

May 10, 2021

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EPA Region VIII
Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)	
)	Docket No. FIFRA-08-2021-0050
Zerorez of Denver Inc.)	
2635 South Santa Fe Drive, Suite 3A)	FIFRA SECTION 13(a)
Denver, Colorado 80223)	
Respondent.)	STOP SALE, USE, or
)	REMOVAL ORDER
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I. AUTHORITY

1. This Stop Sale, Use, or Removal Order (Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency by section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, (FIFRA), 7 U.S.C. § 136k(a), which authorizes the Administrator of the EPA to issue an order prohibiting the sale, use, or removal of any pesticide or device by any person who owns, controls, or has custody of such pesticide or device whenever there is reason to believe that the pesticide or device is in violation of any provision of FIFRA or the pesticide or device has been or is intended to be distributed or sold in violation of any provision of FIFRA.
2. The undersigned EPA official is authorized to issue this Order.

II. GOVERNING LAW

3. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), states that “no person in any State may distribute or sell to any person any pesticide that is not registered under this subchapter.”
4. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person in any state to distribute or sell to any person “any pesticide that is not registered . . . or whose registration has been cancelled or suspended.”
5. The term “person” means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.” Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
6. The term “to distribute or sell” means “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.” Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

7. EPA's regulation at 40 C.F.R. § 152.3 further defines "distribute or sell" as "the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any state."
8. Any applicator, including a "for hire" applicator, who holds or applies an unregistered pesticide to provide a service of controlling pests without delivering any unapplied pesticide will be considered a seller or distributor of pesticides. See, 44 Fed. Reg. 33151, 33152 (June 8, 1979).
9. The term "pesticide" is defined, in relevant part as "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest." Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
10. 40 C.F.R. § 152.15 provides that "[a] substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if ...the person who distributes or sells the substance claims, states, or implies (by labelling or otherwise) ...that the substance...can or should be used as a pesticide."
11. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a) states that "no person shall produce any pesticide subject to FIFRA or active ingredient used in producing a pesticide subject to FIFRA in any state unless the establishment in which it is produced is registered with the EPA."
12. 40 C.F.R. § 167.3 further defines "produce" as "to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to section 5 of FIFRA, any active ingredient or device, or to package, repack, label, relabel, or otherwise change the container of any pesticide or device."
13. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), provides that it shall be unlawful for any person who is a producer to violate any of the provisions of section 7 of FIFRA.
14. Pursuant to section 8(b) of FIFRA, 7 U.S.C. § 136f(b), and 40 C.F.R. Part 169, any producer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers, or offers for delivery any pesticide or device subject to FIFRA, shall furnish to EPA or permit EPA to have access to and copy, certain records related to the delivery, movement and holding of the pesticides or devices upon request from EPA.

III. ALLEGATIONS OF FACT AND LAW

15. Respondent, Zerorez of Denver Inc. (Respondent) is a "person" as that term is defined by section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
16. Respondent is a corporation organized under the laws of the state of Colorado and is authorized to do business in the state of Colorado.
17. Respondent's principal place of business is located at 2635 South Santa Fe Drive, Suite 3A, Denver, Colorado 80223 (Respondent's Establishment).

18. Respondent provides cleaning, disinfection, and sanitization services in commercial and residential settings.
19. On July 27, 2016, a representative of the EPA inspected Respondent's Establishment to determine Respondent's compliance with FIFRA (2016 Inspection).
20. At the conclusion of the 2016 Inspection, the EPA representative informed Respondent that it appeared Respondent was in violation of a number of FIFRA requirements, including making false and misleading claims on their website, the radio, and other advertising venues; producing a pesticide in an unregistered establishment; and sales and distribution of an unregistered pesticide.
21. On September 3, 2018, a representative of the EPA inspected Respondent's Establishment to determine Respondent's compliance with FIFRA (2018 Inspection).
22. At the conclusion of the 2018 Inspection, the EPA representative informed Respondent that it appeared Respondent continued to be in violation of a number of FIFRA requirements, including making false and misleading claims on their website, the radio, and other advertising venues; producing a pesticide in an unregistered establishment; and sales and distribution of an unregistered pesticide.
23. By letter dated May 13, 2019, and received by Respondent in May 2019, the EPA issued a notice of warning to Respondent (2019 Notice) informing Respondent that the EPA had determined that Respondent was out of compliance with FIFRA. In the 2019 Notice, the EPA specifically explained that Respondent was making pesticidal claims in its advertisements for one of its products called Powered Water (aqueous sodium hydroxide with a pH of ~11) and that Respondent was producing and distributing this unregistered pesticide in an unregistered establishment.
24. As of January 7, 2021, and on the date of this Order, materials on Respondent's website continue to make at least one direct pesticidal claim regarding Powered Water. (See, "Upholstery Cleaning – Furniture and other upholstery are a breeding ground for harmful microbes, which can cause allergies, sickness and offensive odors. The Zerorez cleaning system uses its revolutionary green cleaning fluid Powered Water to eliminate them, thereby restoring the appearance of your furniture.")
25. As of January 7, 2021, and on the date of this Order, materials on Respondent's website make the following pesticidal claims about Zr Shield: (a) "Instantly kills 99.9999% of viruses and bacteria"; (b) "Protective Shield – continues to kill viruses and bacteria"; and (c) "Maintains protection for up to 90 days on applied surfaces."
26. As of January 7, 2021, and on the date of this Order, materials on Respondent's website make at least the following additional pesticidal claims without specifically naming the pesticide: (a) Zerorez offers a remarkable green solution to your VCT/Vinyl surfaces, protecting them against harmful pathogens and keeping them looking their best; (b) The Zerorez duct cleaning system thoroughly cleans your air ducts by removing debris and dirt. We then coat the ducts with a proprietary application that protects the ducts eliminating air-borne pathogens; (c) Our services range from an intensive hardwood cleaning that will gently remove dirt and grime – leaving your floors sanitary and clean – to a complete sand and refinish treatment that will take away those deep surface marks

and damage; (d) In order to safely and effectively clean your home, biological matter must be first neutralized to destroy bacteria, fighting odor at its source; (e) Sleep free of dirt and bacteria...Our patented cleaning process provides long-term protection...A more hygienic sleeping environment promotes good health; (f) Inhibits the growth of all mold and bacteria; and (g) Our patented system...Protects surfaces against bacteria, pathogens, and harmful germs...Creates a healthier living environment.

27. Based on the information the EPA reviewed as a result of its inspections, the EPA has determined that Powered Water applied by Respondent as part of its cleaning, disinfection service is a pesticide that must be registered before being distributed or sold.
28. Based on the information the EPA reviewed as a result of its inspections, the EPA has determined that Zr Shield applied by Respondent as part of its cleaning and disinfection service is a pesticide that must be registered before being distributed or sold.
29. As of the date of this Order, Powered Water is not registered as a pesticide with the EPA.
30. As of the date of this Order, Zr Shield is not registered as a pesticide with the EPA.
31. As of the date of this Order, Respondent has not requested or received an EPA establishment number for Respondent's Establishment.
32. As demonstrated in section III, Respondent has distributed or sold, and continues to offer to distribute or sell, two unregistered pesticides, Powered Water and Zr Shield, in violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).
33. As demonstrated in section III, Respondent may be offering to distribute or sell and may have distributed or sold one or more unnamed and unregistered pesticides (in addition to Powered Water and Zr Shield), in violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).
34. As demonstrated in section III, Respondent continues to produce and has produced two unregistered pesticides, Powered Water and Zr Shield, at its establishment, which establishment is not a registered with the EPA, in violation of section 7(a) of FIFRA, 7 U.S.C. § 136e(a).
35. As demonstrated in section III, Respondent may produce and may have produced one or more unnamed and unregistered pesticides (in addition to Powered Water and Zr Shield), at its establishment, which establishment is not registered with the EPA, in violation of section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

IV. ORDER

36. Pursuant to the authority in section 13(a) of FIFRA, 7 U.S.C. § 136k(a), EPA hereby orders Respondent to immediately cease the production, distribution, sale, use, or removal of the pesticides Powered Water and Zr Shield, as well as any other unnamed and unregistered pesticides, under its ownership, control, or custody, wherever such products are located, except in accordance with the provisions of this Order.

37. This Order extends to all quantities of Powered Water and Zr Shield, as well as any other unnamed and unregistered pesticides, intended for sale, distribution, use or removal and any stocks returned to Respondent from its sellers, customers, or other end users.
38. Powered Water shall not be used, sold, offered for sale, held for sale, shipped, delivered for shipment, received, or having so received, shall not be delivered, or offered for delivery.
39. Zr Shield shall not be used, sold, offered for sale, held for sale, shipped, delivered for shipment, received, or having so received, shall not be delivered, or offered for delivery.
40. Unnamed and unregistered pesticides, if any, shall not be used, sold, offered for sale, held for sale, shipped, delivered for shipment, received, or having so received, shall not be delivered, or offered for delivery.
41. Respondent may move or remove Powered Water and Zr Shield, and unnamed and unregistered pesticides, if any, from any establishment ONLY after obtaining prior written approval from EPA, in accordance with the following:
 - a. Movement or removal requests must be made in writing, in an email addressed to Ms. Sherrie Kinard at kinard.sherrie@epa.gov.
 - b. Any request for movement or removal must include a written accounting of the products to be moved, including the quantity of each product (for example, each type and number of containers) to be moved, the address of the facility from which the products will be moved, the address of the destination facility, and a description of the reasons for the movement or removal.
 - c. If the movement or removal is for the purposes of disposal, Respondent must provide written proof of disposal to EPA including proof of compliance with all applicable federal, state, and local laws.
 - d. Any movement or removal of any Powered Water or Zr Shield, or unnamed and unregistered pesticides, if any, made without prior written authorization from EPA in accordance with this paragraph constitutes a violation of this Order and the distribution and sale of illegal pesticides in violation of FIFRA.
42. Within 30 days of receipt of this Order, Respondent must submit to EPA a written accounting of Powered Water and Zr Shield, and unnamed and unregistered pesticides, if any, subject to this Order. The accounting must be submitted to Ms. Kinard at the email address above and must include an accounting of all existing product inventory, including the locations(s) where the products are held, quantities, and container sizes. Respondent must provide EPA with an updated accounting at least every 30 days thereafter through 150 days following receipt of this Order or when Respondent no longer has any Powered Water or Zr Shield, or unnamed and unregistered pesticides, if any, in its ownership, custody or control, whichever occurs earlier.
43. The information requested in paragraphs 41 and 42 must be provided whether Respondent regards part or all of it as a trade secret or confidential business information. Respondent is entitled to assert a claim of business confidentiality in accordance with the regulations at 40 C.F.R. § 2.203(b) by labeling such information at the time it is submitted to EPA as “trade secret” or “proprietary” or

“company confidential” or other suitable notice. Information subject to a proper claim of business confidentiality will be disclosed by EPA to the public only in accordance with the procedures set forth at 40 C.F.R. part 2, subpart B. If Respondent does not make a proper claim at the time that it submits the information in the manner described in 40 C.F.R. § 2.203(b), EPA may make this information available to the public without further notice to Respondent.

- 44. Respondent may seek federal judicial review of this Order pursuant to section 16 of FIFRA, 7 U.S.C. § 136n.
- 45. The issuance of this Order shall not constitute a waiver by 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.
- 46. This Order shall be effective immediately upon receipt by Respondent or any agents of Respondent.
- 47. This Order shall remain in effect unless and until revoked, terminated, suspended, or modified in writing by EPA.
- 48. If any provision of this Order is 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 they shall remain in full force and effect.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8**

**DAVID
COBB**

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By: _____

David Cobb, Section Chief
Toxics and Pesticides Enforcement Section
Enforcement and Compliance Assurance Division