

4/24/2023

5:08 PM

Received by
EPA Region VIII
Hearing Clerk



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

Ref: 8ENF-AT-P

SENT VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

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
Pembina, North Dakota 3401

Subject: Requested action to be taken regarding the Acceleron IX-409, in shipment with entry number 231-04359689 FIFRA-08-2023-0033

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 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 April 19, 2023.

The following information pertains to the shipment:

- The importer and consignee is Bayer Crop Science LP, 243 Three Springs Drive, Weirton, West Virginia 26062-3839. Point of contact, Mitch Orr mitch.orr@bayer.com and ofelia.gomez@bayer.com.
- The manufacturer is Bayer Crop Science 295 Henderson Drive, Regina, S4N 6C2 Canada.
- The Broker is Expeditors International, point of contact JEFF.LAMONICA@EXPEDITORS.COM.
- The bill number is TNXL13121404.
- The entry file date was April 13, 2023.
- The quantity is 14 containers, weighing 3,640 pounds.
- The port of entry is Pembina, North Dakota 3401.
- The country of origin as entered in ACE 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. See 40 C.F.R. § 152.15.

All imported pesticides and devices, including unregistered pesticides, must have been produced in an EPA-registered establishment (even when the production establishment is outside the United States) and labeled accordingly with that establishment number. See 40 CFR § 152.30. The producer is responsible for submitting annual production reports to EPA. 40 C.F.R. § 167.20(a)(3).

The label for Accelron IX-409 has the following language:

- “Insecticide Seed Treatment”
- “This pesticide is highly toxic to bees, birds and aquatic invertebrates.”
- “EPA Establishment Number 92437-CAN-1”

The EPA Establishment with the number 92437-CAN-1 is a terminated establishment.

Therefore, none of the products referenced above in the shipment with entry number 231-04359689 can 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 April 19, 2023, 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.