

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 Trial) Order 2020**

2. Authority for Order

This Order is made by the Environment Protection Authority with the approval of the Chairperson of the Environment Protection Authority as delegate for the Minister for Energy and Environment, under Part 4 of the *Pesticides Act 1999*.

3. Commencement

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

4. Objects

The objects of this Order are to:

- (a) Authorise those persons described in clause 8 to possess and use 1080 Felixer cartridges.
- (b) Specify the manner in which 1080 Felixer cartridges may be used in NSW.

5. Background

A chemical product that contains sodium monofluoroacetate (1080) has been declared to be a “restricted chemical product” as set out in Regulation 45 of the *Agricultural and Veterinary Chemicals Code Regulations 1995* (Cth).

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 *Pesticides Act 1999* 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 *Pesticides Act 1999* provides that a person must not use or possess a restricted pesticide unless authorised to do so by a restricted pesticide authorisation or a pesticide control order.

6. Application

This Order authorises the possession and use of 1080 Felixer cartridges subject to the conditions specified in this Order, including Schedule 1 to this Order.

7. Definitions and interpretation

In this Order (including Schedule 1 to this Order) –

1080 Felixer cartridge means a cartridge containing 8 to 12 milligrams of 1080 derived from a 1080 liquid concentrate product that is the subject of an APVMA permit and which applies to New South Wales (being APVMA permit PER80926 or the permit that subsequently replaces this permit).

1080 liquid concentrate product means any liquid concentrate product that contains 1080 as its only active constituent and has been registered by the APVMA.

Agvet Code has the same meaning as in the *Pesticides Act 1999*.

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

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

Authorised Control Officer means a person who: –

- (a) holds a current certificate of completion or 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 course¹ delivered by NSW DPI or a Registered Training Organisation; or
- (b) is employed by a public authority that has an EPA approved system for evaluating and establishing recognised prior learning that would, at least, be equivalent to obtaining accreditation for the successful completion of the training and assessment components of the Vertebrate Pest Management course; and
- (c) holds a current certificate of completion or VET statement of attainment for completion of the Vertebrate Pesticide accreditation course; and
- (d) holds a current certificate of completion or 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
- (e) is a person who:
 - (i) is a member of staff of NPWS, or another NSW public authority, and is currently employed as part of the Public Service under Part 4 of the *Government Sector Employment Act 2013* to enable that NSW public authority to exercise its functions; or
 - (ii) has obtained approval to operate as an Authorised Control Officer from a person appointed from time to time (in an ongoing, temporary, casual or acting capacity) to the position of Senior Executive Band 1 and above within the EPA Staff Agency prior to completing the training requirements in (c) above.

bait site means each location at which 1080 Felixer cartridges are proposed to be used.

domestic water supply means the point where water supply originates and includes tanks, bores, dams and waterholes with structures and infrastructure such as pumps that supply domestic water. It only includes the water draw point and does not include the entire length of active streams.

EPA means the Environment Protection Authority (NSW).

EPA Staff Agency means the agency of that name in Schedule 1 of the *Government Sector Employment Act 2013*.

Felixer means the grooming trap device that has been developed by Ecological Horizons Pty Ltd and supplied by Thylation Operations Pty Ltd and which is the subject of an APVMA permit. It is a device for the control of feral cats, foxes and small to medium sized wild dogs.

Felixer training course means the training course referred to in condition 1.1 of Schedule 1 of this Order.

Formed or used entry point includes a gateway, road, or trail, including designated walking tracks

¹ This includes completion of the NSW Agriculture/ NSW DPI Vertebrate Pest Management course prior to the establishment of nationally recognised competencies.

and does not include unformed or permanently closed access points, formed or used entry points that are not authorised (including but not limited to an access point created by falling trees or unauthorised alterations to fencing or vegetation or gates or intersections within the baiting location for which someone would have already passed a notice).

habitation means a dwelling, house or some other accommodation that is occupied by people. It includes but is not limited to domestic dwelling houses, hospitals, shops, schools, pre-schools, kindergartens, childcare and community health care centres, factories, nursing homes, public halls, caravan parks and designated camping areas. It does not include any caravan, mobile home, vehicle, tent or other structure that is used for the purpose of camping outside a designated camping area. A designated camping area means any council operated or privately-operated camping and/or caravan area, or any area that is signposted as a camping area on land reserved under Part 4 of the *National Parks and Wildlife Act 1974*.

Indemnity Form means an indemnity form provided by an Authorised Control Officer in respect of the possession of 1080 Felixer cartridges.

landholder means an owner, occupier or manager of land.

NPWS means the National Parks and Wildlife Service as defined under the *National Parks and Wildlife Act 1974*.

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

NPWS RPMS program means a program listed in a Regional Pest Management Strategy or an equivalent pest management strategy of the NPWS.

ongoing use of a Felixer means use of Felixers and 1080 Felixer cartridges where:

- (a) 1080 Felixer cartridges are available on an ongoing basis to feral cats and/or foxes; and
- (b) Empty or spent 1080 Felixer cartridges are checked and replaced (if necessary) from time to time.

public authority has the same meaning as in the *Pesticides Act 1999*.

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

thoroughfare means a road or track maintained for lawful public use for travel to or transportation through NPWS estate. It excludes formed tracks, trails and similar access routes on NPWS estate which are not intended for lawful use by the general public e.g. formed fire trails used for fighting fires.

use of a pesticide has the same meaning as under the *Pesticides Act 1999*.

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

VPM means the current version of the NSW DPI Vertebrate Pesticide Manual.

8. Persons authorised

- 1) Only the following persons are authorised to possess or use, subject to clause 9 of this Order, 1080 Felixer cartridges:
 - (a) Authorised Control Officers;
 - (b) any person who:
 - (i) has obtained 1080 Felixer cartridges from an Authorised Control Officer; and
 - (ii) holds as a minimum:

- (A) a current certificate of completion or statement of attainment on completion of the training and assessment components of a Chemical Accreditation training program assessed at Australian Qualifications Framework level 3 and that has been issued by a Registered Training Organisation in the previous 5 years in recognition of the person's satisfactory achievement of level 3 training competencies covered by the program; and
- (B) has completed the Felixer training course.
- (c) An authorised officer of the Environment Protection Authority.

9. Conditions on the use of 1080 Felixer Cartridges

- (1) A person authorised to use or possess 1080 Felixer cartridges under clauses 8(1)(a) or 8(1)(b) above must only use the 1080 Felixer cartridges in accordance with conditions stated in any applicable APVMA Permit including APVMA Permit 80926 and in accordance with Schedule 1 to this Order.
- (2) A person authorised to possess 1080 Felixer cartridges under clause 8(1)(c) must only possess 1080 Felixer cartridges for the purposes of storing or possessing a sample of the 1080 Felixer cartridge collected in the exercise of powers under section 198 of the *Protection of the Environment Operations Act 1997*.

Notes

Words used in an Order have the same meaning as in the Pesticides Act 1999, unless otherwise defined in this Order.

A person must not contravene this Order – maximum penalty \$120,000 in the case of a corporation and \$60,000 in the case of an individual.

This pesticide control order will remain in force until it is revoked.

Note for users of 1080 Felixer cartridges – *APVMA Permits do not contain all of the conditions that exist for use of 1080 Felixer cartridges in NSW. All persons using 1080 Felixer cartridges must also follow the instructions in Schedule 1 to this Order, to comply with section 39 of the Pesticides Act 1999. Where **any** instructions on the APVMA permit are inconsistent with instructions in Schedule 1 to this Order, the conditions in Schedule 1 to this Order prevail to the extent of the inconsistency.*

Tracy Mackey
Chief Executive Officer
Environment Protection Authority
(by delegation)

Carolyn Walsh
Acting Chairperson
Environment Protection Authority
(by delegation)

Schedule 1

USE OF 1080 FELIXER CARTRIDGES FOR CONTROL OF FERAL CATS, FOXES AND SMALL TO MEDIUM SIZED WILD DOGS

1. TRAINING FOR USERS OF A FELIXER AND 1080 FELIXER CARTRIDGES

A person authorised to possess or use 1080 Felixer cartridges under clause 8 of this Order must only do so in accordance with the following conditions:

- 1.1. Felixers and 1080 Felixer cartridges must only be used or handled by persons who have previously completed a training course 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,and who have received a certificate for that training course issued by Thylation Operations Pty Ltd (or one of its employees, agents or contractors).

2. SUPPLY OF 1080 FELIXER CARTRIDGES

A person authorised to possess or use 1080 Felixer cartridges under clause 8 of this Order must comply with the following conditions on supply of 1080 Felixer cartridges:

Requirements for Authorised Control Officers supplying 1080 Felixer Cartridges

- 2.1. An Authorised Control Officer must not supply 1080 Felixer cartridges to any person other than:
 - 2.1.1. to a person who is authorised to possess or use 1080 Felixer cartridges under clause 8 of this Order; and
 - 2.1.2. where the end-user for the 1080 Felixer cartridges has undertaken the Felixer training course.
- 2.2. Before supplying 1080 Felixer Cartridges to a person in accordance with condition 2.1, an Authorised Control Officer must conduct a risk assessment to determine if it is appropriate to supply 1080 Felixer cartridges to that person. The risk assessment must be conducted in accordance with the policy and procedures of the VPM and with NPWS standard operating procedures. If the Authorised Control Officer determines from the risk assessment that it is not appropriate to supply a person with 1080 Felixer cartridges, then the Authorised Control Officer must not supply any 1080 Felixer cartridges to that person.
- 2.3. An Authorised Control Officer issuing 1080 Felixer cartridges must supply an electronic or physical copy of this pesticide control order with this Schedule 1 to any person receiving 1080 Felixer cartridges.

Requirements for users of 1080 Felixer Cartridges

- 2.4. A person must not possess 1080 Felixer cartridges unless the person has first completed and signed an Indemnity Form for each NPWS RPMS program for which 1080 Felixer cartridges are intended to be used.
- 2.5. Any unused 1080 Felixer cartridges must be returned to the supplying Authorised Control Officer within two (2) months of completion of the use of Felixers.

3. PACKAGING, LABELLING, STORAGE AND TRANSPORT REQUIREMENTS

A person authorised to possess or use 1080 Felixer cartridges under clause 8 of this Order must only do so in accordance with the following conditions:

- 3.1. 1080 Felixer cartridges must be packaged securely when not in use in an impervious plastic bag or container that is structurally sound and meets the requirements of regulation 18 of the *Agricultural and Veterinary Chemicals Code Regulations 1995*.

- 3.2. Plastic bags or containers containing 1080 Felixer cartridge(s) must have a label affixed which is identical in content and format to the product label attached to any APVMA permit applicable to 1080 Felixer cartridges (being APVMA permit PER80926 or the permit that subsequently replaces this permit).
- 3.3. 1080 Felixer cartridges must be stored in such a way that unauthorised persons cannot access the 1080 Felixer cartridges.
- 3.4. 1080 Felixer cartridges must be stored in a secure and lockable location on or in any vehicle transporting 1080 Felixer cartridges.
- 3.5. 1080 Felixer cartridges must be kept away from children, livestock, pets, animal food, foodstuffs, seed and fertilizer at all times. This requirement also applies to empty 1080 Felixer cartridges after use.

4. NOTIFICATION AND SIGNAGE REQUIREMENTS

A person authorised to use 1080 Felixer cartridges under clause 8 of this Order must notify certain persons of the use of 1080 Felixer cartridges and erect notices (1080 Poison notices) in accordance with the following conditions:

Notification of neighbours

- 4.1. 1080 Felixer cartridges must not be used on land unless each landholder of the property with a property boundary within one (1) kilometre of a bait site has been given notification at least three (3) days' in advance of the use of 1080 Felixer cartridges. The notification must contain the following information:
 - (a) the pest(s) being controlled with 1080 Felixer cartridges;
 - (b) the dates when 1080 Felixer cartridges will be used;
 - (c) the National Park or Reserve on which 1080 Felixer cartridges will be used;
 - (d) contact details of the person who will use the 1080 Felixer cartridges, or in the case of a public authority, a contact person or office that can be contacted for information about use of the 1080 Felixer cartridges;
 - (e) a warning that pets and working dogs may be affected; and
 - (f) where ongoing use of a Felixer is planned, the time period for which 1080 Felixer cartridges are to be used in the Felixer at that location.
- 4.2. The notification required in condition 4.1 may be given by telephone, text message, email, in person, or by mail (including letter box drop). If notification cannot be made by one of these methods, or if the number of persons to be notified is more than twenty-five (25), then:
 - (a) notification may be made by advertisement in a local newspaper; or
 - (b) where use of 1080 Felixer cartridges is done under a NPWS RPMS program, notification may be made by advertisement on a government website.
- 4.3. 1080 Felixer cartridges must not be used other than within ten (10) days of the notification required in condition 4.1. The notification required in condition 4.1 may be done multiple times.
- 4.4. For each National Park or Reserve where there is ongoing use of a Felixer, the notification required in condition 4.1 must be given every six (6) months for the period of ongoing use of a Felixer.

1080 Poison Notices

- 4.5. 1080 Felixer cartridges must not be used on any NPWS estate unless and until 1080 poison notices are erected which specify the following:
 - (a) that Felixers containing 1080 Felixer cartridges are being used on NPWS estate;
 - (b) the dates on which 1080 Felixer cartridges are first used or the dates between which 1080 Felixer cartridges will be used;
 - (c) contact details of the NPWS person or office that can be contacted for information about 1080 Felixer cartridges being used on the NPWS estate;

- (d) a warning that domestic animals may be affected.

4.6. The notices required by condition 4.5:

4.6.1. must remain up for the period of time that 1080 Felixer cartridges are in use at that location;

4.6.2. must remain intact and legible for the duration of the trial; and

4.6.3. must be placed at:

- (a) each site where a Felixer is being used;
- (b) every formed or used entry point into the site where 1080 Felixer cartridges are being used;
- (c) the main entrance to the area where 1080 Felixer cartridges are being used in the NPWS estate; and
- (d) at the extremities of and up to five (5) kilometre intervals along all public thoroughfares which border or pass through the area where 1080 Felixer cartridges are being used.

Notes:

- 1) *Under the Pesticides Regulation 2017 (Part 5) public authorities have additional public notification obligations that must be complied with.*
- 2) *1080 Poison Notices may be obtained from Authorised Control Officers.*

5. LOCATION AND DISTANCE REQUIREMENTS

Location

- 5.1 1080 Felixer cartridges must only be used at locations that have received prior written approval from the NPWS Director Conservation.
- 5.2 Felixers must not be placed where 1080 Felixer cartridges are at risk of being washed into or contaminating surface water or groundwater.
- 5.3 Felixers containing 1080 Felixer cartridges must not be deployed in areas where conditions 5.5 to 5.8 of this Schedule 1 cannot be met.
- 5.4 Felixers containing 1080 Felixer cartridges must not be used within close proximity to urban areas unless and until the control program has had a risk assessment approved by an Authorised Control Officer. A program approved under this condition must include strategies for minimising risk to non-target animals.

Property Boundary:

- 5.5 Felixers containing 1080 Felixer cartridges must not be used within five (5) metres from any NPWS estate property boundary unless:
 - (a) the Felixer has been set in such a way that it cannot discharge at an animal that is not on the NPWS estate; and
 - (b) written permission has been given by the occupier of the neighbouring property for the Felixer to be used at an agreed distance that is less than 5 metres from their fence line.

Habitation:

- 5.6 Felixers containing 1080 Felixer cartridges must not be used within one hundred and fifty (150) metres of a habitation.

Domestic Water Supply and Waterways:

- 5.7 Felixers containing 1080 Felixer cartridges must not be used within twenty (20) metres of a domestic water supply or waterway (permanent or ephemeral).

Public Roads and Thoroughfares:

- 5.8 Felixers containing 1080 Felixer cartridges must not be used within five (5) metres of a public road or thoroughfare.

6. PROTECTION OF NON-TARGET ANIMALS

A person authorised to use 1080 Felixer cartridges under clause 8 of this Order must comply with the following requirements:

- 6.1 A person who uses a Felixer containing 1080 Felixer cartridges must take all reasonable measures to avoid poisoning of domestic pets. This includes, but is not limited to:
 - (a) advising neighbours and landholders in writing to restrain, or otherwise prevent dogs and other pets that may activate the Felixer from accessing the area where the Felixer is in use;
 - (b) providing neighbours and landholders with written information on 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.
- 6.2. 1080 Felixer cartridges may be toxic to some native wildlife. To the extent possible, a person using 1080 Felixer cartridges should time control programs for when potentially susceptible non-target species are least active or least susceptible.
- 6.3. To the extent possible, a person who uses 1080 Felixer cartridges must collect any identified or discovered carcasses of animals poisoned by 1080 Felixer cartridges and bury them in accordance with the disposal instructions for 1080 Felixer cartridges in conditions 8.3 and 8.4.
- 6.4. Any non-target animal killed by a 1080 Felixer cartridge must be reported to the EPA.

7. CHECKING REQUIREMENTS

A person authorised to use 1080 Felixer cartridges under clause 8 of this Order must comply with the following requirements:

- 7.1 Felixers must be checked at intervals of no more than 2 months where vehicle access is available or at intervals of no more than 4 months in remote areas where vehicle access is not available.

Note:

The interval between checking and replacing 1080 Felixer cartridges may vary according to the anticipated rate of feral cat or fox immigration into the target area (e.g. daily, weekly, monthly) provided that it is no longer than 2 months where vehicle access is available or 4 months in remote areas where vehicle access is not available.

8. DISPOSAL REQUIREMENTS

A person authorised to possess or use 1080 Felixer cartridges under clause 8 of this Order must comply with the following disposal requirements:

- 8.1 All 1080 Felixer cartridges, both used and unused, must be removed from the Felixer(s) at the end of the use of Felixers at a site or at the time a Felixer is removed from a site.
- 8.2 Used and unused 1080 Felixer cartridges must be handled in accordance with the safety directions of the label that is attached to the APVMA permit applicable to 1080 Felixer cartridges (being APVMA permit PER80926 or the permit that subsequently replaces this permit) and 1080 Felixer cartridges must be stored in a plastic bag or container with the same label.
- 8.3 1080 Felixer cartridges must be lawfully disposed of as follows:
 - (a) 1080 Felixer cartridges must be triple rinsed, or pressure rinsed and must be broken, crushed or punctured;
 - (b) Rinsed 1080 Felixer cartridges and the rinsate must be disposed of:
 - i) at the National Park or Reserve where the 1080 Felixer cartridges were used or at a site approved by the Authorised Control Officer by burial in a disposal pit and covered with at least five hundred (500) mm of soil; or
 - ii) in a local authority landfill.

- 8.4 Any disposal pit used to dispose of 1080 Felixer cartridges must be specifically marked and must not cause water pollution as defined in the *Protection of the Environment Operations Act 1997*.
- 8.5 Plastic bags or containers which have been used to contain 1080 Felixer cartridges must not be used for any other purpose.
- 8.6 Packaging (such as plastic bags or containers) which has been used to contain 1080 Felixer cartridges must be lawfully disposed of as follows:
- (a) Plastic bags or containers must be triple rinsed, or pressure rinsed and must be broken, crushed or punctured.
 - (b) Rinsed packaging and the rinsate must be disposed of:
 - i) at the National Park or Reserve where the 1080 Felixer cartridges were used or at a site approved by the Authorised Control Officer by burial in a disposal pit and covered with at least five hundred (500) mm of soil; or
 - ii) in a local authority landfill.