



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

FILED

2/16/2024

8:00 AM

U.S. EPA REGION 8
HEARING CLERK

Ref: 8ENF-AT-P

SENT BY ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

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

To: U.S. Department of Homeland Security
Bureau of Customs and Border Protection
Port of Pembina, North Dakota 3401

Subject: Requested action to be taken regarding the products in shipment with entry number 551-58492972 FIFRA-08-2024-0014

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 (CBP) that the ProMix FPX Biofungicide products 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 (FIFRA), 7 U.S.C. § 136o(c), and the implementing regulations at 19 C.F.R. §12.114. On February 12, 2024, the EPA marked the entry “Hold Intact,” “Refused,” and “Re-Export” in ACE.

The following information pertains to the shipment of the ProMix FPX Biofungicide:

- The importer is Premier Horticulture Limited, 1 Avenue Premier, Riviere Du Loup Quebec, G5R6C1 Canada.
- The consignee is Premier Tech Growers and Consumables, 200 Kelly Road, Unit E-1, Quakertown, Pennsylvania 18951-4223.
- The broker is A.N. Deringer, Inc.
- The bill number is ARNB23757409SI.
- The entry number is 551-58492972.
- The arrival date was February 7, 2024.
- The quantity is 285 bags, weighing 8550 pounds.
- The port of entry is Pembina, North Dakota 3401.
- The country of origin, as entered in ACE, is Canada.

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, among other reasons:

- (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; or
- (D) its label does not bear the registration number assigned under section 7 to each establishment in which it was produced.

The following pertains to the ProMix FPX Biofungicide that arrived for import:

- The EPA Establishment Number on the product that arrived at the border for import label states, “74267-CAN-001/002/003/004”, without delineating which of those options is the actual establishment number.
- The EPA Establishment Number in the PGA Message Set in ACE is listed as 74267-CAN-002.
- The EPA Establishment Number on the label in Document Imaging System (DIS) states, “74267-CAN-001/002/003/004”, without delineating which of those options is the actual establishment number.

The ProMix FPX Biofungicide is misbranded pursuant to 7 U.S.C. § 136(q)(1) because it does not bear the registration number assigned under section 7 indicating the establishment in which it was produced.

The shipment that arrived at the border 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. §12.114, a Notice of Arrival of Pesticides and Devices, EPA form 3540-1, and a copy of one product label must be submitted. In ACE the DIS had a label uploaded for the product, that states, “74267-CAN-001/002/003/004”, without delineating which of those establishments listed is the applicable establishment number. The information in ACE is false.

Therefore, the ProMix FPX Biofungicide in the shipment referenced above cannot be allowed entry into the United States.

EPA therefore hereby notifies CBP that this merchandise should be refused admission pursuant to the authority of FIFRA § 17(c), 7 U.S.C. § 136o(c), and the implementing regulations at 19 C.F.R. § 12.114. The importer should export this merchandise or dispose of the products under supervision of the CBP within ninety calendar days from the date of this memorandum or within such additional time as the District Director of CBP specifies. Failure to do so may result in either the destruction of the

merchandise as authorized by the FIFRA or in any action necessary to enforce the terms of any bond under which the shipment has been released to the consignee. Alternatively, CBP may elect to seize the products as a prohibited importation pursuant to their authorities as set out at 19 U.S.C. § 1595a(c)(2)(A).

On February 12, 2024, the EPA informed the CBP Cargo Chief in Pembina, North Dakota, 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.