



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 12/08/2022
REGION 8

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9:08am

Received by
EPA Region VIII
Hearing Clerk

FIFRA-08-2023-0009

Ref: 8ENF-AT-P

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
Denver, Colorado 3307

Subject: Requested action to be taken regarding the Baygon Mosquito Coils in shipment with entry number 8LX-00008861

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 Baygon Mosquito Coils 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. §12.114. The entry was marked "Hold Intact," "Refused," and "Re-Export" in the Automated Commercial Environment (ACE) by the EPA on December 6, 2022.

The following information pertains to the shipment of the Baygon Mosquito Coils:

- The consignee and importer is Kerri B. Mcafoos, 2700 East Cedar Avenue, Denver, Colorado 80209-3208.
- The broker is Accustom Brokerage, LLC, point of contact Shannon & Dawn, info@accustombroker.com.
- The file date is December 6, 2022.
- The bill number is ONEYSUBC35555500.
- The port of entry is Denver, Colorado 3307.
- The country of origin is Indonesia.

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. § 136(u)). 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 Baygon Mosquito Coils included the following language:

- “Jumbo Mosquito Coils”

The website associated with the Baygon Mosquito Coils, <https://www.baygon.pk/en-pk/products/baygon-mosquito-coils> included the following language:

- “BAYGON MOSQUITO COILS-10 Hours protection against mosquitos”
- “Store in a cool, dry place. Pesticides, keep in the original label container.”
- “0.03% Transfluthrin”

These claims demonstrate a pesticidal intent pursuant to the definitions above. The product named Baygon Mosquito Coils is thus a pesticide subject to FIFRA regulation.

Baygon Mosquito Coils are not registered pursuant to section 3 of FIFRA (7 U.S.C. § 136a). Therefore, Baygon Mosquito Coils are unregistered pesticides. Importing Baygon Mosquito Coils 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.

19 C.F.R. §12.114 requires that a Notice of Arrival of Pesticides and Devices (NOA), EPA form 3540-1, and a copy of one product label must be submitted. The registrant, wholesaler, dealer, retailer, or other distributor for this shipment failed to correctly file the required information. Therefore, the shipment that arrived at the border also is in violation of FIFRA section 12(a)(2)(N), 7 U.S.C. § 136j(a)(2)(N).

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 December 6, 2022, the Customs and Border Patrol Unit Chief in Denver, Colorado 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.