

5/9/2023



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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8:22 AM

Received by  
EPA Region VIII  
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Ref: 8ENF-AT-P

**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 AAtrex Liquid 4 Herbicide in the shipment described below FIFRA-08-2023-0040

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 AAtrex Liquid 4 Herbicide 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 product was inspected by Customs and Border Patrol Officers in Pembina, North Dakota on May 3, 2023, and after consulting with EPA it was determined to be out of compliance.

The following information pertains to the shipment of the AAtrex Liquid 4 Herbicide:

- The consignee is Land O Lakes, 3336 River Street, River Falls, Wisconsin, 54022.
- The shipper is Winfield United Canada, 302 Wellman Lane 101, Saskatoon, SK S7T0J1.
- The file date was May 3, 2023.
- The bill number is UPSCEW3917TSGR7F.
- The quantity is 2.5 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.

Under FIFRA, 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. 7 U.S.C. § 136(u). 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....”

The label of the AAtrex Liquid 4 Herbicide had the following language:

- “HERBICIDE”
- “Liquid herbicide for selective weed control in corn, sorghum and switchgrass.”
- “PEST CONTROL PRODUCTS ACT/  
LOI SUR LES PRODUITS ANTIPARASITAIRES”

These claims demonstrate a pesticidal intent pursuant to the definitions above. AAtrex Liquid 4 Herbicide is thus a pesticide subject to FIFRA regulation.

AAtrex Liquid 4 Herbicide is not registered pursuant to section 3 of FIFRA, 7 U.S.C. § 136a. Therefore, AAtrex Liquid 4 Herbicide is an unregistered pesticide. Importing AAtrex Liquid 4 Herbicide 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 an unregistered pesticide.

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.

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 3, 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](mailto:tokarz.christine@epa.gov) if you have any questions concerning this matter.