

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2016 APR 22 PM 2:30

FILED
EPA REGION VIII
HEARING CLERK

Docket No. RCRA-8-2016-0003

IN THE MATTER OF:

David Meyer

Flasher, North Dakota

Respondent.

PROCEEDING UNDER SECTION 7003
OF THE SOLID WASTE DISPOSAL ACT,
AS AMENDED, 42 U.S.C. § 6901 et seq.,
42 U.S.C. § 6973

ADMINISTRATIVE ORDER

I. JURISDICTION

1. The United States Environmental Protection Agency Region 8 (EPA) has the authority to issue this Administrative Order (Order) pursuant to section 7003(a) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act, as amended by, among other acts, the Hazardous and Solid Waste Amendments of 1984 (hereinafter referred to as RCRA or the Act), 42 U.S.C. § 6973(a).

2. The Administrator has delegated the authority to issue orders under section 7003 to the Regional Administrators of the EPA by Delegation 8-22-B (April 20, 1994). In EPA Region 8 this authority was redelegated to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice and further redelegated jointly to supervisors in the Legal Enforcement Program and the Technical Enforcement Program by Delegation 8-22-B (November 20, 2000 and February 5, 2001).

3. David Meyer (Respondent) shall undertake all actions required by the terms and conditions of this Order.

II. INTRODUCTION

4. This Order is issued by the EPA. It concerns the performance of cleanup work at the Wilder Ranch, now known as the Meyer Ranch, and the Cannonball Ranch facilities owned and operated by Respondent.

5. Pursuant to section 7003(a) of the Act, 42 U.S.C. § 6973(a), the EPA has notified the State of North Dakota and the State of South Dakota of this action.

6. Pursuant to section 7003(c) of the Act, 42 U.S.C. Section § 6973(c), the EPA notified the Standing Rock Sioux Indian Tribe of the Standing Rock Indian Reservation (Tribe) of this action.

7. The EPA has determined that issuing this Order pursuant to RCRA section 7003, 42 U.S.C. § 6973, is necessary to protect health or the environment.

III. PARTIES BOUND

8. This Order shall apply to and be binding upon Respondent and his officers, employees, agents, successors and assigns.

9. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within two (2) calendar days after the effective date of this Order or date of such retention and shall condition all such contracts on compliance with the terms of this Order.

10. Respondent shall give notice to the EPA thirty (30) or more days prior to transfer of ownership or operation of the facilities. Unless agreed to by the EPA, any such transfer shall not alter Respondent's obligations under this Order.

IV. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Order that are defined in RCRA shall have the meaning assigned to them in the Act. Whenever the terms listed below are used in this Order, the following definitions apply:

“Day” or “day” shall mean a calendar day unless expressly stated otherwise.

“Effective Date” shall be the date on which the EPA's Regional Hearing Clerk enters this Order.

“Order” shall mean this Administrative Order, any amendments thereto, and any documents incorporated by reference into this Order.

“RCRA” shall mean the Resource Conservation and Recovery Act (also known as the Solid Waste Disposal Act), as amended, 42 U.S.C. § 6901, *et seq.*

“Facilities” shall mean The Wilder Ranch, now known as Meyer Ranch, located at Sections 19, 30 and 31, Township 23 North, Range 27 East, Corson County, South Dakota; Section 6, Township 22 North, Range 27 East, Corson County, South Dakota; Sections 1, Township 22 North, Range 26 East, Corson County, South Dakota; Sections 23, 26, 35, and 36, Township 23 North, Range 26 East, Corson County, South Dakota; Section 27 Township 129 North, Range 82 West, Sioux County, North Dakota; North Half of the SE Quarter of Section 25, Township 129 North, Range 82 Sioux County, North Dakota on the Standing Rock Indian Reservation; and the Cannonball Ranch facility, located at the East half of Section 8 Township 134 North, Range 79 West, Morton County, North Dakota just north of the Standing Rock Indian Reservation.

n“Work” shall mean all the activities and requirements specified in this Order including, “Work” shall mean all the activities and requirements specified in this Order including, but not limited to those activities specified in Section VIII of this Order.

“Work Plan” shall mean the plan required in Section VIII of this Order.

V. FINDINGS OF FACT

12. Respondent is the owner and operator of the Meyer Ranch, straddling the border of North and South Dakota, and Cannonball Ranch, in North Dakota (“Facilities”) where he raises cattle and buffalo.

13. From March 3 to March 14, 2016, Respondent or people working for Respondent applied approximately twenty-two (22) 1800-pound bags of Rozol to approximately 5,408 acres of pastureland at the Meyer Ranch, using 5-gallon buckets with spoons, resulting in significant, broadly dispersed surface application. Surface application of Rozol is prohibited by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 *et seq.*

14. Local citizens first saw dead animals the week of March 27, 2016, in the pasture areas of Respondent’s Meyer Ranch where Rozol Prairie Dog Bait (Rozol) had been misapplied. They reported these observations to inspectors for the Standing Rock Sioux Tribe Game and Fish Department, who in turn notified a Special Agent with the U.S. Fish and Wildlife Service and a Pesticide Inspector with the Standing Rock Sioux Tribe. These law enforcement authorities visited the facility several times the week of March 27 and April 3, 2016. These authorities saw large areas of pastureland at the Meyer Ranch facility with misapplied Rozol. The Rozol was easy to see as it was bright bluish/green in color. They also saw dead bald eagles and dead prairie dogs in areas where Rozol had been misapplied.

15. On or about April 6 and 7, 2016, an EPA on scene coordinator (OSC) conducted an investigation at the Meyer Ranch facility. The OSC spoke with Respondent and received permission to enter and inspect the ranch. The EPA OSC entered the Meyer Ranch facility and

saw the Rozol spread broadly across the surface of many thousands of acres of pasture on the facility. During his inspection, the OSC informed Respondent that it would be advisable to hire a qualified environmental contractor to formulate a plan to remediate the areas with misapplied Rozol. The Respondent immediately agreed to do so and provided the OSC with the first draft of a remediation work plan the following day. The OSC provided comments on the draft work plan, and the contractor provided a revised version of the draft work plan the week of April 10, 2016.

16. Respondent informed federal and tribal authorities that he had also applied Rozol in a similar manner at his Cannonball Ranch in North Dakota.

17. Rozol is an anticoagulant rodenticide containing .005 percent chlorophacinone as its active ingredient, manufactured by Liphatech, Inc. the EPA has designated Rozol as a restricted use pesticide pursuant to EPA Registration Number 7173-286, and restricted use pesticides must be applied by certified applicators in accordance with EPA approved labels.

18. Pursuant to section 3 of FIFRA, 7 U.S.C. § 136a, Rozol is a registered, restricted use pesticide and must be used and disposed of as specified on the product label. The Rozol product label provides as follows: Rozol should be applied “by hand scoop or a mechanical bait application machine that is designed and constructed and operated in a manner that ensures that bait is properly placed at least 6 inches down the prairie dog burrows. This product may only be used in underground application. Do not apply bait on or above ground level. Do not allow livestock to graze in treated areas for 14 days after treatment when bait is found above ground.” See attached Rozol Prairie Dog Bait product label, Attachment A.

19. When chlorophacinone bait such as Rozol is applied to the soil, it will likely remain on the soil until it is consumed by wildlife or degrades by microbial metabolism. Soil metabolism half-lives range from approximately 2 to 7 weeks.

20. Chlorophacinone, the active ingredient in Rozol, is an anticoagulant. It prevents the formation of blood clots in animals when ingested or inhaled and causes smaller capillaries to rupture. This causes internal bleeding resulting in death.

21. Chlorophacinone is highly toxic to fish and wildlife. Animals need only consume minimal amounts of bait to achieve a lethal dose. Wildlife exposure occurs when wildlife consumes bait or other animals that have consumed the bait. See Attachment A.

22. Chlorophacinone bait is slow to kill and it may take days to weeks for animals to die after consuming a lethal dose. Scavengers and predators are at particularly high risk if they consume contaminated wildlife. Chlorophacinone bioaccumulates in animals after consumption and may build up in animal tissues after multiple feedings. As a result, consumption of a few highly contaminated animals could be sufficient to kill some predators and/or scavengers.

23. According to the Rozol product label, “the applicator must return to the site within 4 days after bait application, and at 1 to 2 day intervals to collect and properly dispose of any bait

23. According to the Rozol product label, “the applicator must return to the site within 4 days after bait application, and at 1 to 2 day intervals to collect and properly dispose of any bait or dead or dying prairie dogs found at the surface. Carcass searches must be performed . . .” See Attachment A.

24. Respondent is not a certified applicator and improperly applied the restricted use pesticide, Rozol, to the surface of the pasturelands at the Facilities.

25. The Rozol applied by the Respondent was either ingested directly from the surface soils, or through the consumption of animal carcasses that had ingested Rozol, by non-target wildlife and livestock (e.g., Bald Eagles) resulting in their death.

26. To date, based on the proximity to areas where Rozol was applied to the surface, Respondent’s misapplication of Rozol has likely resulted in the deaths of at least 6 Bald Eagles at the Facilities.

27. The Respondent’s livestock may also have been exposed to the Rozol applied to the pastureland. Livestock exposed to any pesticide containing chlorophacinone should not be used for consumption by humans or other animals as chlorophacinone may have accumulated in tissues even though animals are not showing outward signs of poisoning. Therefore, humans should not consume meat, milk, or eggs from exposed animals.

38. Respondent has initiated efforts to address the Rozol on surface soils and has provided plans for addressing the Rozol, but significant quantities of Rozol remain on the surface, posing a continuing threat to non-target wildlife and livestock.

VI. CONCLUSIONS OF LAW

Based on the Findings of Fact set forth above, and the administrative record for this Order, the EPA has determined that:

- a. Respondent is a “person” within the meaning of sections 1004(13) and (15) of RCRA, 42 U.S.C. §§ 6903(13) and (15).
- b. Rozol/chlorophacinone misapplied to surface soils and the carcasses of animals that have consumed such Rozol/chlorophacinone are “solid waste” as defined in section 1004(27) of RCRA, 42 U.S.C. § 6903(27).
- c. Respondent has been or is contributing to the handling, storage, transportation or disposal of solid waste at the Facilities within the meaning of section 7003 of RCRA, 42 U.S.C. § 6973.

- e. The actions required by this Order are necessary to protect human health and the environment because they will prevent future deaths of non-target wildlife and human exposure to Rozol/chlorophacinone at the Facilities.

VII. ORDER

29. Based on the above, the EPA has determined that the activities required by this Order are necessary to protect health or the environment. Respondent shall perform the work specified in this Order in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with this Order, including all documents incorporated herein pursuant to this Order, and all applicable laws.

30. All plans and documents submitted under any section of this Order shall, upon approval by the EPA, be incorporated by reference into this Order as if set forth fully herein.

31. Respondent shall obtain any permits or approvals that are necessary to perform work on or outside the Facilities under applicable law and shall submit timely applications and requests for any such permits and approvals.

VIII. WORK TO BE PERFORMED

32. Based upon the foregoing findings of fact, conclusions of law, and determinations, Respondent shall perform the following work:

- a. immediately take measures to ensure that no livestock are transported off either of the Facilities, and that no livestock are consumed by humans, without prior consultation with a licensed veterinarian and approval by EPA;
- b. within three (3) days after the effective date of this Order, provide to the EPA an inventory of all livestock at both Facilities on the date the Rozol was first misapplied; an inventory of any livestock that have been sold or moved from the ranches since that time, including information detailing to whom they were sold, for what purpose, and their current location; and, a narrative description of any potential exposure of the livestock to Rozol and any measures already taken to ensure that livestock are not exposed to Rozol.;
- c. provide continued surveillance of all livestock exposed to Rozol to assure that no dead livestock is consumed by nontarget species.

33. Respondent shall designate a Project Coordinator responsible for administration of all Respondent's actions required by this Order. Within one (1) day of the effective date of this Order, Respondent shall submit the designated Project Coordinator's name, address, and telephone number in writing to the EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during work at the Facilities. The EPA retains the right to disapprove of any Project Coordinator named by Respondent. Respondent shall retain a

different Project Coordinator within three (3) days following EPA's disapproval of a Project Coordinator and shall submit the coordinator's name, address, telephone number, and qualifications to the EPA. The EPA has designated Tien Nguyen, On-Scene Coordinator, Emergency Response Unit, as its Project Coordinator. Respondent shall direct all submissions required by the Order to the Tribe and the EPA. Submissions to the EPA shall be directed to:

Tien Nguyen, 8EPR-ER
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202
Telephone: (303) 312-6820

Submissions to the Tribe shall be directed to:

Allyson Two Bears
Director of Environmental Department
P.O. Box 516
Fort Yates, ND 58538 (701) 854-3823

34. **Work Plan.** Within three (3) days of the Effective Date of this Order Respondent shall submit a revised Work Plan for EPA approval that describes how Respondent will address the following concerns:

- a. determination of locations of all misapplied Rozol;
- b. tilling of all misapplied Rozol to ensure there is no longer any Rozol on the surface of the pastureland or any other land;
- c. continued surveillance of areas of misapplied Rozol for dead animals as required by the Rozol product label.

35. The EPA may approve, disapprove, require revisions to, or modify any draft Work Plan and its required submittals. If the EPA requires revisions to the Work Plan, Respondent shall submit a revised draft Work Plan within twenty-four (24) hours of receipt of the EPA's notification of the required revisions. Thereafter, the EPA may approve, approve with modifications, or disapprove and draft the Work Plan. Once approved, approved with modifications, or drafted by the EPA, the Work Plan, Work Plan submittals, the schedule, and any subsequent modifications shall be fully incorporated into and enforceable under the Order.

36. Respondent shall not commence or undertake any Work onsite without prior EPA approval.

IX. AGENCY REVIEW AND APPROVAL OF DELIVERABLES

37. The EPA may reject any submittal which the EPA determines is not acceptable. Acceptable shall mean that the quality of submittals or completed work is sufficient to warrant the EPA review to determine whether the submittal or work meets the terms and conditions of this Order. Acceptability of submittals or work, however, does not necessarily imply that they will be approvable. Approval by the EPA of submittals or work, however, establishes that those submittals were prepared, or work was completed, in a manner acceptable to the EPA.

38. Submittal of a document not acceptable is a violation of this Order unless such document is resubmitted prior to the due date for such submittal, or other due date agreed to by the EPA, and the EPA determines that the submittal is acceptable.

39. The EPA will provide Respondent with its written approval, conditional approval, approval with modification, disapproval with comments and/or modifications, or notice of intent to draft and approve, for any acceptable work plan, report (except progress reports), specification or schedule submitted pursuant to or required by this Order.

40. Prior to written approval, no submittal, except progress reports, shall be construed as approved and final. Oral advice, suggestions, or comments given by the EPA will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding on either party, except as otherwise expressly provided for in the imminent threat provisions below.

41. Respondent shall revise any submittal in accordance with the EPA's written comments, and in accordance with the due date specified by the EPA. Revised submittals are subject to EPA approval, approval with conditions, rejection as not acceptable, disapproval with comments and/or modifications, or notice of intent to draft and approve.

X. SITE MONITORING AND REPORTING

42. Progress Reports. Respondent shall submit a written progress report to the EPA concerning actions undertaken pursuant to this Order every Monday beginning after the effective date of the Order until completion of all tasks required by the Work Plan. These reports shall follow a standard format that consists of the topics on the following list: a) activities accomplished and progress made this reporting period; b) problems and how resolved; d) deliverables submitted; e) personnel or schedule changes; f) activities planned next reporting period; and g) estimated or actual costs for the activities planned.

43. Completion Report. Within fourteen (14) days after completion of all activities required by the Work Plan, Respondent shall submit for EPA review and approval a Completion Report summarizing the actions taken to comply with this Order. The Completion Report shall have accompanying appendices containing all relevant documentation generated but not previously submitted, including manifests, invoices or purchase orders, bills, contracts, receipts,

and canceled checks. The Completion Report shall include the following certification which is binding on Respondent and shall be signed by Respondent's designated Project Coordinator who supervised or directed the preparation of the report:

Under penalty of law, I certify to the best of my knowledge, information, and belief, after appropriate inquiries of all relevant persons involved in the preparation of this report, that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

XI. EMERGENCY ACTION

44. In the event Respondent identifies a threat to public health or the environment at the Facilities at any time during implementation of this Order which he believes warrants more immediate action than the Work Plan or Order may require, or warrants action before an otherwise applicable plan is approved, Respondent shall orally notify the EPA Project Coordinator, or EPA management in his absence, within twenty four (24) hours of discovery and notify both the EPA and the applicable State in writing within five (5) calendar days of such discovery, summarizing the nature, immediacy and magnitude of such threat(s).

45. Proper notification, as required in this section, does not relieve Respondent of any other notification responsibility Respondent may have under any other law, including but not limited to Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*, or Section 304 of the Emergency Planning and Community Right to Know Act, as amended, 42 U.S.C. § 11001, *et seq.*

46. If the EPA determines that immediate action is required, the EPA Project Coordinator may orally authorize and require Respondent to take actions to abate the threat prior to approval of the Work Plan, or in addition to a plan after approval.

47. Any oral requirements made pursuant to this subsection shall be immediately incorporated into this Order by reference and are immediately enforceable. The EPA will provide to Respondent a written description of such requirements within a reasonable period of time

XII. SITE ACCESS AND SAMPLING

48. Respondent shall provide access to the EPA, Tribe and State of North Dakota and State of South Dakota employees, contractors, agents, consultants, designees, representatives (the "Agencies") to oversee any and all work being performed under this Order. Respondent shall provide access to the Facilities' property at any time work is being conducted pursuant to this Order and during reasonable business hours during any period work is not being conducted, for the purposes of determining Respondent's compliance with the federal and State hazardous waste programs, and this Order. Respondent shall permit the Agencies to inspect work sites and to

inspect and obtain copies of computer files, operating and field logs, photographs, contracts, manifests, shipping records, and other relevant records and documents relating to this Order or any requirement under this Order and interview the Facilities' personnel and contractors performing work required by this Order. Nothing in this paragraph limits or impairs the EPA's or the States' statutory authorities to enter and inspect the Facilities.

49. The EPA may conduct any tests necessary to ensure compliance with this Order and to verify the data submitted by Respondent. The EPA will provide to Respondent split samples. Respondent shall notify the EPA in writing of any sampling activities undertaken pursuant to any plan or requirement of this Order a minimum of seven (7) days prior to the sampling being conducted, and shall provide split samples to the Agencies upon request.

XIII. AVAILABILITY AND RETENTION OF INFORMATION

50. Respondent shall make available to the EPA, and shall retain, during the pendency of this Order and for a period of three (3) years after its termination, all records and documents in his possession, custody, or control, or in the possession, custody or control of his contractors and subcontractors, which relate to the performance of this Order, including but not limited to documents reflecting the results of any sampling, tests, or other data or information generated or acquired by Respondent, or on Respondent's behalf, with respect to the implementation of this Order.

51. At the end of this three-year period and at least thirty (30) days before any document or information is destroyed, Respondent shall notify the EPA that such documents and information are subject to destruction, shall make such documents or information available to the EPA for inspection and, upon request, shall provide the originals or copies of such documents and information to the EPA. In addition, Respondent shall provide documents and information retained under this section at any time before expiration of the three-year period at the written request of the EPA.

52. Respondent shall, at least 30 days prior to the conveyance of any interest in real property at the Facilities, give written notice to the transferee that the property is subject to this Order. Respondent shall provide written notice to the EPA and the applicable State of the conveyance, including the name and address of the transferee, 14 days prior to such conveyance.

53. Respondent may assert confidentiality claims pursuant to 40 C.F.R. § 2.203(b) with respect to any part of the information submitted to the EPA pursuant to this Order provided such claim is allowed by law. The EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R Part 2, Subpart B. If no such claim accompanies the information when it is received by the EPA, the EPA may make it available to the public without further notice to Respondent.

XIV. NOTICES

54. Whenever under the terms of this Order, notice is required to be given, and/or a report or other document is required to be forwarded by one Party to another, such correspondence shall be sent by certified mail or hand carried to the following individuals at the addresses specified below. Monthly reports and notifications of emergency situations may be faxed or mailed:

As to the EPA:

Tien Nguyen, 8EPR-ER
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202
Telephone: (303) 312-6820
Nguyen.Tien@epa.gov

As to the Tribe:

Allyson Two Bears
Director of Environmental Department
P.O. Box 516
Fort Yates, ND 58538 (701) 854-3823

XV. RESERVATION OF RIGHTS

55. Nothing in this Order shall limit the information gathering, access, and response authority of the United States under RCRA or any other applicable law, nor shall it limit the authority of the EPA to issue additional orders to Respondent under RCRA section 7003. Nothing herein shall limit the power and authority of the EPA to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Facilities. Further, nothing herein shall prevent the EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action and as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9601, *et.seq.*, RCRA, or any other applicable law.

56. This Order shall not be construed as a waiver or limitation of any rights, remedies, powers and/or authorities which the EPA has under the Act, CERCLA or any other applicable law.

57. The EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any

applicable laws and regulations and/or with any of the requirements of this Order, including but not limited to the right to disapprove of work performed by Respondent, to request that Respondent perform additional tasks, and the right to perform any portion of the work herein.

58. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligation to comply with the Act and/or any other applicable state or federal law or regulation.

59. By issuance of this Order, the EPA assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, heirs, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order. This Order shall not relieve Respondent of his obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the work under the terms of this Order.

XVI. FORCE MAJEURE

60. Respondent shall perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure event. For purposes of this Order, a force majeure event is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to his contractors and subcontractors that delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work, increased cost of performance, or strike or other work stoppage by employees or contractors of Respondent.

61. Respondent shall notify the EPA orally within twenty-four (24) hours after the event, and in writing within forty-eight (48) hours after Respondent becomes or should have become aware of events which constitute a force majeure event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall waive any claim of force majeure by Respondent.

62. If the EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure event, the time period for performance of that requirement shall be extended as deemed necessary by the EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure event.

XVII. INSURANCE AND INDEMNIFICATION

63. Respondent shall establish and maintain adequate insurance. The United States shall not be liable for any injury or damages to persons or property resulting from acts or omissions of Respondent or his contractors in implementing the requirements of this Order.

64. Respondent shall indemnify and hold the United States Government, its agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, his employees, agents, servants, receivers, successors, or assigns, or any persons including, but not limited to firms, corporations, subsidiaries, and contractors, in carrying out activities under this Order. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by Respondent in carrying out activities under this Order.

XVIII. MODIFICATIONS TO APPROVED WORK PLAN OR SCHEDULE

65. Modifications to any plan or schedule in the Work Plan may be made in writing by the EPA Project Coordinator or at the EPA Project Coordinator's oral direction. The EPA Project Coordinator will memorialize oral modifications in writing within a reasonable period of time provided, however, that the effective date of the modification shall be the date of the EPA Project Coordinator's oral direction.

66. If Respondent seeks permission to deviate from the approved Work Plan, Respondent's Project Coordinator shall submit a written request to the EPA for approval outlining the proposed Work Plan modification and its basis. No informal advice, guidance, suggestion, or comment by the EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of any obligation to obtain such formal approval as may be required by the Order and to comply with all requirements of the Order unless it is formally modified.

XIX. ISSUANCE, EFFECTIVE, AND TERMINATION DATES

67. This Order shall be issued on the day it is filed with the Regional Hearing Clerk. This Order shall be effective five (5) calendar days from the day it is issued, except paragraph 32(a) which is effective upon receipt by Respondent.

68. Any modification made by the EPA to this Order is effective on the date such modification is filed with the Regional Hearing Clerk, so long as Respondent is sent a copy by certified mail or has hand delivered to it a copy of the modification as expeditiously as possible after the modification is filed with the Regional Hearing Clerk.

69. This Order shall terminate upon Respondent's receipt of written notice from the EPA that Respondent has demonstrated, to the satisfaction of the EPA, that the requirements of this Order, including any additional tasks determined by the EPA to be required pursuant to this Order, but not including record retention, have been satisfactorily completed.

XX. OPPORTUNITY TO CONFER

70. Respondent may request, at any time within five (5) days after the issuance of this Order, a telephonic conference with the EPA to discuss this Order and its requirements. Respondent may within five (5) days after the effective date of this Order request a conference with the EPA at which Respondent may appear in person or by an attorney or other representative, and which may be held in person or by telephone, to discuss all other matters under the Work Plan.

71. The purpose and scope of any conference shall be limited to issues involving the implementation of the actions required by this Order and the extent to which Respondent intends to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made.

72. Requests for a conference must be by telephone to Andrew Lensink at (303) 312-6908 or Laurianne Jackson at (303) 312-6950 followed by written confirmation mailed that day to:

Laurianne Jackson, 8ENF-L
Enforcement Attorney
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202
Telephone: (303) 312-6950

XXI. ATTACHMENTS

73. The attachment to the Order listed below is incorporated by reference.

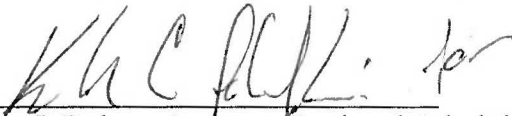
Attachment A – Rozol Prairie Dog Bait product label

In the Matter of: Mr. David Meyer

Proceeding Under section 7003 of the Solid Waste Disposal Act, as Amended, 42 U.S.C. § 6901 et seq., 42 U.S.C. § 6973

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION VIII
Complainant**

Date: 4/22/16

By: 
Suzanne J. Bohan, Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

APR 22 2016

Issuance Date

RESTRICTED USE PESTICIDE
DUE TO HAZARD TO NONTARGET ORGANISMS
For retail sale to and use only by Certified Applicators or persons under their
direct supervision and only for those uses covered by the Certified
Applicator's Certificate.

ROZOL®

PRAIRIE DOG BAIT

Active Ingredient: chlorphacinone 0.005%
Inert Ingredients 99.995%
Total 100.000%

EPA Reg. No. 7173-286

EPA Est. No. 7173-WI-1

KEEP OUT OF REACH OF CHILDREN
CAUTION: See side panel for additional precautionary statements.

(Liphatech Logo)
Liphatech, Inc.
3600 W. Elm Street
Milwaukee, WI 53209
(414) 351-1476

A C C E P T E D
03/11/2015
<small>Under the Federal Insecticide, Fungicide and Rodenticide Act as amended, for the pesticide registered under EPA Reg. No. 7173-286</small>

Net Weight: 1 pound up to 2000 pounds

WARRANTY: To the extent consistent with applicable law, seller makes no warranty, expressed or implied, concerning use of this product other than indicated on the label. Buyer assumes all risk of use and/or handling of product when such use and/or handling is contrary to label instructions.

Side Panel:

PRECAUTIONARY STATEMENTS
Hazard to Humans and Domestic Animals

CAUTION: Harmful if swallowed or absorbed through the skin because it may reduce the clotting ability of blood and cause bleeding. Keep away from children, domestic animals and pets. Do not get in eyes on skin or on clothing. All handlers (including applicators) must wear shoes plus socks, and gloves. Any person who retrieves carcasses or unused bait following application of this product must wear gloves.

USER SAFETY REQUIREMENTS: Follow manufacturer's instructions for cleaning/maintaining PPE. If no such instructions for washables, use detergent and hot water. Keep and wash PPE separately from other laundry. Remove PPE immediately after handling this product. Wash the outside of gloves before removing. As soon as possible, wash hands thoroughly after applying bait and before eating, drinking, chewing gum, using tobacco or using the toilet and change into clean clothing.

FIRST AID: Have label when obtaining treatment advice.

If swallowed: Call a poison control center or doctor immediately for treatment advice. Have person sip a glass of water if able to swallow. Do not induce vomiting unless told to do so by the poison control center or doctor.

If on skin: Take off contaminated clothing. Rinse skin with plenty of cool water for 15-20 minutes. Call a poison control center or doctor for treatment advice.

TREATMENT FOR PET POISONING: If animal eats bait, call veterinarian at once.

NOTE TO PHYSICIAN OR VETERINARIAN: Contains chlorophacinone, an anticoagulant. If swallowed, this material may reduce the clotting ability of the blood and cause bleeding. For humans or dogs that have ingested this product and/or have obvious poisoning symptoms (bleeding or prolonged prothrombin times), give Vitamin K₁ intramuscularly or orally.

ENVIRONMENTAL HAZARDS: This product is toxic to fish and wildlife. Dogs and other predatory and scavenging mammals and birds might be poisoned if they feed upon animals that have eaten this bait. Do not apply directly to water, or to areas where surface water is present. Do not contaminate water by cleaning of equipment or disposal of wastes. Runoff also may be hazardous to aquatic organisms in water adjacent to treated areas.

STORAGE AND DISPOSAL: Do not contaminate water, food or feed by storage or disposal.

Pesticide Storage: Store in original container in a cool, dry place inaccessible to children and pets.

Pesticide Disposal: Wastes resulting from the use of this product may be disposed of in trash or at an approved waste disposal facility.

Container Handling: Nonrefillable container. Do not reuse or refill this container. **[Plastic:]** Completely empty container, then offer for recycling or reconditioning; or puncture and dispose of in a sanitary landfill. **[Paper:]** Completely empty container, then dispose of empty container in trash or at an approved waste disposal facility.

DIRECTIONS FOR USE

It is a violation of Federal law to use this product in a manner inconsistent with its labeling.

READ THIS LABEL and follow all use directions and precautions. Only use for sites, pests, and application methods specified on this label.

IMPORTANT: Do not expose children, pets, or other nontarget animals to rodenticides. To help prevent accidents:

1. Store product not in use in a location out of reach of children and pets.
2. Dispose of product container, unused, spoiled and unconsumed bait as specified on this label.

Use restrictions: This product may only be used as follows:

1. **Sites/Pests:** Black-Tailed Prairie Dogs (*Cynomys ludovicianus*) on rangeland and adjacent noncrop areas.
2. **States:** Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming. Do not apply this product within the exterior boundaries of the Crow Reservation or the Blackfeet Reservation in Montana.

3. **Application Method:** Apply bait by hand scoop or a mechanical bait application machine that is designed, constructed and operated in a manner that ensures that bait is properly placed at least 6 inches down the prairie dog burrows. This product may only be used in underground applications. Do not apply bait on or above ground level. Treat only active burrows.
4. **Treatment Period:** Apply between October 1 and March 15 of the following year, when animals will most readily take the grain bait.
5. **Non-Applicators:** Do not allow children, pets, domestic animals or persons not involved in the application to be in the area where the product is being applied.
6. **Grazing Restriction:** Do not allow livestock to graze in treated areas for 14 days after treatment and when no bait is found above ground.
7. Do not use any other rodenticides containing anticoagulants (diphacinone) in prairie dog towns during the treatment period allowed on this label.

Endangered Species: It is a Federal offense to use any pesticide in a manner that results in the death of an endangered species. Use of this product may pose a hazard to endangered or threatened species. When using this product, you must follow the measures contained in the Endangered Species Protection Bulletin for the area in which you are applying the product. To obtain Bulletins, no more than six months before using this product, consult <http://www.epa.gov/espp/> or call 1-800-447-3813. You must use the Bulletin valid for the month in which you will apply the product.

Site Assessment: Before applying this product, identify active prairie dog burrows by visual observation. The openings of active burrows will generally be free of leaves, seeds, other debris or spider webs, and will show freshly turned earth, and have prairie dog feces nearby.

Application: Apply 1/4 cup (53 grams or nearly 2 ounces) of bait at least 6 inches down active prairie dog burrows. Make sure no bait is left on the soil surface at the time of application. Applicator must retrieve and dispose of any bait that is spilled above ground or placed less than 6 inches down the burrow entrance.

Follow-up: Prairie dogs that have eaten this bait will begin to die off 4 to 5 days after they eat a lethal amount. The applicator must return to the site within 4 days after bait application, and at 1 to 2 day intervals, to collect and properly dispose of any bait or dead or dying prairie dogs found on the surface. Carcass searches must be performed using a line-transect method that completely covers the baited area. Transect center lines must be not more than 200 feet (about 60 meters) apart, and should be considerably less if searches are conducted in more densely vegetated sites. Transect lines may be traveled on foot or by vehicle at a rate not to exceed 4 mph. All carcasses found above ground must be collected and disposed of properly. Continue to collect and dispose of dead or dying prairie dogs and search for non-target animals for at least two weeks, but longer if carcasses are still being found at that time. Carcass collection should occur in late afternoon, near sundown, to reduce the potential of nocturnal animals finding carcasses and dying animals. Bury carcasses on site in holes dug at least 18 inches deep or in inactive burrows (no longer being used by prairie dogs or other species) to avoid non-target animal scavenging. Burial includes covering and packing the hole or burrow with soil. If burial is not practical (due to frozen ground, etc.) and other disposal methods are allowed by state and local authorities, collected carcasses may be disposed of by other methods to insure that the carcasses are inaccessible to scavengers.

All dead or dying non-target animals must be reported to the National Pesticide Information Center 1-800-858-7378 as soon as possible. Any apparently injured or sick Federally listed species must also be immediately reported by calling 303-236-7540 (if located in Kansas, Nebraska, the Dakotas, Montana, Colorado or Wyoming) or 505-248-7889 (if located in Texas, New Mexico or Oklahoma). The Black-footed Ferret Coordinator must also be contacted if ferrets are found during Rozol Prairie Dog Bait applications or carcass searches at 970-897-2730 x224. If live black footed ferrets are found outside reintroduction sites, before, during or after Rozol Prairie Dog Bait application, the Black-footed Ferret Coordinator must be contacted immediately and sufficient time must be allowed for the FWS to capture and relocate the black-footed ferret(s) before Rozol Prairie Dog Bait application.

Reapplication: If prairie dog activity persists several weeks or months after the bait was applied, a second application may be made, by treating burrows in the same manner, time period and procedure as the first application. Follow all application, site assessment and follow-up directions and use restrictions as found above.

IN THE MATTER OF: DAVID MEYER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one true and correct copy of the foregoing **ADMINISTRATIVE ORDER ON CONSENT** were hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail to the following Friday, April 22, 2016 as indicated below:

To

David Meyer P.O. Box 1100
3285 67th Street
Flasher, North Dakota
By CERTIFIED MAIL # 7008 3230 0003 0726 4963

Date: Friday, April 22, 2016

By:


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