

5/24/2023



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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

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SENT VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

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

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

Subject: Requested action to be taken regarding the product in the shipment with entry number 300-43490251 FIFRA-08-2023-0048

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 product 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. § 12.114. The entry was marked "Hold Intact," "Refused," and "Re-Export" in ACE by the EPA on May 23, 2023.

The following information pertains to the shipment with entry number 300-43490251:

- The importer is Erco Worldwide LP (Thunder Bay), 2001 Neebing Avenue, Thunder Bay, Ontario P7E6S3 Canada.
- The consignee is International Dioxide, 40 Whitecap Drive North Kingstown, Rhode Island 02852-7445.
- The broker is Livingston International, PGA@livingstonintl.com.
- The file date was May 1, 2023.
- The bill number is CPRS231210319519.
- The quantity is a solution weighing 186,072 pounds.
- The port of entry is Pembina, North Dakota 3401.
- The country of origin is Canada.

The shipment that arrived at the border for import was in violation of FIFRA section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), which states that it is unlawful for any person to distribute or sell any pesticide that is not registered under section 3 of FIFRA, 7 U.S.C. § 136a.

The shipment that arrived at the border for import was also in violation of FIFRA section 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E), which provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.

Under FIFRA section 2(u), 7 U.S.C. § 136(u), a pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, i.e., use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant. 40 C.F.R. § 152.15 states: “A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if... [t]he person who distributes or sells the substance claims, states, or implies (by labelling or otherwise) ... [t]hat the substance... can or should be used as a pesticide.”

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....”

Under FIFRA section 2(q)(1), 7 U.S.C. § 136(q)(1), a pesticide is misbranded and subject to enforcement action if, among other reasons:

- the labeling bears any statements, designs, or graphic representations that are false or misleading;
- its packaging or wrapping does not conform to standards established pursuant to FIFRA section 25(c)(3);
- it is an imitation of, or is offered for sale under the name of another pesticide;
- the label fails to bear the establishment number of the establishment where it was produced;
- any required information is not prominently displayed on the label;
- it lacks adequate directions for use; or
- it lacks an adequate warning or caution statement.

Under 40 C.F.R. § 156.10, a pesticide’s labeling must meet the following requirements:

(a) General -

(1) Contents of the label. Every pesticide product shall bear a label containing the information specified by the Act and the regulations in this part. The contents of a label must show clearly and prominently the following:

- (i) The name, brand, or trademark under which the product is sold as prescribed in paragraph (b) of this section;
- (ii) The name and address of the producer, registrant, or person for whom produced as prescribed in paragraph (c) of this section;
- (iii) The net contents as prescribed in paragraph (d) of this section;
- (iv) The product registration number as prescribed in paragraph (e) of this section;
- (v) The producing establishment number as prescribed in paragraph (f) of this section;

- (vi) An ingredient statement as prescribed in paragraph (g) of this section;
- (vii) Hazard and precautionary statements as prescribed in subpart D of this part for human and domestic animal hazards and subpart E of this part for environmental hazards.
- (viii) The directions for use as prescribed in paragraph (i) of this section; and
- (ix) The use classification(s) as prescribed in paragraph (j) of this section.

The ACE entry data for this shipment had the following information:

- EPA Registration Number 53345-12
- EPA Establishment Number 053345CAN004

Documents uploaded into ACE included:

- Product label for Chlorite Solution 37%, EPA Reg. No. 52245-12
- Product label for Olin High Strength Sodium Hypochlorite, EPA Reg. No. 72315-15

This information demonstrates a pesticidal intent by listing multiple EPA registered pesticides. While it is unclear whether the the solution in the shipment listed above is “Chlorite Solution 37%” or “Olin High Strength Sodium Hypochlorite” or another product, the information demonstrates a pesticidal intent, and the shipment thus contains a pesticide pursuant to the definitions above. The shipment is therefore subject to FIFRA regulation.

Customs and Border Protection Officers inspected this shipment on May 23, 2023, and discovered that none of the required information for import of a pesticide accompanied the shipment.

In accordance with 40 CFR 156.10(a)(4)(ii)(A), “While a pesticide product is in transit, the appropriate provisions of 49 CFR parts 170–189, concerning the transportation of hazardous materials, and specifically those provisions concerning the labeling, marking and placarding of hazardous materials and the vehicles carrying them, define the basic Federal requirements. In addition, when any registered pesticide product is transported in a tank car, tank truck or other mobile or portable bulk container, a copy of the accepted label must be attached to the shipping papers, and left with the consignee at the time of delivery.”

No copy of an EPA accepted label accompanied this shipment nor was a part of the shipping papers associated with this entry. In addition to lacking an EPA accepted label, the shipment also lacked many of the requirements of 40 C.F.R. § 156.10, including: the product registration number, an EPA establishment number of the establishment where the pesticide was produced, a caution or warning statement, and directions for use.

Because the shipment was not labeled with a product registration number, the products are unregistered pesticides. Importing these products in the shipment referenced above is a violation of FIFRA section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), as a distribution or sale of unregistered pesticides.

Because the shipment was not labeled with the information required by under 40 C.F.R. § 156.10, the shipment was misbranded pursuant to FIFRA section 2(q)(1), 7 U.S.C. § 136(q)(1).

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 correctly file reports required by the Act. As required by 19 C.F.R. § 12.114, a Notice of Arrival of Pesticides and Devices (NOA), EPA form 3540-1, and a copy of one product label must be submitted. Therefore, the shipment that arrived at the border was also in violation of FIFRA section 12(a)(2)(N), 7 U.S.C. § 136j(a)(2)(N).

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 May 23, 2023, the Customs and Border Patrol unit chief in Pembina, North Dakota 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.