



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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Ref: 8ENF-AT-P

SENT VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

From: David Cobb
Section Chief, Toxics Enforcement Unit
Enforcement and Compliance Assurance Division

To: U.S. Department of Homeland Security
Bureau of Customs and Border Protection
Port of Sweetgrass, Montana 3310

Subject: Requested action to be taken regarding the EcoBran -Bran for Grasshoppers Pesticides in shipment with entry number SQ4-03554927 FIFRA-08-2021-0047

By this memorandum, the U.S. Environmental Protection Agency, Region 8, is informing the Bureau of Customs and Border Protection of the U.S. Department of Homeland Security that the EcoBran - Bran for Grasshoppers Pesticides in the import shipment described below should be **Denied Entry-Refused Delivery** into the United States pursuant to the authority of section 17(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136o(c), and the implementing regulations at 19 C.F.R. section 12.114. The entry was marked "Hold Intact," "Refused," and "Re-Export" in ACE by the EPA on April 12, 2021.

The following information pertains to the shipment of the EcoBran - Bran for Grasshoppers Pesticides:

- The consignee is Coball LLC, 1191 Magnolia Avenue, Suite D429, Corona, California 92879-3215.
- The broker is Border Buddy Customs Brokers, point of contact Nikki Dodd, ndodd@borderbuddy.com.
- The EPA Registration Number as listed on the label image sent to EPA upon request is 19713-630-67650.
- The EPA Establishment Number as listed on the label sent to EPA upon request is 067650-CN-001.
- The bill number is JBML1151290.
- The entry number is SQ4-03554927.
- The release date was April 8, 2021.
- The quantity is 26 pallets, weighing 39,676 pounds.
- The port of entry is Sweetgrass, Montana 3310.
- The country of origin as entered in ACE is Canada.

Section 2(u) of FIFRA, 7 U.S.C. § 136(u) defines “pesticide” as (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer, except that the term “pesticide” shall not include any article that is a “new animal drug” within the meaning of section 321(w) [1] of title 21, that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 321(x) [1] of title 21 bearing or containing a new animal drug. The term “pesticide” does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 321 of title 21. For purposes of the preceding sentence, the term “critical device” includes any device which is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term “semi-critical device” includes any device which contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body.

Section 2(t) of FIFRA, 7 U.S.C. § 136(t) defines “pest” as “(1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 136w(c)(1) of this title.”

Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers” and defines “labeling” in part, as “all labels and all other written, printed, or graphic matter – (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide....”

Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), provides that, “a pesticide is misbranded if –

- (A) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
- (B) it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to section 136w(c)(3) of this title;
- (C) it is an imitation of, or is offered for sale under the name of, another pesticide;
- (D) its label does not bear the registration number assigned under section 7 to each establishment in which it was produced;
- (E) any word, statement, or other information required by or under the authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared to other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (F) the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any

requirements imposed under section 3(d) of this Act, are adequate to protect health and the environment; [or]

(G) the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment[.]”

Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.

The shipment that arrived at the border for import had a label with an establishment number listed as 67650-CN-001, which is not an EPA registered establishment number. Therefore, the pesticide is misbranded pursuant to 7 U.S.C. § 136(q)(1) and 40 C.F.R. § 156.10(a)(5). Sale or distribution of the product violates 7 U.S.C. § 136j(a)(1)(E).

The shipment that arrived for import is also in violation of FIFRA section 12(a)(2)(N), 7 U.S.C. § 136j(a)(2)(N), because a registrant, wholesaler, dealer, retailer, or other distributor failed to file reports required by the Act. As required by 19 C.F.R. section 12.114, a Notice of Arrival of Pesticides and Devices, EPA form 3540-1, and a copy of one product label must be submitted. Neither a Notice of Arrival nor an image of the label was submitted either electronically or via the CBP authorized electronic data interchange system.

Therefore, the EcoBran - Bran for Grasshoppers Pesticides cannot be allowed entry into the United States.

The Agency hereby notifies U.S. Customs and Border Protection that this merchandise has been refused admission and recommends that this merchandise be re-exported or destroyed within 90 calendar days from the date of this Notice.

On April 12, 2021, the Customs and Border Patrol unit chief in Sweetgrass, Montana, was informed by the EPA that it would deny entry of this shipment.

Please contact Christine Tokarz, the import enforcement coordinator, by phone at (303) 312-6147 or by email at tokarz.christine@epa.gov if you have any questions concerning this matter.