



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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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 Oase Marine Service Kit in the shipment described below FIFRA-08-2023-0045

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 shipment was inspected by EPA Officers at the Sweetgrass, Montana Port of Entry on May 18, 2023, and was determined to be out of compliance.

The following information pertains to the shipment of Oase Marine Service Kit:

- The importer is Deal4K, 102 Central Ave, Suite 1002, Sweetgrass, Montana 59484.
- The consignee is Grace Duncan, 13803 Grapevine Road, Phyllis, Kentucky 41554-8503.
- The broker is Deal 4 K.
- The reference number is DYKPA3436056.
- The entry date was May 18, 2023.
- The quantity is 1 Oase Marine service Kit, weighing 5 pounds.
- The port of entry is Sweetgrass, Montana 3310.
- 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 section 2(u), 7 U.S.C. § 136u, 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. 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 Oase Marine Service Kit comes with the following items:

- Round Filter
- Reef Salt
- Water Conditioner liquid packet
- Biological Booster liquid packet

The label of the Water Conditioner liquid packet includes the following language:

- “Conditions your water and removes harmful elements”
- “Use regularly to improve filtration, reduce algae and benefit the well being of your fish”

These claims demonstrate a pesticidal intent pursuant to the definitions above. The Oase Marine Service Kit is thus a pesticide and subject to FIFRA regulation.

The Oase Marine Service Kit is not registered pursuant to section 3 of FIFRA (7 U.S.C. § 136a). Therefore, these products 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 unregistered pesticides.

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.

The Agency hereby notifies U.S. Customs and Border Protection that this merchandise should be refused admission and recommends that this merchandise be re-exported or destroyed within 90 calendar days from the date of this Notice.

On May 18, 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.