

Pesticides Act 1999

Pesticide Control Order issued under section 38

1. Name

This Order is to be known as the **Pesticide Control (1080 Felixer Cartridge) Order 2022**

2. Authority for Order

This Order is made by the Environment Protection Authority (**EPA**) under Part 4 of the *Pesticides Act 1999* (the **Act**).

3. Commencement

This Order commences on date of publication in the NSW Government Gazette.

4. Revocation of Previous Order

This Order revokes and replaces the Pesticide Control (1080 Felixer Cartridge Trial) Order 2020 made by the EPA and published in the NSW Government Gazette No 116 (n2020-1589) of 5 June 2020.

5. Objects

The objects of this Order are to:

- (a) authorise those persons described in clause 9 of this Order to possess or use 1080 Felixer cartridges, being a restricted pesticide under the Act;
- (b) specify the manner in which 1080 Felixer cartridges must be used in NSW; and
- (c) revoke and replace the Pesticides Control (1080 Felixer Cartridge Trial) Order 2020.

6. Background

This Order is made under section 38 of the Act in light of the declaration of chemical products that contain sodium monofluoroacetate (1080) as “restricted chemical products” under clause 45 and Schedule 4 of the *Agricultural and Veterinary Chemicals Code Regulations 1995* (Cth). This Order is also made to implement additional requirements for 1080 use in NSW in order to protect public health, property and the environment.

Section 94 of the Agvet Code, which is applied as law of New South Wales by the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994*, provides that a person must not, without reasonable excuse, supply a restricted chemical product, or cause or permit a restricted chemical product to be supplied, to a person who is not authorised to use the product under another law of this jurisdiction.

Section 4 of the Act provides that a “restricted pesticide” means a pesticide that is a restricted chemical product within the meaning of the Agvet Code. Section 17 of the Act provides that a person must not possess or use a restricted pesticide unless authorised to do so by a restricted pesticide authorisation or a pesticide control order.

7. Application

This Order authorises the possession and use of 1080 Felixer cartridges subject to the conditions specified in this Order, including the Schedule to this Order.

8. Definitions and interpretation

In this Order (including the Schedule to this Order) –

1080 means the chemical sodium monofluoroacetate (also known as sodium fluoroacetate).

1080 Felixer cartridge means a cartridge that:

- (a) is applied using a Felixer
- (b) contains 1080 as its only active constituent, and
- (c) is either:
 - (i) an APVMA registered chemical product; or
 - (ii) a product allowed for use under an APVMA permit.

Act means the *Pesticides Act 1999*.

Agvet Code has the same meaning as in the Act.

application site means the position of a Felixer containing 1080 Felixer cartridges within a location.

apply a pesticide includes, but is not limited to, drop, lay, place or otherwise apply the pesticide by any means.

approved label has the same meaning as in the Act.

APVMA means the Agricultural Pesticides and Veterinary Medicines Authority established by the *Agricultural and Veterinary Chemicals (Administration) Act 1992* of the Commonwealth.

Australian Qualifications Framework has the same meaning as in section 7 of the *Higher Education Act 2001*.

authorised agent means a person who is engaged by a landholder to take possession of 1080 Felixer cartridges on the landholder's behalf and use 1080 Felixer cartridges on the property of that landholder.

Authorised Control Officer means a person who:

- (a) either:
 - (i) holds a VET statement of attainment issued by NSW DPI's Registered Training Organisation or another Registered Training Organisation on completion of the training and assessment components of the Vertebrate Pest Management course; or
 - (ii) is employed by a public authority that has an EPA-approved system for evaluating and establishing recognised prior learning that is, at minimum, equivalent to obtaining accreditation for the successful completion of the training and assessment components of the Vertebrate Pest Management course; and
- (b) holds a certificate of completion issued by the NSW DPI within the previous five (5) years for completion of the training and assessment components of the Vertebrate Pesticide Accreditation course; and
- (c) holds a VET statement of attainment on completion of the training and assessment components of a Chemical Accreditation training program assessed at Australian Qualifications Framework levels 3 and 4 and that has been issued by a Registered Training Organisation. To maintain currency of level 3 Chemical Accreditation a person must complete refresher training every 5 years but for level 4 Chemical Accreditation only

initial accreditation is required for the duration of their employment, functioning as an Authorised Control Officer; and

(d) either:

- (i) is a member of staff of NPWS, LLS, NSW DPI, or another public service agency and is currently employed as part of the Public Service under Part 4 of the *Government Sector Employment Act 2013* to enable that public service agency to exercise its functions; or
- (ii) has obtained approval to operate as an Authorised Control Officer from an EPA employee appointed from time to time (in an ongoing, temporary, casual or acting capability) to the position of Senior Executive Band 1 and above within the EPA, prior to completing the training requirements in (c) above, for the purposes of this Order.

end user means a person who is authorised to use 1080 Felixer cartridges in accordance with clause 9(2) of this Order.

EPA means the Environment Protection Authority (NSW).

EPA authorised officer means an authorised officer as defined in the *Protection of the Environment Operations Act 1997*.

Felixer means the grooming trap device that has been developed by Ecological Horizons Pty Ltd and supplied by Thylation Operations Pty Ltd.

Felixer program means the use of 1080 Felixer cartridges at a location, for the control of vertebrate pests.

Felixer training course means the training course delivered by Thylation Operations Pty Ltd (or one of its employees, agents or contractors) that provides certification for the use of 1080 Felixer cartridges to control vertebrate pests which covers:

- (a) setting up, using and maintaining a Felixer;
- (b) handling, loading and disposing of 1080 Felixer cartridges; and
- (c) minimising risks to users, bystanders, the environment, and non-target animals.

formed entry point means a particular place that has been constructed to allow a person to enter a location. It excludes permanently closed or unauthorised entry points.

landholder means an owner, occupier or manager of land.

LLS means Local Land Services as constituted under the *Local Land Services Act 2013*.

location means:

- (a) in the case of public places:
 - (i) subject to sub-paragraphs (a)(ii) and (a)(iii) of this definition, the whole of the property;
 - (ii) in the case of State forests, and LLS-managed travelling stock reserves – the area, bordered by peripheral roads, formed tracks, property boundaries, rivers or internal fences, of the State forest or LLS-managed travelling stock reserve where 1080 Felixer cartridges are being applied; and
 - (iii) in the case of NPWS land or property included under a NPWS BPMS program – the area defined by a map in the Authorised Control Officer risk assessment for the Felixer program; and
- (b) in any other case:
 - (i) where the property is less than 100 ha – the whole of the property; and
 - (ii) where the property is 100 ha or more – the area, bordered by peripheral roads, formed tracks, property boundaries, rivers or internal fences, of the property where 1080 Felixer cartridges are being applied.

NPWS means the National Parks and Wildlife Service as defined under the *National Parks and*

Wildlife Act 1974, and also includes any person involved in the administration of that Act.

NPWS BPMS program means a program listed in a Branch Pest Management Strategy or an equivalent pest management strategy, of the NPWS.

NPWS estate means the land reserved or acquired under Part 4 of the *National Parks and Wildlife Act 1974*.

NPWS land means NPWS estate, or land otherwise managed or leased by NPWS under the *Crown Land Management Act 2016* or the *Forestry Act 2012*.

NSW DPI means the NSW Department of Primary Industries.

permit has the same meaning as in the Act.

possession has the same meaning as in the Act.

property means an area of land, including privately owned land, a holding (as defined in the *Local Land Services Act 2013*), a travelling stock reserve, a State forest, NPWS land, or a public place.

public authority has the same meaning as in the Act and clause 39 of the *Pesticide Regulation 2017* (in circumstances where that clause applies).

public place has the same meaning as in the *Protection of the Environment Operations Act 1997*.

public service agency has the same meaning as in the *Government Sector Employment Act 2013*, and also includes a statutory body representing the Crown.

Registered Training Organisation has the same meaning as under the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth.

restricted pesticide has the same meaning as in the Act.

State forest has the same meaning as under the *Forestry Act 2012*.

thoroughfare means a road or track maintained for public use for travel or transportation, including through a property. It excludes tracks, trails and similar access routes on public land such as NPWS land or State forest, which are not intended for use by the general public (for example, formed fire trails used for fighting fires).

travelling stock reserve has the same meaning as under the *Local Land Services Act 2013*.

unused in relation to 1080 Felixer cartridges, means a 1080 Felixer cartridge that has been safely stored and has at no time been placed in the environment for any period of time to control vertebrate pests.

use of a pesticide has the same meaning as in the Act.

vertebrate pest means the target pest species:

- (a) listed on an approved label for 1080 Felixer cartridges; or
- (b) identified in an APVMA permit that allows the use of 1080 Felixer cartridges.

Vertebrate Pest Management course means the Vertebrate Pest Management course delivered by NSW DPI, or a Registered Training Organisation; and includes the Vertebrate Pest Management course delivered by NSW Agriculture or NSW DPI prior to the establishment of nationally recognised competencies.

Vertebrate Pesticide Accreditation course means the Vertebrate Pesticide Accreditation course delivered by NSW DPI or LLS or by NPWS staff who have been endorsed by the NSW Vertebrate Pesticide Training Committee.

Vertebrate Pesticide Induction Training course means the Vertebrate Pesticides Induction Training course delivered by LLS for end users of vertebrate pesticides.

VET statement of attainment has the same meaning as in the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth.

9. Persons authorised

- (1) An Authorised Control Officer is authorised to possess and use 1080 Felixer cartridges, subject to clause 10(1) of this Order.
- (2) A person, other than a person authorised to possess and use 1080 Felixer cartridges under clauses 9(1), 9(3), or 9(4) of this Order, is authorised to possess and use 1080 Felixer cartridges, subject to clause 10(1) of this Order, provided that the person:
 - (a) has obtained 1080 Felixer cartridges from an Authorised Control Officer; and
 - (b) is either:
 - (i) a person who is qualified within the meaning of clause 31(1)(a), (b), or (c) of the *Pesticides Regulation 2017*; or
 - (ii) a person who holds a qualification under clause 31(1)(d) of the *Pesticides Regulation 2017*, which for the purposes of this Order is the Vertebrate Pesticide Induction Training course; and
 - (c) holds a certificate of completion for the Felixer training course; and
 - (d) is one of the following:
 - (i) a person that is contracted or employed by the NPWS, the Wild Dog Destruction Board, NSW DPI or the LLS to use 1080 Felixer cartridges; or
 - (ii) a landholder of the land on which 1080 Felixer cartridges are to be used; or
 - (iii) an authorised agent of the landholder of the land on which 1080 Felixer cartridges are to be used.
- (3) A person who conducts a business of selling or supplying 1080 Felixer cartridges, whether as an employee, contractor or self-employed person, is authorised to possess and use 1080 Felixer cartridges, but only in accordance with clause 10(2) of this Order.
- (4) An authorised officer of the EPA is authorised to possess and use 1080 Felixer cartridges but only in accordance with clause 10(3) of this Order.

10. Conditions on the use of 1080 Felixer cartridges

- (1) A person authorised to possess and use 1080 Felixer cartridges under clause 9(1) or 9(2) of this Order must only possess and use the 1080 Felixer cartridges in accordance with the conditions stated in the Schedule to this Order.
- (2) A person authorised to possess and use 1080 Felixer cartridges under clause 9(3) of this Order may only possess or store the 1080 Felixer cartridges for the purposes of selling or supplying the 1080 Felixer cartridges, and must not prepare the 1080 Felixer cartridges for use, or apply, spray, spread or disperse the 1080 Felixer cartridges by any means.
- (3) A person authorised to possess or use 1080 Felixer cartridges under clause 9(4) of this Order must only possess or use 1080 Felixer cartridges by possessing or storing samples of 1080 Felixer cartridges that have been collected in the exercise of powers under section 4 of the Act and Chapter 7 of the *Protection of the Environment Operations Act 1997*.

Notes

Words used in this Order have the same meaning as in the Act, unless otherwise defined in this Order.

A person must not contravene this Order – maximum penalty \$120,000 for a corporation or \$60,000

for an individual.

This Order will remain in force until it is revoked.

This Order imposes additional controls for the use of 1080 Felixer cartridges in NSW in accordance with section 39(1) of the Act, including additional requirements to those appearing on an approved label or specified in a permit in accordance with section 39(3) of the Act. All persons using 1080 Felixer cartridges in NSW must follow the conditions in this Order, to comply with section 39 of the *Pesticides Act 1999*. This Order does not displace any requirements that may apply to a person under other relevant legislation, including the Act and Regulations made under the Act. Where the this Order does not address a matter that is required by other legislation, then the requirements on that matter in other legislation must be complied with. Where requirements on an approved label or specified in a permit are inconsistent with conditions in this Order, the conditions in this Order prevail to the extent of the inconsistency.

In regard to clause 9(2)(b)(i) of this Order, clause 31 of the *Pesticides Regulation 2017* provides a definition of “recognised qualification”. For the purposes of that definition, the EPA approves units of competency under Schedule 2 of the *Pesticides Regulation 2017*. Approvals of units of competencies are published in the NSW Government Gazette. Links to the approvals published in the NSW Government Gazette are found on the EPA website.

Karen Marler
Director – Environmental Solutions (Chemicals, Land & Radiation)
Environment Protection Authority
(as delegate of the EPA)

Schedule 1

CONDITIONS ON THE POSSESSION AND USE OF 1080 FELIXER CARTRIDGES FOR CONTROL OF VERTEBRATE PESTS

1. POSSESSION AND USE OF 1080 FELIXER CARTRIDGES BY AUTHORISED CONTROL OFFICERS

A person authorised to possess and use 1080 Felixer cartridges under clause 9(1) of this Order must do so in accordance with the following conditions:

- 1.1 An Authorised Control Officer must not allow a person to take possession of 1080 Felixer cartridges unless that person is authorised to use 1080 Felixer cartridges under clause 9 of this order.
- 1.2 An Authorised Control Officer must not allow an authorised agent to take possession of 1080 Felixer cartridges unless the authorised agent has provided evidence of a current authorisation, given by the relevant landholder, for each property on which the 1080 Felixer cartridges are intended to be used. The authorisation must not cover a period of time greater than 12 months.
- 1.3 Before allowing a person to take possession of 1080 Felixer cartridges, an Authorised Control Officer must conduct a risk assessment to determine if it is appropriate for that person to use 1080 Felixer cartridges, and for the end user to use the 1080 Felixer cartridges at a location. If the Authorised Control Officer determines from the risk assessment that it is not appropriate to permit a person to take possession of 1080 Felixer cartridges, then the Authorised Control Officer must not allow that person to take possession of any 1080 Felixer cartridges from the Authorised Control Officer.
- 1.4 An Authorised Control Officer must ensure that a copy of the risk assessment (see condition 1.3 of this Schedule) is provided to the end user for each Felixer program.
- 1.5 An Authorised Control Officer must ensure that a copy of this Pesticide Control Order is provided to the end user for each Felixer program.

2. POSSESSION AND USE BY END USERS OF 1080 FELIXER CARTRIDGES

A person authorised to possess and use 1080 Felixer cartridges under clause 9(2) of this Order must do so in accordance with the following conditions:

- 2.1 A person must not apply 1080 Felixer cartridges on a property without the written consent of the property's landholder.
- 2.2 An authorised agent must provide, to the Authorised Control Officer from whom they take possession of 1080 Felixer cartridges, evidence of a current authorisation given by the landholder on whose property the 1080 Felixer cartridges will be used. The authorisation must clearly set out the dates or date range to which it applies and must not cover a period of time greater than 12 months.

3. USE, APPLICATION, STORAGE AND DISPOSAL OF 1080 FELIXER CARTRIDGES

A person authorised to possess and use 1080 Felixer cartridges under clause 9(2) of this Order may only do so in accordance with the following conditions:

- 3.1 If transporting or storing 1080 Felixer cartridges, the person must ensure that the 1080 Felixer cartridges cannot be accessed by any persons who are not authorised to use 1080 Felixer cartridges under clause 9 of this Order.
- 3.2 When using 1080 Felixer cartridges, the person must ensure that the 1080 Felixer cartridges

are used in accordance with any risk mitigating measures identified in the risk assessment prepared by the relevant Authorised Control Officer in accordance with condition 1.3 of this Schedule.

- 3.3 The person using the 1080 Felixer cartridges must ensure that all application sites are recorded.
- 3.4 The person must ensure that all 1080 Felixer cartridges are removed from each application site at the end of the relevant Felixer program.
- 3.5 The person must ensure that all 1080 Felixer cartridges, rinsate and packaging are disposed of at the end of the Felixer program in accordance with the following:
 - (a) in a waste management facility that can lawfully accept the 1080 Felixer cartridges, rinsate or packaging; or
 - (b) by burial, in a disposal pit at a disposal site identified and approved by the Authorised Control Officer in the risk assessment (see condition 1.3).

4. PUBLIC NOTIFICATION

A person authorised to use 1080 Felixer cartridges under clause 9(2) of this Order must notify certain persons of the use of 1080 Felixer cartridges in accordance with the following conditions:

- 4.1 The person must not apply 1080 Felixer cartridges on any land unless a minimum of 72 hours' notice has been given before the date on which they intend to use the 1080 Felixer cartridges ("**the notification**").
- 4.2 The notification required under condition 4.1 of this Schedule must be given to the landholder of every property that has a property boundary within one kilometre of a location where the 1080 Felixer cartridges are to be used.
- 4.3 The notification required under condition 4.1 must contain the following information:
 - (a) the type of pest(s) being controlled with the 1080 Felixer cartridges;
 - (b) the property on which the 1080 Felixer cartridges will be used;
 - (c) dates on which the 1080 Felixer cartridges will be initially deployed and the range of dates during which the 1080 Felixer cartridges will be used;
 - (d) contact details of the person who will use the 1080 Felixer cartridges or their office; or in the case of a public authority, contact details of the person who can be contacted for more information about 1080 Felixer cartridges being used on the property, or their office;
 - (e) a warning that pets and working dogs may be affected by exposure to 1080 Felixer cartridges;
 - (f) advice to restrain, or otherwise prevent dogs and other pets that may activate the Felixer from entering the location during Felixer programs; and
 - (g) how to obtain advice on prevention of accidental poisoning, symptoms of 1080 poisoning and on measures that should be taken in the event that the Felixer releases 1080 onto a non-target animal, including advice to seek immediate veterinary assistance in the event of accidental poisoning.
- 4.4 The notification required under condition 4.1 must be given every six (6) months.

5. SIGNAGE

A person authorised to use 1080 Felixer cartridges under clause 9(2) of this Order must ensure that notices ("1080 Poison Notices") are erected in accordance with the following conditions:

- 5.1 A person must not use 1080 Felixer cartridges on a property unless 1080 Poison Notices are erected at that property. These notices must remain erect, intact, legible and clearly visible for the duration of the Felixer program.

5.2 A person must place 1080 Poison Notices at:

- (a) all vehicle entry points to a location, commonly used entry points to a location, and every formed entry point into a location;
- (b) the main entrance to a location where 1080 Felixer cartridges are being used; and
- (c) every five kilometres along all thoroughfares which border or pass through a location.