

4/17/2023



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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

9:00 AM

Received by
EPA Region VIII
Hearing Clerk

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
Sweetgrass, Montana 3310

Subject: Requested action to be taken regarding the Aiptasia-X products FIFRA-08-2023-0027

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 Aiptasia-X in the 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 shipment was inspected by EPA Officers at the Sweetgrass, Montana Port of Entry on March 30, 2023, and was determined to be out of compliance.

The following information pertains to the shipment of the Aiptasia-X:

- The consignee is Kim Foran 14080 Eden Isle Boulevard, Windmere, Florida 34786.
- The shipper is DYKPA3330293 DEAL4K Calgary, Canada.
- The shipment was imported under Section 321.
- The file date was March 30, 2023.
- The quantity is one box with a total net weight of 2 pounds.
- The port of entry is Sweetgrass, Montana 3310.
- 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. § 136(u), 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 label of the Aiptasia-X: Reef Safe Guaranteed Efficiency included the email address, support.fr@redseafish.com.

The website, <https://g1.redseafish.com/reef-care-program/aiptasia-x/>, includes the following information about Aiptasia-X:

“Aiptasia-X is a unique, thick adhesive mixture that globulates on contact with the aquarium water. It is easily injected near to the oral disk of the anemone and stimulates the anemone to ingest the material without causing it to withdraw. Within minutes of ingesting the Aiptasia-X the anemone will implode, eradicating both the anemone and planulas.”

These claims demonstrate a pesticidal intent pursuant to the definitions above. Aiptasia-X: Reef Safe Guaranteed Efficiency is thus a pesticide subject to FIFRA regulation.

Aiptasia-X: Reef Safe Guaranteed Efficiency is not registered pursuant to FIFRA section 3, 7 U.S.C. § 136a. Therefore, Aiptasia-X: Reef Safe Guaranteed Efficiency is an unregistered pesticide. Importing Aiptasia-X: Reef Safe Guaranteed Efficiency 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 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. Therefore, the shipment that arrived at the border was also 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 March 30, 2023, the Customs and Border Patrol Cargo Team in Sweetgrass, Montana was informed by the EPA that it would deny entry of this shipment.

Please contact Christine Tokarz, FIFRA import coordinator, by phone at (303) 312-6147 or by email at tokarz.christine@epa.gov if you have any questions concerning this matter.