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U.S. EPA REGION 8
HEARING CLERK

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DELIVERY RECEIPT REQUESTED

SUBJECT: Requested action to be taken regarding the Peak Ozone-ZOO-140150 in shipment with entry number 551-19192125 FIFRA-08-2025-0003

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

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 (CBP) that the products in the import shipment described below should be **Denied Entry-Refused Delivery** 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. section 12.114. The entry was marked “Hold Intact,” “Refused,” and “Re-Export” in the Automated Commercial Environment (ACE) by the EPA on November 1, 2024. The following information pertains to the shipment:

- The importer is Blue Falls Manufacturing Ltd, Thorsby, Alberta, Canada T0C2P0.
- The consignee is Aqua Balance Inc, 2368 S State Street, Salt Lake City, Utah 84115-2756.
- The broker is Mathew Stevens, Northern Border Import Specialist, A.N. Deringer, Inc., mastevens@anderinger.com.
- The bill number is GRBP0252536.
- The product is the Peak Ozone-ZOO-140150.
- The port of entry is Sweetgrass, Montana 3310.

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(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).

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....”

On October 31, 2024 EPA received a statement from the importer, Blue Falls Manufacturing Ltd, regarding the Peak Ozone-ZOO-140150, “Christine is correct in that it is a pesticide device and we will re-export it. It was shipped from us by mistake as we are aware that we do not have an EPA number that is required for us to ship to the US (we applied awhile ago and have not had any word back). The device is currently at the Utah dealership and he is holding the unit and awaiting our instructions for re-export.”

Therefore, these Peak Ozone-ZOO-140150 are pesticide devices.

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 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, these pesticide products in the shipment referenced above cannot be allowed entry into the United States.

The EPA hereby notifies CBP that this merchandise should be refused admission pursuant to the authority of FIFRA § 17(c), 7 U.S.C. § 136o(c), and the implementing regulations at 19 C.F.R. § 12.114. The importer should export this merchandise or dispose of the products under supervision of the CBP within ninety calendar days from the date of this memorandum or within such additional time as the District Director of CBP specifies. Failure to do so may result in either the destruction of the merchandise as authorized by FIFRA or in any action necessary to enforce the terms of any bond under which the shipment has been released to the consignee. Alternatively, CBP may elect to seize the products as a prohibited importation pursuant to their authorities as set out at 19 U.S.C. § 1595a(c)(2)(A).

On November 1, 2024, the EPA informed the CBP Cargo Chief in Sweetgrass, Montana, that it would deny entry of this shipment. Please contact Christine Tokarz, the import enforcement coordinator, by email at tokarz.christine@epa.gov, if you have any questions concerning this matter.