



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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U.S. EPA REGION 8
HEARING CLERK

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SENT VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

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

To: U.S. Department of Homeland Security
Bureau of Customs and Border Protection
Sweetgrass, Montana 3310

Subject: Requested action to be taken regarding the HEPA Filters in shipment with entry number 79974851370 FIFRA-08-2024-0002

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 (FIFRA), 7 U.S.C. § 136o(c), and the implementing regulations at 19 C.F.R. § 12.114. The entry was marked "Hold Intact," "Refused," and "Re-Export" in ACE by the EPA on October 10, 2023.

The following information pertains to the shipment:

- The consignee and importer is Ocean Sales Ltd. 700 Sleater Kinney Road, SE Suite B241, Lacey, Washington 98503-1113. Point of contact, Nick Elliott nick@oceansales.ca.
- The broker is FedEx Trade Networks Trans. and Brokerage.
- The entry file date was September 27, 2023.
- The quantity is 160 HEPA Filters, weighing 320 pounds.
- The port of entry is Sweetgrass, Montana 3310.
- The country of origin as entered in ACE is Canada.

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 which is misbranded.

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(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)).

Under FIFRA section 2(q)(1), 7 U.S.C. § 136(q)(1), a device is misbranded and subject to enforcement action if, among other reasons:

- the labeling bears any statements, designs, or graphic representations that are false or misleading (see also 40 CFR 156.10(a)(5));
- its packaging or wrapping does not conform to standards established pursuant to FIFRA section 25(c)(3) (as of 2010, such standards have yet to be established for devices);
- it is an imitation of, or is offered for sale under the name of another device;
- the label fails to bear the establishment number of the establishment where it was produced;
- any required information is not prominently displayed on the label;
- it lacks adequate directions for use; or
- it lacks an adequate warning or caution statement.

The HEPA Filters had the following claims on the label:

- “Genuine cleanvac+ quality”
- “Dust and allergen removal”
- “Protects up to 3 months”
- “HEPA”

These claims demonstrate a pesticidal intent (an allergen to be specific) pursuant to the definitions above. The HEPA Filters are thus pesticide devices and subject to FIFRA regulation.

The HEPA Filters are devices under FIFRA section 2(h), 7 U.S.C. § 136(h), and 40 C.F.R § 152.500(a) because it falls within the definition of “any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest, [which includes virus, bacteria, or other micro-organism,] 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.”

The HEPA Filters are misbranded pursuant to FIFRA section 2(q)(1), 7 U.S.C. § 136(q)(1) because there is no EPA Establishment Number, no directions for use, and no caution or warning statements on their labels.

Therefore, these products are misbranded pursuant to 7 U.S.C. § 136(q)(1). Importing the products in the shipment referenced above is a violation of FIFRA section 12(a)(1)(F), 7 U.S.C. § 136j(a)(1)(F), as a distribution or sale of a misbranded device.

The shipment that arrived at the border for import is also 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, none of the products referenced above can be allowed entry into the United States.

On October 10, 2023, the Customs and Border Patrol unit chief in Sweetgrass, Montana 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.