

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. **FIFRA-08-2003-0005**

In the Matter of:

The Farmers Elevator Company)
of Honeyford, North Dakota)
2472 30th Street, NE)
Gilby, North Dakota)
58235)
EPA Est. No. 07425-ND-001)
Respondent.)

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

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 1361(a). EPA regulations authorized by the statute are set out in part 167 of title 40 of the Code of Federal Regulations, and violations of the regulations constitute violations of FIFRA, section 12, 7 U.S.C. section 136j. 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 CFR 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 section 12(a)(2)(L), 7 U.S.C. 136j(a)(2)(L), and proposes the assessment of a civil penalty as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge to disagree with (1) any fact 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, 999 18th st., Suite 300, Denver, Colorado 80202-2466, 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 proposed in this 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. If Respondent chooses to resolve this proceeding by paying the specific penalty proposed in this complaint, payment must be made, within thirty (30) calendar days of receipt of this complaint, by sending a certified or cashier's check payable to "Treasurer, United States of America," in care of:

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

A copy of the check must be mailed simultaneously to the attorney listed below.

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 Brenda L. Morris at 1-800- 227-9441, extension 6891; 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.**

GENERAL ALLEGATIONS

8. Respondent is a "person" within the meaning of section 2(s) of FIFRA, 7 U.S.C. section 136(s), and therefore subject to the requirements of the statute and/or regulations.

9. Respondent is the owner and operator of a facility ("facility") located at 2472 30th Street, NE , Gilby, North Dakota, EPA establishment number 07425-ND-001.

10. Respondent is a "producer" as defined by section 2(w) of FIFRA, 7 U.S.C. §136(w) and a "distributor/seller" as defined by section 2(gg) of FIFRA, 7 U.S.C. §136(2)(gg), of a "pesticide" as defined at section 2(u) of FIFRA, 7 U.S.C. §136(2)(u).

11. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. 136j(a)(2)(L), makes it unlawful for any person who is a pesticide producer to fail to report the types and amounts of pesticides it currently produces, it produced during the past year, and it sold or distributed during the past year on its annual report (EPA Form 3540-16) in accordance with section 7(c)(1) of FIFRA, 7 U.S.C. §136e(c)(1) and 40 CFR 167.85.

12. In accordance with 40 CFR 167.85(d), the annual report must be filed on or before March 1st for the preceding calendar year.

13. Respondent failed to file an annual report by March 1, 2002, for pesticides it produced, sold, or distributed during calendar year 2001.

14. Respondent's failure to file an annual report by March 1, 2002, for pesticides it produced, sold, or distributed during calendar year 2001, in accordance with section 7(c)(1) of FIFRA, 7 U.S.C. §136e(c)(1) and 40 CFR 167.85, constitutes one violation of 40 CFR 167.85 and therefore one violation of section 12(a)(2)(L) of FIFRA, 7 U.S.C. 136j(a)(2)(L).

PROPOSED CIVIL PENALTY

15. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1) and 40 CFR part 19, authorizes the assessment of a civil penalty of up to \$5,500.00 for each day of each violation of FIFRA. In arriving at the assessment of the penalty specified below, EPA, as required by section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), has taken into consideration the following, as known to Complainant at this time:

- The size of Respondent's business;
- Respondent's ability to continue in business in light of the proposed penalty; and
- The gravity of the alleged violation(s).

Agency policy with respect to assessment of civil penalties under FIFRA is governed by EPA's Enforcement Response Policy for FIFRA section 7(c) Pesticide Producing Establishment Reporting Requirement and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), July 2, 1990, (enclosed) which provide a rational, consistent, and equitable method for applying these statutory factors to the facts and circumstances of specific cases. Using the policies to apply the statutory factors to the facts of this case, EPA proposes that a penalty of **\$5,500** be assessed against Respondent for the violations alleged above. The penalty calculation/narrative is enclosed and incorporated as attachment A to this complaint. Additionally, Complainant has enclosed a copy of "Information for Small Businesses."

16. The administrative law judge 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.

To discuss settlement or ask any questions you may have about this process, please contact Brenda L. Morris, Enforcement Attorney, at 303-312-6891, or the address below.

United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice, Complainant
999 18th Street, Suite 300 (ENF-L)
Denver, CO 80202

Date: April 25, 2003 By: SIGNED
Elisabeth Evans, Director
Technical Enforcement Program

Date: 4/25/03 By: David J. Janik
Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program

SIGNED
Brenda L. Morris, Enforcement Attorney
Legal Enforcement Program

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT, AND NOTICE OF OPPORTUNITY FOR HEARING was hand-carried to the Regional Hearing Clerk, EPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado, and that a true copy of the same was sent certified mail to:

Mr. Thomas McMahon, Registered Agent for
The Farmers Elevator Company of Honeyford, North Dakota
2472 30th Street, NE
Gilby, North Dakota
58235

4-30-03

Date

SIGNED Brenda Morris for

Judith McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON APRIL 28, 2003.