



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

FILED

1/25/2024

1:54 PM

U.S. EPA REGION 8
HEARING CLERK

Ref: 8ENF-AT-P

SENT VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

From: David Cobb
Section Supervisor, Toxics and 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 Coghlan's Citronella Candles in shipment with entry number 300-68480443 FIFRA-08-2024-0010

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 Coghlan's Citronella Candles 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 January 22, 2024.

The following information pertains to the shipment of the Coghlan's Citronella Candles:

- The manufacturer is Coghlan's Limited, 121 Irene Street, Winnipeg, Manitoba, R3T4C7 Canada.
- The consignee is Smart Warehousing, 18905 Kill Creek Road, Edgerton, Kansas 66021.
- The broker is Livingston International, point of contact, Ernie Hughes, pga@livingstonintl.com, Brintnell, Randy rbrintnell@livingston.com.
- The release date was January 22, 2021.
- The quantity is 2,880 candles, 2169.35 pounds.
- The port of entry is Pembina, North Dakota 3401.
- 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 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. Additionally, 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 label of the Coghlan’s Citronella Candle includes the following website: <https://coghlan.com>. That website includes the following language:

- “Coghlan's Citronella Candle is a versatile and practical accessory for camping trips or outdoor events.”
- “The candle's pleasant citronella scent helps keep insects at bay while providing heat and light.”

These claims demonstrate a pesticidal intent pursuant to the definitions above. Coghlan’s Citronella Candle is thus a pesticide subject to FIFRA regulation.

Coghlan’s Citronella Candle is not registered pursuant to section 3 of FIFRA, 7 U.S.C. § 136a. Therefore, Coghlan’s Citronella Candle is an unregistered pesticide. Importing Coghlan’s Citronella Candle 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 file reports required by FIFRA. 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. Neither a Notice of Arrival nor an image of the label was submitted either electronically or via the CBP authorized electronic data interchange system. Therefore, it cannot be allowed entry into the United States.

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 January 22, 2024, 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.