



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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

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U.S. EPA REGION 8  
HEARING CLERK

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**SENT BY ELECTRONIC MAIL**  
**DELIVERY RECEIPT REQUESTED**

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

To: U.S. Department of Homeland Security  
Bureau of Customs and Border Protection  
Port of Pembina, North Dakota 3401

Subject: Requested action to be taken regarding the products in shipment with entry number HTD-93488460 FIFRA-08-2024-0006

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, 7 U.S.C. § 136o(c), and the implementing regulations at 19 C.F.R. section 12.114. The entry was marked “Hold Intact,” “Refused,” and “Re-Export” in ACE by the EPA on November 30, 2023.

The following information pertains to the shipment:

- The importer and consignee is Troy Chemical Corporation Inc. 1 Avenue L, Newark, New Jersey, 07105-3805.
- The broker is Cavalier Logistics, Linda Muccio [lmuccio@cavlog.com](mailto:lmuccio@cavlog.com).
- The bill number is ATET00027565.
- The arrival date was November 14, 2023.
- The quantity is 2,205 pounds.
- The port of entry is Pembina, North Dakota 3401.
- The country of origin as entered in ACE is United States.

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.”

Under FIFRA section 2(u) 7 U.S.C. § 136(u), 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. ( ). 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(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 following pertains to the ACE Entry information uploaded into ACE:

- The product name was listed as “Mergal 758”
- The EPA Registration Number was listed as “5383-137 “
- The EPA Establishment Number was listed as “005383NJJ001”

The following pertains to the actual product that arrived for import:

- The product name was “Mergal 758”
- The EPA Registration Number was listed as “5383-137”
- The EPA Establishment Number was listed as “81581-SC-001”

The shipment that arrived at the border for import is 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 file reports required by the Act. As required by 19 C.F.R. section 12.114, a Notice of Arrival of Pesticides and Devices, EPA form 3540-1, and a copy of one product label must be submitted. The EPA Establishment Number listed in ACE contradicted the EPA Establishment Number on the product that arrived for import. Therefore, the information in ACE was false.

Therefore, the Mergal 758 pesticide product in the shipment referenced above cannot be allowed entry into the United States.

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 November 30, 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.