



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

7/12/2023

12:05pm

Received by
EPA Region VIII
Hearing Clerk

FIFRA-08-2023-0058

Ref: 8ENF-AT-P

SENT VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

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

To: U.S. Department of Homeland Security
Bureau of Customs and Border Protection
Sweetgrass, Montana 3310

Subject: Requested action to be taken regarding the Photocatalysis Inhaled Mosquito Killer
in shipment described below

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 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. CBP Officers in Sweetgrass, Montana inspected this product upon attempted import and coordinated with EPA to determine it was out of compliance on July 10, 2023.

The following pertains to the Photocatalysis Inhaled Mosquito Killer product:

- The importer is Josh Lynch, 18 October Lane, Enfield, North Carolina 27823-9314.
- The shipper is DYK Post, 102 Central Avenue, Sweetgrass, Montana 59484-9005.
- The quantity is 1 product, weighing 1 pound.

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(h) of FIFRA, 7 U.S.C. § 136(h), defines “device” as “any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other

form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.” (See also 40 C.F.R § 152.500(a)).

Under FIFRA section 2(q)(1), 7 U.S.C. § 136(q)(1), a device 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 (see 40 CFR 156.10(a)(5) below);
- its packaging or wrapping does not conform to standards established pursuant to FIFRA section 25(c)(3) (as of 2010, such standards have yet to be established for devices);
- it is an imitation of, or is offered for sale under the name of another device;
- 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.

Implementing regulations at 40 CFR 156.10(a)(5) further define false and misleading statements as follows:

False or misleading statements. Pursuant to section 2(q)(1)(A) of the [Act](#), a [pesticide](#) or a device declared subject to the [Act](#) pursuant to [§ 152.500](#), is misbranded if its labeling is false or misleading in any particular including both pesticidal and non-pesticidal claims. Examples of statements or representations in the labeling which constitute misbranding include:

- (i) A false or misleading statement concerning the composition of the [product](#);
- (ii) A false or misleading statement concerning the effectiveness of the [product](#) as a [pesticide](#) or device;
- (iii) A false or misleading statement about the value of the [product](#) for purposes other than as a [pesticide](#) or device;
- (iv) A false or misleading comparison with other [pesticides](#) or devices;
- (v) Any statement directly or indirectly implying that the [pesticide](#) or device is recommended or endorsed by any [agency](#) of the Federal Government;
- (vi) The name of a [pesticide](#) which [contains](#) two or more principal active [ingredients](#) if the name suggests one or more but not all such principal active [ingredients](#) even though the names of the other [ingredients](#) are [stated](#) elsewhere in the labeling;
- (vii) A true statement used in such a way as to give a false or misleading impression to the purchaser;
- (viii) Label disclaimers which negate or detract from labeling statements required under the [Act](#) and these regulations;
- (ix) Claims as to the safety of the [pesticide](#) or its ingredients, including statements such as “safe,” “nonpoisonous,” “noninjurious,” “harmless” or “nontoxic to humans and pets” with or without such a qualifying phrase as “when used as directed”; and
- (x) Non-numerical and/or comparative statements on the safety of the [product](#), including but not limited to:
 - (A) “Contains all natural ingredients”;
 - (B) “Among the least toxic chemicals known”
 - (C) “Pollution approved”

The Photocatalysis Inhaled Mosquito Killer label and labelling in the shipment described above includes the following language:

- “Mosquito Killer”
- “Mosquito Repellant”
- “This product is widely used in villas, courtyards, houses, hospitals...”
- “PHOTOCATALYSIS Inhaled Mosquito Killer”
- “Mosquito killing”

These claims demonstrate a pesticidal intent pursuant to the definitions above. The Photocatalysis Inhaled Mosquito Killer is thus a pesticide and subject to FIFRA regulation.

The Photocatalysis Inhaled Mosquito Killer is a device under FIFRA section 2(h), 7 U.S.C. § 136(h), and 40 C.F.R § 152.500(a) because it falls within the definition of “any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest, [which includes virus, bacteria, or other micro-organism,] or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.”

The Photocatalysis Inhaled Mosquito Killer is misbranded pursuant to FIFRA section 2(q)(1), 7 U.S.C. § 136(q)(1), because there is no EPA Establishment Number, no directions for use, and no caution or warning statements on their labels.

Therefore, this product is misbranded pursuant to 7 U.S.C. § 136(q)(1). Importing the product in the shipment referenced above is a violation of FIFRA section 12(a)(1)(F), 7 U.S.C. § 136j(a)(1)(F), as a distribution or sale of a misbranded device.

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 product referenced above can be allowed entry into the United States.

On July 10, 2023, the Customs and Border Patrol unit chief in Sweetgrass, Montana 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.