



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

**JAN 11 2016**

Ref: 8ENF-UFO

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**  
**AND ELECTRONIC TRANSMISSION**

Craig Hammond  
Registered Agent  
Power Engineering Company  
364 West 600 North  
Salt Lake City, Utah 84103

Re: STOP SALE, USE OR REMOVAL ORDER  
Power Engineering Company

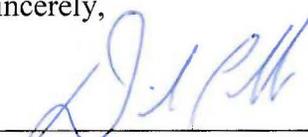
Dear Mr. Hammond:

Enclosed is a Stop Sale, Use or Removal Order (Order) issued by the United States Environmental Protection Agency Region 8 to Power Engineering Company (Power Engineering) for producing, distributing, or selling the misbranded pesticide product as described in the Order. ***The Order is effective immediately upon receipt by you, as registered agent for Power Engineering.***

Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136k(a), authorizes the EPA to issue an order prohibiting the sale, use, or removal of any pesticide by any person who owns, controls, or has custody of such pesticide whenever there is reason to believe the pesticide is in violation of any provision of FIFRA or such pesticide has been or is intended to be distributed or sold in violation of FIFRA. As explained further in the enclosed Order, Power Engineering has been, and possibly still is, producing, distributing, or selling a misbranded pesticide product.

If you or Power Engineering have any questions about this matter, you may contact Dan Webster of my staff at 303-312-7076, or by email at [webster.daniel@epa.gov](mailto:webster.daniel@epa.gov). For any legal questions, please contact Brenda Morris, Senior Enforcement Attorney by phone (303-312-6891) or by email at [morris.brenda@epa.gov](mailto:morris.brenda@epa.gov).

Sincerely,

  
\_\_\_\_\_  
David Cobb, Acting Unit Chief  
Technical Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice

Enclosure



9. A “pesticide product” is defined at 40 C.F.R. § 152.3 as “a pesticide in a particular form (including composition, packaging and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.”
10. Section 2(w) of FIFRA, 7 U.S.C. § 136(w) defines “producer” as “the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device.”
11. According to 40 C.F.R. § 152.132, registrants may distribute or sell their registered product under another company’s name and address instead of (or in addition to) their own. Such distribution and sale is termed “supplemental distribution” and the product is referred to as a “supplemental registration” or “distributor product.”
12. According to 40 C.F.R. § 152.132(a), supplemental distribution is permitted upon notification to the Agency if all the following conditions are met: “The registrant has submitted to the Agency for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor’s company number, the additional brand names to be used, and the registration number of the registered product.”
13. The registrant of the federally registered product for which a second party wishes to obtain supplemental registration must have submitted to the Agency a statement (EPA form 8570-5, Notice of Supplemental Registration of Distributor) signed by both the registrant of the basic registered product and the second party (the distributor). As explained in 40 C.F.R. § 152.132(a), the basic registrant is the only one who can submit EPA form 8570-5.
14. As stated at 40 C.F.R. § 152.15, with certain exceptions not applicable in this circumstance, “[n]o person may distribute or sell any pesticide product that is not registered under [FIFRA].”
15. According to 40 C.F.R. § 152.13(b), a “registrant may distribute or sell a product under labeling bearing any subset of the approved directions for use, provided that in limiting the uses listed on the label, no changes would be necessary in precautionary statements, use classification, or packaging of the product.”

## **II. BACKGROUND**

16. Power Engineering Company is a corporation organized under the laws of the state of Utah and is authorized to do business in the state of Utah.
17. Power Engineering Company is a person as defined in section 2(s) of FIFRA, 7 U.S.C. § 136(s).
18. Power Engineering Company is a producer as defined in section 2(w) of FIFRA, 7 U.S.C. § 136(w), with the EPA-assigned number 41368.
19. Power Engineering Company currently produces and distributes a distributor product named 7407, which carries a label that is marked EPA Reg. No. 84024-1-41368.

20. Justeq, LLC is a limited liability corporation registered in the state of Illinois with offices at 2871 Crimson Court, Northbrook, IL 60062.
21. Justeq is a registrant as defined in section 2(y) of FIFRA, 7 U.S.C. § 136(y), with the EPA-assigned company number 41368.
22. Justeq has submitted to the Agency a Notice of Supplemental Registration of Distributor that identifies Power Engineering Company as a supplemental distributor of the registered product Justeq07 under the distributor product name 7407.

### III. BASIS FOR ORDER

23. On May 14, 2014, an inspector from the EPA conducted a FIFRA inspection at the Power Engineering Company facility located at 364 West 600 North, Salt Lake City, Utah 84103.
24. During the inspection the inspector obtained sales invoices for 7407.
25. During the inspection the inspector requested and obtained the label that was currently applied to 7407. This label included EPA Reg. No. 84024-1-41368. All further references to the 7407 label refer to the label obtained during the inspection unless otherwise noted.
26. The May 14, 2014 inspection revealed that Power Engineering was not in compliance with FIFRA.
27. The label obtained during the inspection for the 7407 should have been nearly identical to the August 13, 2012 or July 15, 2013 revision for Justeq07, EPA Reg. No. 84024-1, but discrepancies were noted. The 7407 best matches the Justeq07 October, 18, 2007 revision.
28. At the time of the inspection the label applied by Power Engineering Company to 7407 did not include the updated storage and disposal directions that are included in the Justeq07 label, edition August 13, 2012, which was approved by the EPA.
29. The EPA issued guidance in 2007 alerting registrants to update their Storage Disposal/Container Handling requirements (PR Notice 2007-4).
30. PR Notice 2007-4, available at <http://www2.epa.gov/sites/production/files/2014-04/documents/pr2007-4.pdf>, requires: *a statement identifying the container as refillable or nonrefillable and a reuse statement appropriate to that container; for nonrefillable containers, a recycling or reconditioning statement providing additional instructions for managing an empty container; for nonrefillable containers, a batch code for the product contained; and for some nonrefillable containers and all refillable containers, a statement providing cleaning instructions prior to container disposal.*
31. Pesticide Registration Notice 2007-4 directed pesticide manufacturers to update their labels to comply with 40 C.F.R. part 156 established by Final Rule "Pesticide Management and Disposal; Standards for Pesticide Containers and Containment" (71 FR 47330, August 16, 2006). As specified in the final rule, by August 17, 2009, all pesticide products distributed or sold by a registrant must have labels that comply with the new requirements (40 C.F.R. § 156.159).

32. The 7407 label is not in compliance with 40 C.F.R. § 156.159, therefore the product 7407 was misbranded at the time of the inspection.
33. Power Engineering Company had been producing, distributing, or selling one misbranded pesticide in a violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

#### **IV. ORDER**

34. The EPA hereby orders Power Engineering Company to stop the sale, use, or removal of all pesticide products subject to this Order, namely all misbranded 7407 products, EFFECTIVE IMMEDIATELY.
35. This Order pertains to all quantities and sizes of 7407.
36. The EPA hereby orders Power Engineering Company to use the most recently approved labels on all pesticides they manufacture and to ensure they have complied with any editions required by the EPA. The current revision for Justeq07, EPA Reg. No. 84024-1 is dated July 15, 2013.
37. Questions concerning this Order may be submitted to the following:

Dan Webster  
U.S. EPA Region 8 (ENF-UFO)  
1595 Wynkoop Street  
Denver, CO 80202
38. Any violation of the terms or provisions of this Order by an officer, agent, or other person acting for or employed by Power Engineering Company may subject such person as well as Power Engineering Company to civil or criminal penalties as prescribed in section 14 of FIFRA, 7 U.S.C. § 136l.
39. The issuance of this Order shall not constitute a waiver by the EPA of its remedies, either judicial or administrative, under FIFRA or any other Federal environmental law, to address this matter or any other matters or unlawful acts not specified in this Order.
40. This Order shall be EFFECTIVE IMMEDIATELY upon receipt by Power Engineering Company.
41. Power Engineering Company may seek federal judicial review of this Order pursuant to section 16 of FIFRA, 7 U.S.C. § 136n.

42. If any provision(s) of this Order are subsequently held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and shall remain in full force and effect. The terms of this Order shall remain in effect unless and until the EPA modifies or terminates either the Order or certain provisions of the Order in writing.

1/7/2016

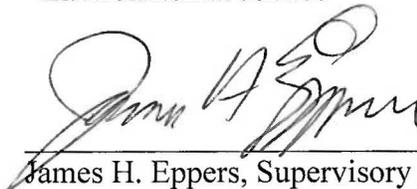
Date



David Cobb, Acting Unit Chief  
Technical Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice

DEC 28 2015

Date



James H. Eppers, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice