



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

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DELIVERY RECEIPT REQUESTED

From: David Cobb
Section Chief, Toxics & Pesticides 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 Brominating Granules, Brominating Tablets,
and Mineral Ionizer Purifier System in shipment with entry number DN2-19513129

FIFRA-08-2022-0015

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. section 12.114. The entry was marked "Hold Intact," "Refused," and "Re-Export" in ACE by the EPA on November 18, 2021.

The following information pertains to the shipment:

- The importer is Northern Lights Cedar Tubs Inc., 835 Kapelus Drive, West Saint Paul Manitoba R4A5A4 Canada.
- The consignee is Robert Heck, 57740 East 345 Road, Jay, Oklahoma 74346-5687.
- The broker is GHY USA, Inc. Point of contact, Kimberly Weber, kimw@ghy.com.
- The bill number is RDWY6246011336.
- The entry file date was November 16, 2021.
- The quantity is 1 bottle of Brominating Granules, 1 bottle of Brominating Tablets, and 1 Mineral Ionizer Purifier System weighing 5 pounds.
- The port of entry is Pembina, North Dakota 3401.
- The country of origin as entered in ACE is Canada.

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. Section 2(u) of FIFRA, 7 U.S.C. § 136(u) (See also 40 C.F.R. § 152.15.)

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 40 CFR 156.10(a)(5) below);
- 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 label for the Brominating Tabs has the following language, “Sanitizer for Pools and Hot Tubs” and “Controls bacteria and algae in spa water”.

The label for the Brominating Granules has the following language, “Controls bacteria and algae in spa and hot tub water”.

The manual for the Mineral Ionizer Purifier System has the following language, “This device will assist in controlling bacteria and algae in pools and spas by augmenting the bactericidal and algicidal activity of primary disinfectants such as chlorine or bromine.”

Disinfectants are designed to kill pests, specifically germs or microorganisms, and are considered pesticides. The labels of the Brominating Tabs and the Brominating Granules contain pesticidal claims indicating pesticidal intent. The Brominating Tabs and the Brominating Granules have not been registered with the EPA. FIFRA section 12(a)(1)(A) (7 U.S.C. § 136j(a)(1)(A)) 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). Therefore, these products in the shipment listed above are considered unregistered pesticides and should not be allowed entry into the United States.

These Mineral Ionizer Purifier Systems are devices under FIFRA section 2(h), 7 U.S.C. § 136(h), and 40 C.F.R § 152.500(a) because they fall 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 Mineral Ionizer Purifier Systems 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 label or labelling.

Therefore, these products are misbranded pursuant to 7 U.S.C. § 136(q)(1). Importing these 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 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.

Therefore, none of the products referenced above in the shipment with entry number DN2-19513129 should 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 November 18, 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.