



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
Denver, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

APR - 1 2013

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Andrew P. Kudick  
President  
Polecare, Inc.  
4001 Automation Way  
Fort Collins, CO 80525

Dear Mr. Kudick:

**STOP SALE, USE, OR REMOVAL ORDER**

Enclosed is a **STOP SALE, USE, OR REMOVAL ORDER** which directs you to immediately halt all distribution, sale, and/or use of the following product:

- Bioguard Tri-Bor Paste, including but not limited to all quantities imported under U.S. Customs entry number WLD-0217678-6.

Paragraphs 14 and 15 of the Order inform you of why this action is being taken. Please contact David Golden at 303-312-6501 if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Darcy O'Connor", written over a horizontal line.

Darcy O'Connor, Director  
Technical Enforcement Program UIC-FIFRA-OPA  
Office of Enforcement, Compliance and  
Environmental Justice (8-ENF-UFO)  
U.S. Environmental Protection Agency,  
Region 8

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2013 APR -1 PM 12:49

In the Matter of: )

Polecare, Inc. )  
4001 Automation Way )  
Fort Collins, CO 80525 )

Respondent )

STOP SALE, USE,  
OR REMOVAL ORDER

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: FIFRA-08-2013-0003

I. AUTHORITIES

1. The United States Environmental Protection Agency (EPA) 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), as amended, 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. Respondent may seek federal judicial review of this Order pursuant to section 16 of FIFRA, 7 U.S.C. § 136n.
2. Supervisors in the Technical Enforcement Program and the Legal Enforcement Program 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)(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.
5. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is misbranded.
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(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.”
8. 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.”
  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(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), defines “misbranded” as a pesticide whose label “does not bear the registration number assigned under section [7 of FIFRA] to each establishment in which it is produced.”

## **II. BACKGROUND**

11. Polecare, Inc. is a corporation organized under the laws of the State of Colorado and is authorized to do business in the State of Colorado.
12. Polecare, Inc. is a “person” as defined in section 2(s) of FIFRA, 7 U.S.C. § 136(s).
13. On February 27, 2013, Export Consolidation Services, acting on behalf of Polecare, Inc., submitted to EPA Region 8, a Notice of Arrival of Pesticides and Devices (NOA) indicating that a shipment of 98 kilograms of Bioguard Tri-Bor Paste, a misbranded pesticide not registered with EPA, was imported from Australia into the U.S. Customs Port of Entry in Denver, CO, under U.S. Customs entry number WLD-0217678-6.

## **III. BASIS FOR ORDER**

14. On March 4, 2013, an EPA inspector conducted a federal inspection of the shipment of Bioguard Tri-Bor Paste at Denver International Airport. The product was released and allowed to enter the U.S. Upon further review of the product, EPA determined the product should not have been allowed entry into the U.S.
15. Bioguard Tri-Bor Paste is a pesticide that is a misbranded pesticide and is not registered with EPA as a pesticide. Bioguard Tri-Bor Paste is produced by Preschem Pty., Ltd. in Cheltenham, VIC, Australia, a pesticide producing establishment registered with the EPA (EPA establishment number 83933-AUS-001).
16. This Order shall pertain to all quantities of Bioguard Tri-Bor Paste which are within the ownership, control or custody of Polecare, Inc.

## **IV. ORDER**

17. The EPA hereby ORDERS Polecare, Inc. NOT to distribute, sell, use or remove all quantities of Bioguard Tri-Bor Paste including, but not limited to, all quantities of the shipment of Bioguard Tri-Bor Paste subject to U.S. Customs entry number WLD-0217678-6, except in accordance with this Order.

18. Within 10 days of receipt of the Order, Polecare, Inc. must submit a written proposal for proper disposition of all Bioguard Tri-Bor Paste subject to this Order. The proposal shall include an inventory of detailed accounting of Bioguard Tri-Bor Paste by unit packaging size(s), quantity, and location(s) products are being held. Polecare, Inc. must submit the import documentation for all Bioguard Tri-Bor Paste in the ownership, control, or custody of Polecare, Inc. The products subject to this Order shall not be moved, destroyed or disposed of without prior written consent from EPA. The proposal and inventory shall be submitted to the following person, or to such other person as EPA designates in writing:

David Golden (8-ENF-UFO)  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop St.  
Denver, CO 8102-1129

19. Violation of the terms or provisions of this Order may subject the violator to CIVIL OR CRIMINAL PENALTIES as prescribed in section 14 of FIFRA, 7 U.S.C. § 136l.
20. Any violation of the terms or provisions of this Order by an officer, agent, or other person acting for or employed by Polecare, Inc. may subject the violator as well as Polecare, Inc. to civil or criminal penalties as prescribed in section 14 of FIFRA, 7 U.S.C. § 136l.
21. 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.
22. The EPA hereby orders Polecare, Inc. to stop the sale, use, or removal of the pesticide Bioguard Tri-Bor Paste, EFFECTIVE IMMEDIATELY.

23. 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 they 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 this Order or certain provisions of this Order in writing.

3/29/15

Date



Darcy O'Connor, Director  
Technical Enforcement Program UIC-FIFRA-OPA  
Office of Enforcement, Compliance and  
Environmental Justice (8-ENF-UFO)  
U.S. Environmental Protection Agency,  
Region 8

3.29.13

Date

*Margaret G. (Peggy) Livingston, Acting for*  
James H. Eppers, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice  
U.S. Environmental Protection Agency,  
Region 8

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **STOP SALE, USE OR REMOVAL ORDER**, in the matter of **POLECARE, INC.; DOCKET NO.: FIFRA-08-2013-0003** was filed with the Regional Hearing Clerk on April 1, 2013.

Further, the undersigned certifies that a true and correct copy of the documents were delivered Eduardo Quintana, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on April 1, 2013, to:

Andrew P. Kudick, President  
Polecare, Inc.  
4001 Automation Way  
Ft. Collins, CO 80525

April 1, 2013

  
Tina Artemis  
Paralegal/Regional Hearing Clerk