



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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09/28/2022

8:32am

FIFRA-08-2022-0048

Received by
EPA Region VIII
Hearing Clerk

Ref: 8ENF-AT-P

SENT VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

From: Scott Patefield
Manager, Air and Toxics Enforcement Branch
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 PREempt Wipes in shipment with entry number CIU-31078862

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 PREempt Wipes 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 Automated Commercial Environment (ACE) by the EPA on September 26, 2022.

The following information pertains to the shipment of the PREempt Wipes:

- The consignee is Evans Consoles Inc. 1577 Spring Hill Road Suite 110, Vienna, Virginia 22182-2223.
- The manufacturer is Evans Consoles Inc. 1616 27 Avenue NE0 Calgary, T2E 8W4 Canada.
- The broker is Cole International, Dave Ryan, Dave.Ryan@coleintl.com.
- The release date was September 19, 2022.
- The bill number is EVNJ27427.
- The quantity is 1 canister of wipes, approximately 2 pounds.
- The port of entry is Sweetgrass, Montana 3310.
- The country of origin is Canada.

The shipment that arrived at the border for import was in violation of FIFRA section 12(a)(1)(A) (7 U.S.C. § 136j(a)(1)(A)), which states that it is unlawful for any person to distribute or sell any pesticide that is not registered under section 3 of FIFRA (7 U.S.C. § 136a).

Under FIFRA, 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. (7 U.S.C. § 136u). 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(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....”

The PREempt Wipes label includes the following claims:

- “Virucidal”
- “Bacterial”
- “Tuberculocide”
- “Broad Spectrum Sanitizer
- “Fungicidal”
- “A powerful disinfectant”
- “One-Step Surface Cleaner and Disinfectant”
- “Produit Nettoyant et Désinfectant en Une Étape pour Les Surfaces”

These claims demonstrate a pesticidal intent pursuant to the definitions above. The PREempt Wipes are thus pesticides subject to FIFRA regulation.

The PREempt Wipes are not registered pursuant to section 3 of FIFRA (7 U.S.C. § 136a). Therefore, these wipes are unregistered pesticides. Importing these products in the shipment referenced above is a violation of FIFRA section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), as a distribution or sale of an unregistered pesticide.

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. 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 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 September 26, 2022, 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.