UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Haveman Grain Co., Inc. and Dan Haveman,	)	Docket No.I.F.& R.-VII-1211C-93P
	)	
	)	
Respondents	)	

Federal Insecticide, Fungicide and Rodenticide Act - Penalty - Gravity of Violation

Where penalty computed in accordance with the Enforcement Response Policy for FIFRA (July 2, 1990) was found to overstate the risks and thus the gravity of the violation, penalty was determined without regard to the policy.

Appearance for Complainant:

Anne Rauch, Esq.
Assistant Regional Counsel
U.S. EPA, Region VII
Kansas City, Kansas

Appearance for Respondents:

Loren Haveman, Pro Se
Union, Nebraska

INITIAL DECISION

This a civil penalty proceeding under § 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (FIFRA), 7 U.S.C. § 136l. The proceeding was commenced by the issuance, on February 19, 1993, of a complaint charging Respondents, Haveman Grain Co., Inc. and Dan Haveman (collectively Haveman), with violating § 12(a)(2)(G) of the Act by use of registered pesticides

in a manner inconsistent with their labeling. Pesticides identified in the complaint were the restricted use pesticides (RUPs) Bladex 4L and Extrazine, EPA Reg. Nos. 352-470 and 353-500, respectively; Prowl, EPA Reg. No. 241-243-ZA, Pursuit Plus, EPA Reg. No. 241-315, Weedone LV4, EPA Reg. No. 264-202A, and Herbicide A-4D, EPA Reg. No. 42750-13. For this alleged violation, it was proposed to assess Respondents a penalty of $5,000, the maximum permitted by the Act for a single violation (§ 14(a)(1)).

In a letter-answer, dated March 30, 1993, signed by Mr. Loren Haveman, identified as "owner" in other documents in the record, Haveman stated that "(l)ast year after the planting season was over, we were getting our bulk chemical tanks winterized. The tanks, which had Extrazine, Prowl and Pursuit Plus in them, were rinsed with about 100 gallons of water and then we added 2,4-D. We sprayed this rinse water on an area around our elevator to control weed growth." Haveman denied that there was any drift off of "our property" or that there was any damage to the environment. Haveman alleged that "we" are a small, family-owned business, contended that the proposed penalty was excessive and requested a hearing.

By a letter, dated August 4, 1993, the ALJ directed that, in the absence of a settlement, the parties were to exchange specified prehearing information. Thereafter, Haveman retained counsel, who filed an amended answer denying the violations alleged in the complaint. The amended answer contested the proposed penalty as excessive and confiscatory and requested a hearing.

After the parties exchanged the information directed by the ALJ, Complainant filed a motion for an accelerated decision, contending that there was no dispute of material fact that Haveman violated the Act as alleged in the complaint and that judgment should be entered for the full amount of the penalty sought. Complainant relied in part on admissions in Haveman's initial answer and alleged that the proposed penalty was computed in strict accordance with the Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated July 2, 1990 ("ERP"). By an order, dated July 7, 1995, which is attached hereto and incorporated herein by reference, the motion was granted in part. Although holding that the amended answer superseded the initial answer and thus the admissions therein could not be used to support the motion,[1/] the order held that other uncontradicted evidence amply supported Haveman's liability for the violation alleged in the complaint. Determination of an appropriate penalty was, however, held to involve factual issues inappropriate for resolution on summary judgment.

By a notice, dated August 16, 1995, a hearing on this matter was scheduled to be held in Plattsmouth, Nebraska, on September 21, 1995.[2/] The parties have, however, stipulated that the penalty may be determined on the basis of documents previously submitted and

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[1/] It is permissible, however, to offer superseded pleadings into evidence at trial as evidence of an admission. 6 Wright, Miller & Kane, Federal Practice & Procedure, § 1476.

[2/] Counsel retained by Haveman has withdrawn from the case.

upon consideration of Haveman's arguments in an attachment, dated August 24, 1995. The hearing has been canceled.

Based upon the entire record, including the prehearing exchanges submitted by the parties, the mentioned stipulation and Haveman's arguments attached thereto, I make the following:

FINDINGS OF FACT

1. Respondent, Haveman Grain Company, Inc., Union, Nebraska, was at all times pertinent to the complaint a corporation incorporated under the laws of the State of Nebraska. Respondent, Dan Haveman, was, at all times pertinent hereto, a certified commercial pesticide applicator, Card Nos. NE061614 and NE482448, employed by Haveman Grain Company, Inc. (Complaint ¶¶ 4 & 5; Use/Misuse Inspection, C's Exh 2).

2. On June 29, 1992, Jeff Lawrence, an employee of Haveman acting under the supervision of Mr. Dan Haveman, made a pesticide rinsate application/disposal to a non-crop site at the Rockbluff Elevator, Plattsmouth, Nebraska, property of Haveman Grain Company, Inc. (Affidavit of Loren Haveman, C's Exh. 11). The application consisted of 2.5 gallons of 2,4-D LV4, EPA Reg. No. 42545-27-42750; 2 gallons of Herbicide A-4D, EPA Reg. No. 42750-13, in a mixture of water and rinsates.[3/] Other

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[3/] The EPA Reg. No. for 2,4-D LV4 (Weedone) stated in the complaint (264-202A) is incorrect, because a photo of the label (No. 27, C's Exh. 12) reflects that the EPA Reg. No. for this product is 42545-27-42750. Confusion as to registration numbers may explain apparent conflicts in the evidence as to the precise pesticides in the rinsate applied/disposed by Haveman. For (continued...)

pesticides in the rinsate included the restricted use pesticides Bladex 4L, and Extrazine II 4L, EPA Reg. Nos. 352-470 and 352-500, respectively; Prowl, EPA Reg. No. 241-243-ZA and Pursuit Plus, EPA Reg. No. 241-315. (Affidavit of Loren Haveman; Use/Misuse Inspection).

3. The pesticide rinsate referred to in the preceding finding with approximately 300 gallons of water was applied to the parking area, vegetated river bank and grassy areas around the Rockbluff Elevator property (Affidavit of Loren Haveman). Areas to which the rinsate was applied are more particularly shown on a sketch drawn by David Horak, the EPA investigator (C's Exh. 4), which reflects that pasture-land is immediately adjacent to the elevator property on the west, that further to the west is the residence of Ms. Gayla Collins and that the vegetated river bank, referred to by Mr. Haveman, adjoins the Missouri River.

4. The EPA investigation, initially conducted on July 6, 1992, was prompted by a telephone call on July 2, 1992, from Ms. Gayla Collins, who complained that a pesticide application

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3/ (...continued)
example, the Use/Misuse Inspection quotes Ms. Gwen Haveman, Secretary of Haveman Grain Company, Inc., as stating that the 2,4-D Amine 4 product, EPA Reg. No. 42545-37-42750 (sic) was not in the rinsate disposal material (Id. 6). This appears to be contrary to the affidavit of Loren Haveman, which indicates that 2,4-D Amine, EPA Reg. No. 427-50-13 and 2,4-D LV4, EPA Reg. No.4245-27-42750, were in the rinsate. Photo Nos. 38-41 and the affidavit of Ms. Haveman referred to in the Use/Misuse Inspection, which may explain the apparent contradiction, are, however, not in the record.

by the Rockbluff Elevator on June 29 or 30, 1992, had made her and her animals ill (Use/Misuse Inspection; Affidavit of Gayla Collins, C's Exh. 7). The Rockbluff Elevator is approximately one and one-half blocks east of Ms. Collins' residence. Ms. Collins is reported to have stated that she observed a truck with a sprayer applying what she believed to be a pesticide, that she and her four-year old son, Cody, were the only members of her family outside at the time of the application, that she experienced dizziness and nausea during the application and that her son vomited the next day. Ms. Collins is also quoted as stating that she noticed a decrease in egg and milk production from her chickens and goats, that one of her goats became sick and a chicken died from what she believed to be drift from the pesticide (Id.). Ms. Collins acknowledged, however, that she had not noticed any plant damage, since the date of the application.[4/]

5. Mr. Horak collected wipe samples from the southeast side of a pickup truck box (STC-77-01) and from the east side of a semi-trailer (STC-77-02) parked adjacent to Ms. Collins' driveway. He also collected soil samples from the parking

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[4/] Photos (Nos. 4, 5 & 6, C's Exh. 12), taken by Mr. Horak at the time of the initial inspection in the vicinity of a semi-trailer and pickup truck box parked adjacent to Ms. Collins' driveway, show yellow-colored patches which could be vegetation affected by pesticide drift. In the absence of testimony explaining the photos and in view of Ms. Collins' statement to the effect that she had not noticed any plant damage, such a conclusion is not warranted.

area at the Rockbluff Elevator (STC-77-04), and the vegetated river bank (STC-77-05).[5/]

6. The samples referred to in the preceding finding along with a control sample (STC-77-03F), were submitted to the Montana State University (MSU), College of Agriculture Analytical Laboratory on July 20, 1992. Under date of August 18, 1992, MSU reported that no detectable levels of atrazine, cyanazine, or pendimethalin were found in the wipe samples (STC-77-01 & STC-77-02) (C's Exh. 8). Soil Sample STC-77-04 was reported to contain atrazine at a concentration of 31 ppm, cyanazine at a concentration of 4.3 ppm, 2,4-D at a concentration of 81 ppm, and pendimethalin at a concentration of 211 ppm. Soil Sample STC-77-05 was reported to contain atrazine at a concentration of 70 ppm, cyanazine at a concentration of 21 ppm, 2,4-D at a concentration of 6.6 ppm, and pendimethalin at a concentration of 37 ppm.[6/] (C's Exh. 8). Samples STC-77-04 & STC-77-05 were also reported to contain imazethapyr at concentrations of 0.90 ppm and 1.5 ppm, respectively.

7. Cyanazine and atrazine are active ingredients in Extrazine II 4L, cyanazine is the active ingredient in Bladex 4L,

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[5/] The Use/Misuse Inspection indicates that the investigator also collected a water sample (STC-77-06) from the Missouri River. The record does not reveal the disposition of this sample or whether any tests were conducted thereon.

[6/] The laboratory report indicates that both soil samples contained "small yellow particles", which may be Pursuit Plus residue and which may explain the high reported concentrations of pendimethalin, one of the active ingredients in Pursuit Plus.

pendimethalin is the active ingredient in Prowl, 2,4-D is the active ingredient in Weedone LV4 and Herbicide A-4D and pendimethalin and imazethapyr are the active ingredients in Pursuit Plus (C's Exh. 8).

8. The label for Extrazine II 4L indicates that it is a selective herbicide for the control of annual grasses and broadleaf weeds in field corn, popcorn, and sweet corn (C's Exh. 13). The Bladex 4L label (C's Exh. 14) states that it is a selective herbicide for the control of annual grasses and broadleaf weeds in field corn, popcorn, and sweet corn, cotton and grain sorghum. The label for Prowl herbicide provides that it is for use in cotton, edible beans, field corn, grain sorghum, nonbearing fruit, nut crops, and vineyards, peanuts, potatoes, rice, soybeans, sunflowers, sweet corn, and tobacco (C's Exh. 15). The label for Pursuit Plus indicates that its use is limited to fields intended for the planting of soybeans (C's Exh. 16).

9. Haveman regarded the spraying activity observed by Ms. Collins as pesticide rinsate disposal rather than a pesticide application (Use/Misuse Inspection; Affidavit of Loren Haveman). Copies of labels in the record for the pesticides identified in finding 7 are incomplete and do not include directions for disposal. The label for Prowl, however, states "Do not contaminate water by cleaning of equipment or disposal of wastes" and the label for Pursuit Plus states that "Wastes resulting from the use of this product may be disposed of on

site or at an approved waste disposal facility." In the order, dated July 7, 1995, referred to above, "on site" in this context was determined to mean a site for a pesticide application, which was consistent with the label. The mentioned order also concluded that it was unlikely that directions for disposal on the labels of the other pesticides in the rinsate differed significantly from that for Pursuit Plus and that, whether viewed as a pesticide application or as pesticide disposal, the spraying at the Rockbluff Elevator, referred to above, was inconsistent with the labels. Although given ample opportunity to do so, Respondent has not attempted to dispute that conclusion in whole or in part.

10. Photos taken by Mr. Horak in the vicinity of the Rockbluff Elevator and along the river bank (Nos. 14-17, 19-26, C's Exh. 12) show brown vegetation purportedly indicating that the pesticide application/disposal effectively killed plant life in the areas sprayed. Ms. Collins is quoted as saying that no pesticide applications had been made to her property that year (Use/Misuse Inspection at 2). Mr. Roy Smith, who farms land across Rockbluff Road to the south of the Rockbluff Elevator, the adjoining pastureland and Ms. Collins' residence (C's Exh. 4), is reported to have stated that he applied Command at a rate of 1.5 pints per acre and Septor at a rate of 0.5 pints per acre about May 26, 1992 (Use/Misuse Inspection at 7). These products are apparently herbicidal pesticides.

11. In the attachment to the stipulation, Mr. Haveman emphasized that the original complaint was for drift and, yet, the samples taken from Ms. Collins' property did not show any [pesticide] concentration. Mr. Haveman asserted that he talked with a man (unidentified) from Harris Labs, Lincoln, Nebraska, concerning these tests, who stated that, if [soil] concentrations were as high as reported nothing would grow on the land for at least three years. According to Mr. Haveman, the vegetation grew back that fall. Mr. Haveman quoted the man from Harris Labs as stating that the concentration reported in the sample(s) would equate to about 140 pounds of product. He (Haveman) alleged that, if extrazine were in the spot sampled, it would take about 35 gallons to equal the concentration reported in the sample. Asserting that they had "rinsed" empty tanks, he maintained there was no way "that could be". He stated that one of the tanks had been used for Extrazine II, which contained atrazine and Bladex, and that the other [tank] had been used for Pursuit Plus, which contained Prowl and Pursuit. Averring that these products were very expensive and that you could not afford to waste them, he maintained that the rinse water could not have contained even a cup of product.

12. Mr. Haveman stated that 2,4-D and "crop oil" were added to the rinse water. He explained that crop oil was added to the spray to help it adhere to broadleaf weeds and to aid in the prevention of drift. Offering an explanation for the

concentrations reported in the soil samples collected on the Rockbluff Elevator property, Mr. Haveman again referred to his conversation with the "man from Harris Labs", who is reported to have opined that the crop oil could "scour" the sides of the tank on the floater. Mr. Haveman stated that the floater had sat for a while during the spraying at issue and that, while the floater sits, the pressure can "back off" causing the nozzles to drip. He asserted that "scour" from the tank sides could have settled in the lines and that the high concentrations reported in the samples could be attributable to the fact that the samples were taken from the spot where the floater sat and dripped.

13. Mr. Haveman claimed that the "yellow particles", which he is quoted as identifying as "Pursuit residue" in the Use/Misuse Investigation, and which are shown in Photos 17-19 (C's Exh. 12), must have been "scoured" from the floater tank and contended that the samples were not representative of the area sprayed. According to Mr. Haveman, he would not have sprayed "those weeds", if he thought that there was anything in the spray that would hurt anyone or anything. Alluding to penalties reportedly assessed in other cases allegedly involving more egregious violations, he argued that the proposed fine was completely unfair and excessive.

14. The method used in computing the proposed penalty is set forth in a memorandum, dated November 8, 1993, attached to Complainant's Prehearing Exchange. The gravity level of 2 for

the violation of § 12(a)(2)(G), "use of a registered pesticide in a manner inconsistent with its labeling," was lifted from Appendix A of the July 2, 1990 Enforcement Response Policy (ERP) for the Federal Insecticide, Fungicide, and Rodenticide Act. This gravity level was then applied to the penalty matrix on page 19 of the ERP, Haveman being placed in Category I as to size of business (gross sales in excess of $1,000,000), resulting in the proposed penalty of $5,000. The next step is to consider adjustments to the gravity based penalty, and although harm to human health and the environment were determined to be "unknown", no adjustments to the proposed penalty were considered to be appropriate.[7/]

15. The parties have stipulated that the proposed penalty was computed in conformance with the July 2, 1990 Enforcement Response Policy; that the 1991 income tax return for Respondent, Haveman Grain Co., Inc., shows gross income in excess of $11,000.000 (sic); and that Respondent has the ability to pay the proposed penalty.

[7/] The penalty memorandum states that Respondent has one prior FIFRA violation. The only evidence supporting that assertion in the record, however, is a Notice of Warning, dated August 22, 1988 (C's Exh. 18) and a complaint, dated June 12, 1990 (C's Exh. 17), neither of which is acceptable as evidence of a prior violation (ERP, Appendix B Footnotes). The footnotes expressly exclude a notice of warning as evidence of a prior violation and provide that in order to constitute a prior violation, the prior violation must have resulted in: (1) a final order, either as a result of an uncontested complaint, or as a result of a contested complaint which is finally resolved against the violator; (2) a consent order.....; (3) the payment of a civil penalty....; (4) conviction under the FIFRA's criminal provisions.

CONCLUSIONS

1. The pesticide rinsate application/disposal effected by Haveman on June 29, 1992, to the Rockbluff Elevator property, a non-crop site, found above was inconsistent with the labels and thus a violation of FIFRA § 12(a)(2)(G). Considered as a pesticide application, the application was inconsistent with the labels of Bladex, Extrazine II 4L, Pursuit Plus and Prowl, which are for use only on specified crops or crop sites.[8/] Viewed as disposal, the application was contrary to label provisions providing that "(w)astes resulting from use of the product shall be disposed of on site [a site in conformance with uses specified on the label] or at an approved waste disposal facility."
2. For the above violation, an appropriate penalty is the sum of $1,000.

DISCUSSION

The violation alleged in the complaint, use of pesticides inconsistent with label directions, is amply supported by the

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[8/] There is no indication that application of 2,4-D Amine or 2,4-D LV4 to the Rockbluff Elevator property would have been contrary to the labels on these pesticides. These pesticides should not, however, have been mixed with the rinsate from other pesticides.

record and, indeed, is not seriously disputed. Therefore, this issue warrants no further discussion.

Turning to the penalty, while adhering to the ERP has the virtue of simplicity, it tends to make penalty calculation a mechanical exercise. Simply find the violation alleged in Appendix A and apply the indicated violation level to the column in the penalty matrix under which falls the size of respondent's business (in terms of gross sales).[9/] The ERP provides for adjustments in the gravity based penalty so determined to account for the actual circumstances of the violation and, inter alia, the compliance history of the violator. Because the health and environmental effects of the spraying at issue were considered to be "unknown", no adjustments to the gravity based penalty were made. Additionally, Respondent was determined, erroneously on this record, to have had one prior violation of the Act.

Although the precise concentrations in the rinsate are not and cannot be known, the penalty in the instant matter was determined as if application strength pesticides were applied to the non-crop sites in question. Because the evidence is to the contrary, it is concluded that the proposed penalty greatly overstates the risk of the pesticide misuse shown here and the ERP will be disregarded as

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[9/] See In the Matter of Employers Insurance Company of Wausau, and Group Eight Technology, Inc., Docket Nos. TSCA-V-C-62-90 and TSCA-V-C-66-90 (Initial Decision, September 29, 1995) (no presumption of validity attaches to agency policy statements [such as the ERP], and, if the Agency chooses to rely on such statements in determining a penalty, it must support the findings, assumptions and determinations upon which the policy rests by evidence).

I am permitted to do by the Rules of Practice (40 CFR § 22.27(b)). See, e.g., In re James C. Lin and Lin Cubing, Inc., FIFRA Appeal No. 94-2 (EAB, December 6, 1994) (penalty determined to be excessive even though it was calculated in accordance with the penalty policy).

FIFRA § 14(a)(4) provides that "(i)n determining the amount of the penalty, the Administrator shall consider the appropriateness of such 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". The first two factors are frequently considered under the rubric of "ability to pay" and, thus, are treated as one factor. Because Respondent has stipulated that it has the ability to pay the proposed penalty, this issue need not be addressed.

The "gravity of the violation" is considered from two aspects, the gravity of the harm or potential harm and the gravity of the misconduct. According to the initial answer, the pesticide rinsate in the pesticide application/disposition at issue here consisted of approximately 100 gallons. Precise concentrations of pesticide active ingredients in the rinsate are unknown. The evidence is, however, that the material applied to property surrounding the Rockbluff Elevator consisted of the rinsate, mixed with 2.5 gallons of 2,4-D LV4, 2 gallons of Herbicide A-4D and approximately 300 gallons of water (findings 2 and 3). Respondent asserts that the pesticides Bladex 4L, Extrazine II 4L, Prowl and Pursuit Plus are too expensive to be wasted and that the rinse

water could not have contained even "a cup" of product (finding 11). Although the validity of this assertion depends in part on the size of the tanks and the method of removing product therefrom, e.g., pumping or draining, of which there is no evidence, it is a practical certainty that Respondent has grossly understated the quantity of product in the rinsate.

Firstly, Respondent recognizes that reported concentrations in soil samples collected by Mr. Horak appear to be high. Respondent contends that the samples are not representative of the area sprayed. However, Mr. Haveman's reported conversations with an unidentified "man from Harris Labs" obviously may not be accepted as support for this argument.[10/] The explanation that the samples may have been collected from an area where the floater was parked and the nozzles dripped is plausible and is certainly possible. Lacking, however, is any evidence of where the floater may have been parked in relation to where the samples were collected. Secondly, the yellow "Pursuit residue" shown in photos taken by Mr. Horak (finding 12) seemingly refutes the contention that the rinsate could not have contained even a cup of product. The reported opinion of the "man from Harris Labs" that "crop oil"

[10/] The "man from Harris Labs" is reported to have opined that if concentrations were as high as reported, nothing would grow on the land for at least three years (finding 11). As a minimum, it would be necessary to obtain an affidavit from this individual stating his qualifications and experience to render an expert opinion, the facts upon which the opinion is based and the facts in this case as he understood them to be. Moreover, there is no evidence to support Mr. Haveman's allegation that the vegetation grew back that fall.

added to the 2,4-D mixture could have scoured the sides of the floater tank is not, of course, acceptable evidence that the mentioned residue may be explained by any such "scouring".

Notwithstanding the conclusion that Respondent has understated the amount of product in the rinsate, the fact remains that the penalty proposed herein was computed as if application strength pesticides had been applied to the non-crop site at issue. Because this is not the case, it is concluded that the risk of harm or potential harm from the application/disposal at issue is overstated as is the seriousness or gravity of the misconduct.[11/] It should be emphasized that in the absence of other evidence of drift, the anecdotal evidence provided by Ms. Collins does not establish

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[11/] This case illustrates why it is normally inappropriate to determine a penalty without a hearing. If a hearing were held, it is likely that there would be evidence which would enable a more definitive determination of the risk of harm from the application/disposal at issue, e.g., a more precise description of the area involved, the direction and velocity of the wind, testimony as to where in her yard Ms. Collins and her son were at the time, an explanation of the photos as supporting or refuting the possibility of drift, whether the adjoining pasture exhibited any evidence of drift, testimony as to the size of the storage tanks at the Rockbluff Elevator, estimates of the quantity of rinsate and of pesticide concentrations therein, testimony as to where the floater was parked in relation to where the samples were collected, testimony as to the precise locations and method of drawing the samples, expert testimony as to the affects of reported concentrations on vegetation and testimony as to the time which elapsed before the vegetation "grew back". Additionally, a hearing may have elicited other evidence as to risks from the concentrations shown, such as whether the samples were representative in view of the fact that both contained yellow particles or residue, and whether, assuming the particles were Pursuit Plus residue, reported concentrations may thereby have been affected. Also, the factual issue of Respondent's good faith may more accurately be assessed at a hearing.

actual harm from the violation.[12/] While it is true that the fact no actual harm has been shown is not controlling as the "potential for harm" must be considered, it is concluded that on this record the potential for harm has not been shown to warrant a penalty of the magnitude proposed. There is no evidence or allegation that application of 2,4-D to the areas in question would have been contrary to the labels on these pesticides and no acceptable evidence of prior violations by Respondents in the record. I accept Mr. Haveman's assertions of good faith, i.e., concentrations of pesticides in the rinsate were thought to be insignificant. Under all of the circumstances, a penalty of $1,000 adequately reflects the gravity of the potential for harm and the gravity of the misconduct. See, e.g., In re Johnson Pacific Incorporated, FIFRA Appeal No. 93-4 (EAB, February 2, 1995) (Board recognition of ALJ's latitude in determining penalty).

ORDER

It having been found that Respondents, Haveman Grain Company, Inc. and Dan Haveman, violated FIFRA § 12(a)(2)(G) as alleged in the complaint, a penalty of $1,000 is assessed against them in

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[12/] It would seem that any drift would have been apparent in the pasture, which separates Ms. Collins' residence from the Rockbluff Elevator. There is no evidence that this is so.

accordance with § 14(a)(4) of the Act (7 U.S.C. § 1361).[13/] Payment of the penalty shall be made by submitting a cashier's or certified check in the amount of $1,000 payable to the Treasurer of the United States to the following address within 60 days of the date of this order:

Regional Hearing Clerk
U.S. EPA, Region VII
P.O. Box 360748M
Pittsburgh, PA 15251

Dated this 12th day of December 1995.

Spencer T. Nissen
Administrative Law Judge

Encl.
Order, dated July 7, 1995.

[13/] Unless this decision is appealed to the EAB in accordance with Rule 22.30 (40 CFR Part 22), or unless the EAB elects to review the same sua sponte as therein provided, this decision will become the final order of the EAB in accordance with Rule 22.27(c).