factual basis for the allegation in paragraph 17 of the complaint that Respondent was not a certified applicator at the time of the application and that Respondent is a "commercial applicator" within the meaning of Sections 2(e)(2) and 14(a)(1) of FIFRA.
7. State the nature of and provide a copy of the documentation obtained by the Montana Department of Agriculture to the effect that Respondent Kevin Larsen applied Furadan to grain in December of 2004 to kill rodents and other pests (Exhibit 1, ¶ 4).
8. Provide the factual basis for the assertion in paragraph 25 of the complaint that at the time of the alleged Furadan application, Respondent was not a certified applicator, and therefore, not certified to apply RUPs in violation of Section 12(a)(2)(F) of FIFRA.

By Respondent:

1. If not provided in responses to specific items below, summarize any facts supporting denial of the violations alleged in the complaint.
2. State the factual basis for the assertion in paragraph 1 of the answer that Complainant lacks jurisdiction. Is the contention that Complainant lacks jurisdiction due to the fact that the enforcement of FIFRA has been delegated to the State of Montana?
3. Identify the corporate entity that owns the Larsen Farm.
4. If Respondent is contending that the proposed penalty exceeds his ability to pay, provide financial statements, copies of income tax returns or other data to support such contention.

Responses to this Order should be provided to the Regional Hearing Clerk, the other party, and to the undersigned on or before June 15, 2007.

Dated this 17th day of May, 2007.


Spencer T. Nissen
Administrative Law Judge

* In accordance with Rule 22.5(c)(4), the parties are directed to promptly notify the Regional Hearing Clerk, all other parties, and the ALJ of any change in address and/or telephone number.

** The parties are informed that the use of E-Mail to communicate with this office is considered inappropriate.

In the matter of *Kevin Larsen-Larsen Farms*, Respondent.
Docket No. FIFRA-08-2007-0002

CERTIFICATE OF SERVICE

I certify that the foregoing **Order**, dated May 17, 2007, was sent this day in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Facsimile and Pouch Mail to:

Tina Artemis
Regional Hearing Clerk
U.S. EPA / Region VIII
1595 Wynkoop Street
Denver, CO 80202-2466
Fx: 303.312.7053

One Copy by Facsimile and Certified Mail to:

Eduardo Quintana, Esq.
Sr. Enforcement Counsel
U.S. EPA, Region VIII
1595 Wynkoop Street
Denver, CO 80202-1129
Fx: 303.312.7519

One Copy by Facsimile and Certified Mail to:

Laura Christoffersen, Esq.
Christoffersen & Knierim, P.C.
20 Broadway, P.O. Box 650
Culbertson, MT 59218
Fx: 406.787.5842

Dated: May 17, 2007
Washington, D.C.