



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Phone 800-227-8917
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SEP 18 2015

Ref: 8ENF-UFO

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED
AND ELECTRONIC TRANSMISSION

Marvin D. Haney, Registered Agent
for Perma-Guard, Inc.
60 Cutler Drive, Suite 202
North Salt Lake City, Utah 84054

Re: STOP SALE, USE OR REMOVAL ORDER
Perma-Guard, Inc.

Dear Mr. Haney:

Enclosed is a Stop Sale, Use or Removal Order (Order) issued by the United States Environmental Protection Agency Region 8 (EPA) to Perma-Guard, Inc. (Perma-Guard) for misbranded and unregistered pesticide products listed in the Order. *The Order is effective immediately upon receipt by you, as registered agent for Perma-Guard.*

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, Perma-Guard has been and is producing, distributing, or selling, misbranded and unregistered pesticide products.

If you or Perma-Guard 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. For any legal questions, please contact Brenda Morris, Senior Enforcement Attorney, by phone (303-312-6891) or by email at morris.brenda@epa.gov.

Sincerely,

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

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2015 SEP 28 AM 10: 52

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:

Perma-Guard, Inc.
60 Cutler Drive, Suite 202
North Salt Lake City, UT 84054

Respondent

STOP SALE, USE,
OR REMOVAL ORDER

DOCKET No: FIFRA-08-2015-0006

I. AUTHORITIES

1. The United States Environmental Protection Agency (EPA) Region 8 issues this Stop Sale, Use, or Removal Order (Order) pursuant to the authority vested in the Administrator of the EPA by section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136k(a), which authorizes the Administrator of the EPA to issue orders 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 the pesticide or device is in violation of any provision of FIFRA, or that such pesticide or device has been or is intended to be distributed or sold in violation of any such provisions, or when the registration has been cancelled by a final order.
2. Supervisors in the technical enforcement program and the legal enforcement program of EPA Region 8 have been jointly delegated the authority to issue such orders.
3. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states "it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under section 136a of this title or whose registration has been cancelled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter."
4. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states "it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is adulterated or misbranded."
5. Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(I), states it shall be unlawful for any person to violate any order issued under section 13 of FIFRA, 7 U.S.C. § 136k.
6. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a "person" as "any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not."
7. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines "registrant" as "a person who has registered any pesticide pursuant to the provisions of [FIFRA]."

8. Section 2(gg), 7 U.S.C. § 136(gg) defines “to distribute or sell” as “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.”
9. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “pest,” in part as “any [] 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 [25(c)(1) of FIFRA].”
10. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” in part, as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”
11. 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.”
12. As stated at 40 C.F.R. § 156.10(a)(5)(x)(A), a pesticide “is misbranded if its labeling is false or misleading in any particular,” including non-numerical and/or comparative statements on the safety of the product, such as “Contains all natural ingredients.”
13. As stated at 40 C.F.R. § 152.132, “the registrant may distribute or sell his registered product under another person’s name and address instead of (or in addition to) his own. Such distribution and sale is termed ‘supplemental distribution’ and the product is referred to as a ‘distributor product.’”
14. As stated at 40 C.F.R. § 152.132, “the distributor is considered an agent of the registrant for all intents and purposes under the Act, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.”
15. Supplemental distribution is permitted upon notification to the Agency if . . . , according to 40 C.F.R. § 152.132(a), “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.”
16. 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].”

II. BACKGROUND

17. Perma-Guard, Inc. (Perma-Guard) is a corporation organized under the laws of the state of New Mexico and is authorized to do business in the state of Utah.
18. Perma-Guard is a “person” as defined in section 2(s) of FIFRA, 7 U.S.C. § 136(s).
19. Perma-Guard is a registrant as defined in section 2(y) of FIFRA, 7 U.S.C. § 136(y), with the EPA-assigned company number 67197.

20. Perma-Guard produces and distributes a product, Grain or Seed Storage Insecticide D-10, marked EPA Reg. No. 67197-1.
21. Perma-Guard produces and distributes a product, Household Insecticide D-20, marked EPA Reg. No. 67197-2.
22. Perma-Guard produces and distributes a product, Fire Ant Insecticide, marked EPA Reg. No. 67197-2.
23. Perma-Guard produces and distributes a product, Dogs and Cats Pet Insecticide D-20, marked EPA Reg. No. 67197-5.
24. Perma-Guard produces and distributes a product, Commercial Insecticide D-20, marked EPA Reg. No. 67197-6.
25. Imreys Minerals California Inc. (Imreys), is a corporation organized under the laws of the state of Delaware, located at 2500 San Miguelito Road, Lompoc, California 93436.
26. Imreys is a registrant as defined in section 2(y) of FIFRA, 7 U.S.C. § 136(y), with the EPA-assigned company number 73729.
27. Perma-Guard produces and distributes a pesticide product, Crawling Insect Control, marked EPA Reg. No. 73729-1-67197.
28. Imreys, the registrant of Diafil 610 Diatomaceous Earth, EPA Reg. No. 73729-1, has not submitted to the Agency EPA form 8570-5, Notice of Supplemental Distribution of a Registered Pesticide Product, signed by Imreys and Perma-Guard. This form includes listing the names and addresses of the registrant, Imreys, and the distributor, Perma-Guard; Perma-Guard's company number, 67197; the brand name Crawling Insect Control; and the registration number of the registered product, 73729-1-67197 as required by 40 C.F.R. § 152.132.
29. The EPA has not registered the pesticide product Perma-Guard Crawling Insect Control, which has no EPA-approved registration number.
30. Perma-Guard distributes a pesticide product, Household Insecticide D-20 EPA Reg. No. 67197-2 to Freshwater Organics of Sandy, Utah. This product is relabeled as Bye Bye Bugs for bedbugs and is marked with the EPA Reg. No. 67197-2-88726 and EPA Est. No. 67197-UT-001.
31. Freshwater Organics is considered an agent of Perma-Guard.
32. Perma-Guard, the registrant of Household Insecticide D-20 EPA Reg. No. 67197-2 has not submitted to the Agency EPA form 8570-5, Notice of Supplemental Distribution of a Registered Pesticide Product, signed by Perma-Guard and Freshwater Organics. This form includes listing the names and addresses of the registrant, Perma-Guard, and the distributor, Freshwater Organics; Freshwater Organic's company number, 88726; the brand name Bye Bye Bugs for bedbugs; and the registration number of the registered product, 67197-2-88726 as required by 40 C.F.R. § 152.132.

33. The EPA has not registered the pesticide product Bye Bye Bugs for bedbugs, which has no EPA-approved registration number.
34. On February 27, 2014, Perma-Guard timely filed EPA form 3540-16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments, for reporting year 2013.
35. On May 15, 2014, Perma-Guard sent an amended EPA form 3540-16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments, for reporting year 2013.
36. On February 24, 2013, Perma-Guard timely filed EPA form 3540-16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments, for reporting year 2012.

III. BASIS FOR ORDER

37. On May 14, 2014, an EPA inspector conducted a FIFRA inspection at the Perma-Guard facility located at 60 Cutler Drive, Suite 202, North Salt Lake City, Utah 84054.
38. During the inspection the inspector obtained sales invoices for all Perma-Guard pesticides mentioned above.
39. During the inspection the inspector requested and obtained labels that have were currently applied to all pesticide products as mentioned above.
40. On EPA form 3540-16, described in paragraph 34, Perma-Guard reported production and sales in 2013, EPA Reg. No. 67197-2, 67197-5, 67197-6 and 73729-1-67197. Production of EPA Reg. No. 67197-1 was not included. The May 14, 2014 inspection revealed the Perma-Guard was not reporting pesticide production correctly.
41. On EPA form 3540-16, described in paragraph 35, Perma-Guard reported production and sales in 2013, EPA Reg. No. 67197-1, 67197-2, 67197-5, 67197-6 and 73729-1-67197.
42. On EPA form 3540-16, described in paragraph 36, Perma-Guard reported production and sales in 2013, EPA Reg. No. 67197-1, 67197-2, 67197-5, and 67197-6.
43. The label for Grain or Seed Storage Insecticide D-10, EPA Reg. No. 67197-1, appears to be a label that was issued August 5, 1993. The label that should have been on this pesticide was issued April 17, 2009. When the EPA approved the label in 1993 several editions were required prior to Perma-Guard releasing the product for shipment. Several of these editions were not made by Perma-Guard including not removing, "naturally occurring."
44. The label for Household Insecticide D-20, EPA Reg. No. 67197-2, appears to be a label that was issued December 6, 2007. The label that should have been on this pesticide was issued May 25, 2012, February 27, 2013, or December 24, 2013.
45. The label for Fire and Ant Insecticide, EPA Reg. No. 67197-2, appears to be a label that was issued February 20, 1998. The label that should have been on this pesticide was issued May 25, 2012, February 27, 2013, or December 24, 2013.

46. The label for Dogs and Cats Insecticide D-20, EPA Reg. No. 67197-5, appears to be a label that was issued December 31, 2003. The label that should have been on this pesticide was issued December 6, 2007. When the EPA approved the label in 2003 several editions were required prior to Perma-Guard releasing the product for shipment. Several of these editions were not made by Perma-Guard.
47. 40 CFR § 152.130(c) states: *Normally, if the product labeling is amended on the initiative of the registrant, by submission of an application for amended registration, the registrant may distribute or sell under the previously approved labeling for a period of 18 months after approval of the revision, unless an order subsequently issued by the Agency under FIFRA sec. 6 or 13 provides otherwise. However, if paragraph (d) of this section applies to the registrant's product, the time frames established by the Agency in accordance with that paragraph shall take precedence.*
48. The labels for EPA Reg. No. 67197-1, 67197-2, and 67197-5, obtained during the inspection are in violation of 40 C.F.R. § 152.130(c).
49. The label for Commercial Insecticide, EPA Reg. No. 67197-6, is missing the required statement "Wear a suitable dusk mask when using this product during prolonged exposures," inside the Caution box.
50. 40 C.F.R. § 156.70(b) states: *Content of statements. When data or other information show that an acute hazard may exist to humans or domestic animals, the label must bear precautionary statements describing the particular hazard, the route(s) of exposure and the precautions to be taken to avoid accident, injury or toxic effect or to mitigate the effect. The precautionary paragraph must be immediately preceded by the appropriate signal word.*
51. The label for EPA Reg. No 67197-6 obtained during this inspection is in violation of 40 C.F.R. § 156.70(b)
52. At the time of the inspection Perma-Guard stated they were not applying batch codes to their containers.
53. 40 C.F.R. § 156.140(a)(4) Batch code states: *A lot number, or other code used by the registrant or producer to identify the batch of the pesticide product which is distributed and sold is required.*
54. Perma-Guard has been and is producing, distributing, or selling a misbranded pesticides, 67197-1, 67197-2, 67197-5 and 67197-6, in violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).
55. Perma-Guard has been and is producing, distributing, or selling an unregistered pesticide, 73729-1-67197, in violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).
56. On January 21, 2015, an inspector with the Utah Department of Agriculture conducted a FIFRA inspection with Freshwater Organics of Sandy, Utah. The inspection revealed that Freshwater Organics is repackaging Household Insecticide D-20 EPA Reg. No. 67197-2 and applying their own label to the product.

57. The Bye Bye Bugs for bedbugs label obtained from Freshwater Organics is not the same as that of the registered product as required by 40 C.F.R. § 152.132(d).
58. The label obtained from Freshwater Organics implies that the product is repackaged at Perma-Guard because it is marked with EPA Est. No. 67197-UT-1. The inspection revealed that Perma-Guard is distributing unmarked pesticide containers to Freshwater Organics and that Freshwater Organics is applying their own misbranded label to the Household Insecticide D-20 EPA Reg. No. 67197-2.
59. Perma-Guard will be held responsible for violations pertaining to the distributor product, Bye Bye Bugs for bedbugs as stated in 40 C.F.R. § 152.132,
60. Perma-Guard has been and is producing, distributing, or selling an unregistered pesticide, Bye Bye Bugs for bedbugs EPA Reg. No. 67197-2, in violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).
61. Perma-Guard has been and is producing, distributing, or selling a misbranded pesticides, Bye Bye Bugs for bedbugs EPA Reg. No. 67197-2, in violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

IV. ORDER


62. The EPA hereby orders Perma-Guard to stop the sale, use, or removal of all pesticide products subject to this Order, which includes Grain or Seed Storage Insecticide D-10, marked EPA Reg. No. 67197-1; Household Insecticide D-20, marked EPA Reg. No. 67197-2; Fire Ant Insecticide, marked EPA Reg. No. 67197-2; Dogs and Cats Pet Insecticide D-20, marked EPA Reg. No. 67197-5; and Commercial Insecticide D-20, marked EPA Reg. No. 67197-6 that have outdated labels EFFECTIVE IMMEDIATELY.
63. The EPA hereby orders Perma-Guard to start using their current labels on all pesticides they manufacture and to ensure they have complied with any editions required by the EPA.
64. The EPA hereby orders Perma-Guard to stop the sale, use, or removal of Perma-Guard Crawling Insect Control, EFFECTIVE IMMEDIATELY.
65. The EPA hereby orders Perma-Guard to stop the sale, use, or removal of all pesticide products sold to distributors that are not in compliance with 40 C.F.R. § 152.132.
66. The EPA hereby order Perma-Guard to supply a list of all distributors of Perma-Guard products to the EPA.
67. The EPA hereby orders Perma-Guard to apply batch codes to all pesticide products they produce as required.
68. This Order pertains to all quantities and sizes of the pesticide products subject to this Order.
69. Any questions concerning this Order may be submitted to the following:

Dan Webster
US EPA Region 8 (ENF-UFO)
1595 Wynkoop Street
Denver, CO 80202
(303) 312-7076

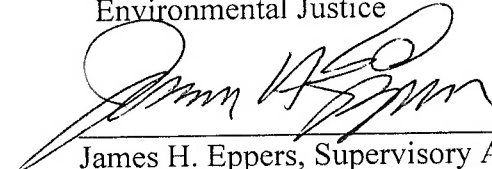
70. Any violation of the terms or provisions of this Order by an officer, agent, or other person acting for or employed by Perma-Guard may subject such person as well as Perma-Guard to civil or criminal penalties as prescribed in section 14 of FIFRA, 7 U.S.C. § 136f.
71. The issuance of this Order shall 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.
72. This Order shall be EFFECTIVE IMMEDIATELY upon receipt by Respondent.
73. Respondent may seek federal judicial review of this Order pursuant to section 16 of FIFRA, 7 U.S.C. § 136n.
74. 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.

9/15/15
Date

9/17/15
Date



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



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