



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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March 15, 2021
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EPA Region VIII

Hearing Clerk

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SENT VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

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

DAVID COBB

Digitally signed by DAVID
COBB
Date: 2021.03.15 15:04:11
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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 Albaugh Technical Bromoxynil Octanoic Acid in shipment with entry number 581-01067865 FIFRA-08-2021-0033

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 Albaugh Technical Bromoxynil Octanoic Acid 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 March 11, 2021.

The following information pertains to the shipment of the Albaugh Technical Bromoxynil Octanoic Acid:

- The importer and consignee is Albaugh LLC, 1525 Northeast 36th Street, Ankeny, Iowa 50021-6754. The point of contact, Shannon Lucas, SHANNONL@ALBAUGHELLC.COM.
- The manufacturer is Heben Pesticide & Chemicals Company Limited, Yanjiang Industrial Area, Liandun R, Houjing, Wenzhou 325008 China.
- The broker is Scarbrough International, Ltd, point of contact Alyson Schroer, ASCHROER@SCARBROUGH-INTL.COM.
- The EPA Registration Number as listed in the uploaded label image is 42750-54.
- The EPA Establishment Number as listed on the uploaded label image is 79693-CAN-004.
- The bill number is GXTQ54001810.
- The entry number is 581-01067865.
- The ship date was March 11, 2021.
- The quantity is 39,672 pounds.
- The port of entry is Pembina, North Dakota 3401.
- The country of origin as entered in ACE is China.

Section 2(u) of FIFRA, 7 U.S.C. § 136(u) defines “pesticide” as (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer, except that the term “pesticide” shall not include any article that is a “new animal drug” within the meaning of section 321(w) [1] of title 21, that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 321(x) [1] of title 21 bearing or containing a new animal drug. The term “pesticide” does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 321 of title 21. For purposes of the preceding sentence, the term “critical device” includes any device which is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term “semi-critical device” includes any device which contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body.

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(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), provides that, “a pesticide is misbranded if –

- (A) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
- (B) it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to section 136w(c)(3) of this title;
- (C) it is an imitation of, or is offered for sale under the name of, another pesticide;
- (D) its label does not bear the registration number assigned under section 7 to each establishment in which it was produced;
- (E) any word, statement, or other information required by or under the authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared to other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (F) the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any

requirements imposed under section 3(d) of this Act, are adequate to protect health and the environment; [or]

(G) the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment[.]”

In accordance with 40 C.F.R. § 156.10(a)(5), a pesticide or a device 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:

- a. A false or misleading statement concerning the effectiveness of the product as a pesticide or device. 40 C.F.R. § 156.10(a)(5)(ii);
- b. Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by any agency of the Federal Government. 40 C.F.R. § 156.10(a)(5)(v); and
- c. A true statement used in such a way as to give a false or misleading impression to the purchaser. 40 C.F.R. § 156.10(a)(5)(vii).

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 which is adulterated or misbranded.

The shipment that arrived at the border for import had a label with the following language, “Made in China.” This statement implies that the product was manufactured in China, yet the EPA Establishment is listed as 79693-CAN-4. The “Made in China” language is therefore false and misleading. Therefore, the pesticide is misbranded pursuant to 7 U.S.C. § 136(q)(1) and 40 C.F.R. § 156.10(a)(5), and sale or distribution of the product violates 7 U.S.C. § 136j(a)(1)(E).

Therefore, the Albaugh Technical Bromoxynil Octanoic Acid 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 March 11, 2021, 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 if you have any questions concerning this matter.