

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)
)
FLOWATER, INC.)
)
)
4045 Pecos Street)
Denver, Colorado 80211-2555)
)
Respondent.)
_____)

Docket No. FIFRA-08-2024-0037-
FIFRA SECTION 13(a)
STOP SALE, USE, or
REMOVAL ORDER



I. AUTHORITY

1. This Stop Sale, Use, or Removal Order (Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency by section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. § 136k(a), which authorizes the Administrator of EPA to issue an order 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 that the pesticide or device is in violation of any provision of FIFRA or the pesticide or device has been or is intended to be distributed or sold in violation of any provision of FIFRA.
2. The undersigned EPA official has been duly authorized to issue this Order.

II. GOVERNING LAW

3. Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), provides that it shall be unlawful for any person in any state to distribute or sell to any person any device that is misbranded.
4. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), provides that it shall be unlawful for any person to violate any regulation issued under section 3(a) or section 19 of FIFRA.
5. 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.”
6. 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 microorganism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1).”

7. Pursuant to the authority in section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1), the Administrator has declared that a pest is “[a]ny fungus, bacterium, virus, prion, or other microorganism, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs ... and cosmetics.” See 40 C.F.R. § 152.5(d).
8. 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.”
9. EPA’s implementing regulation at 40 C.F.R. § 152.500(a) provides the following: A device is defined as any instrument or contrivance (other than a firearm) intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than a bacterium, virus, or other microorganism on or in living man or living animals) but not including equipment used for the application of pesticides (such as tamper-resistant bait boxes for rodenticides) when sold separately therefrom.
10. Section 2(gg) of FIFRA, 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....”
11. EPA’s implementing regulation at 40 C.F.R. § 152.3 further defines the term “distribute or sell” as “the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any state.”

12. 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....”
13. Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), provides that, among other reasons, “a pesticide is misbranded if ...
 - [D] its label does not bear the registration number assigned under [section 7] of this title to each establishment in which it was produced; ...
 - [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 title, 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 title, is adequate to protect health and the environment.”
14. Section 17(c) of FIFRA, 7 U.S.C. § 136o(c), and the regulations implementing that provision set forth at 19 C.F.R. §§ 12.110 - 12.117, establish that importers of pesticides must submit to the EPA, prior to the arrival of the shipment in the United States, a Notice of Arrival of Pesticides and Devices on U.S. Environmental Protection Agency Form 3540-1, or must file an electronic alternative to the Notice of Arrival with the filing of entry documentation via any Customs and Border Protection (CBP)-authorized electronic data interchange system.
15. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), provides that it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by FIFRA.

III. BASIS FOR THE ORDER

16. Respondent, Flowater, Inc., is a corporation organized under the laws of the State of Colorado and is therefore a “person” as that term is defined by section 2(s) of

FIFRA, 7 U.S.C. § 136(s), and subject to FIFRA and the implementing regulations promulgated thereunder.

17. Respondent imported three shipments associated with entry numbers JJ8-82153056, JJ8-82152504, and JJ8-82158121, containing the following products: one hundred eight Flowater Refill Stations (entry number JJ8-82153056), one hundred eight Flowater Refill Stations (entry number JJ8-82152504), and fourteen Water Purifier-Pro 400, Commercial High Flow (entry number JJ8-82158121). The shipments (entry numbers JJ8-82153056 and JJ8-82152504) entered the United States at the Port of Denver, Colorado, from Korea on October 26, 2023; and, from Sweden (entry number JJ8-82158121) on December 18, 2023.
18. As the importer of the shipment listed in paragraph 17, and by doing business in the United States, Respondent is subject to the requirements of FIFRA and its implementing regulations.
19. Respondent is and was at all times relevant to the allegations herein, an “importer” as that term is defined in 19 C.F.R. § 101.1 and was the importer of record for all of the unlawful imports alleged herein.
20. The Flowater Refill Stations labels identify FloWater (FloWater, Inc. 4045 Pecos Street, Suite 180, Denver, CO 80211), and direct the reader to the following website. www.myflowater.com
21. The website, www.myflowater.com automatically redirects to <https://drinkflowater.com/>. The Flowater Refill Station product page has the following language:
 - “The most advanced water dispenser ever.”
 - “With our new-tech FloWater Refill Stations, we have introduced the most advanced water purification and sanitizing technology ever”
 - “Eliminates up to 99% of all toxins, heavy metals, microplastics, viruses and bacteria with membrane used in FloWater’s Advanced Osmosis system.”
 - “Self-sanitizing with a fully-recessed dispensing nozzle and the most potent sanitizing mechanism available, eliminating any potential cross-contamination.”

22. The Water Purifier-Pro 400, Commercial High Flow Units labels identify FloWater (FloWater, Inc. 4045 Pecos Street, Suite 180, Denver, CO 80211), and direct the reader to the following website. www.myflowater.com
23. The website, www.myflowater.com automatically redirects to <https://drinkflowater.com/>. The Purifier-Pro 400, Commercial High Flow product page has the following language:
 - “The most advanced water dispenser ever.”
 - “With our new-tech FloWater Refill Stations, we have introduced the most advanced water purification and sanitizing technology ever”
 - “Eliminates up to 99% of all toxins, heavy metals, microplastics, viruses and bacteria with membrane used in FloWater’s Advanced Osmosis system.”
 - “Self-sanitizing with a fully-recessed dispensing nozzle and the most potent sanitizing mechanism available, eliminating any potential cross-contamination.”
24. The Flowater Refill Stations and the Purifier-Pro 400, Commercial High Flow Units associated with entry numbers JJ8-82153056, JJ8-82152504, and JJ8-82158121 do not bear a registration number assigned under FIFRA section 7 (EPA establishment number: 103517).
25. Because of the lack of an EPA establishment registration number on the label or labeling, the Flowater Refill Stations and the Purifier-Pro 400, Commercial High Flow Units associated with entry numbers JJ8-82153056, JJ8-82152504, and JJ8-82158121 are misbranded pursuant to sections 2(q)(1)(D), (F) and (G) of FIFRA, 7 U.S.C. §§ 136(q)(1)(D),(F) and (G), 40 C.F.R. § 152.500(b)(1).
26. The importation of the shipments of Flowater Refill Stations and the Purifier-Pro 400, Commercial High Flow Units is a “distribution or sale” pursuant to section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
27. Respondent’s importation of the shipment of the following pesticidal devices: the Flowater Refill Stations and the Purifier-Pro 400, Commercial High Flow Units, through Denver, Colorado, Port of Entry constitutes three separate violations of section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), which provides that it is

unlawful for any person to distribute or sell to any person a device that is misbranded.

28. Respondent failed to file a Notice of Arrival of Pesticides and Devices with EPA for each pesticidal device in the shipment of the Flowater Refill Stations and the Purifier-Pro 400, Commercial High Flow Units as required by 19 C.F.R. § 12.112.

IV. ORDER

29. Pursuant to the authority in section 13(a) of FIFRA, 7 U.S.C. § 136k(a), EPA hereby orders Respondent to immediately cease the sale, use, or removal of all the Flowater Refill Stations and the Purifier-Pro 400, Commercial High Flow Units associated with entry numbers JJ8-82153056, JJ8-82152504, and JJ8-82158121 under its ownership, control, or custody, wherever such products are located, except in accordance with the provisions of this Order.
30. The products shall not be sold, offered for sale, held for sale, shipped, delivered for shipment, received; or, having been so received, delivered, offered for delivery, moved, or removed, for any reason, other than in accordance with the provisions of this Order and any provisions of any written modifications to this Order.
31. As part of Respondent's plan to come into compliance with FIFRA, Respondent has requested and has obtained an establishment number (103517) as of January 16, 2024, for its establishment located at 6200 North Washington Street, Suite 10, Denver, Colorado, 80216 (Denver Establishment).
32. Respondent also has reworked the product labels and website for the Flowater Refill Stations to make their sale or distribution compliant with FIFRA. Respondent has agreed to rework the product labels and website for the Purifier-Pro 400 units to make their sale and distribution compliant with FIFRA. Specifically, Respondent will rework and relabel the Purifier-Pro 400 units in its FIFRA section 7 registered Denver Establishment with FIFRA compliant labels and labeling.
33. Pursuant to the terms of EPA's acceptance of Respondent's rework plan on March 29, 2024, the following provisions are established as part of this Order:
 - a) All products in the United States that are owned by, are in the custody of, or

are controlled by Respondent may be transported as necessary to the registered establishment identified in Respondent's rework plan (i.e., the Denver Establishment). No products shall be distributed until products are relabeled with FIFRA compliant labels and labeling.

- b) Respondent will document such movements and rework activities in accordance with the terms set forth in the rework plan.
- c) Products will be allowed to be released for distribution in commerce upon certification that the rework of those products, as specified in the rework plan, has been completed.
- d) The distribution, sale, and use of such products that have been reworked and released shall not be deemed a violation of this Order, provided the products, including labeling, are fully compliant with FIFRA.

34. All reporting to EPA required by this Order and the rework plan shall be submitted to Sherrie Kinard at kinard.sherrie@epa.gov.

V. OTHER MATTERS

35. Respondent may seek federal judicial review of this Order pursuant to section 16 of FIFRA, 7 U.S.C. § 136n.

36. The issuance of this Order shall not constitute a waiver by 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.

37. This Order shall be effective immediately upon receipt by Respondent or any of Respondent's agents.

38. Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(1), provides that it shall be unlawful for any person to violate any order issued under section 13 of FIFRA.

39. This Order shall remain in effect unless and until revoked, terminated, suspended, or modified in writing by EPA.

40. If any provision of this Order is 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.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8**

Date:

By:

DAVID

COBB

David Cobb, Supervisor

Toxics and Pesticides Enforcement Section

Enforcement and Compliance Assurance Division

Digitally signed by

DAVID COBB

Date: 2024.04.23

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