



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

**JAN 13 2016**

Ref: 8ENF-UFO

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
AND ELECTRONIC TRANSMISSION**

John M. Foster, III, Registered Agent  
for Energy Mizer, Inc.  
1907 Buffalo Cir.  
Farmington, Utah 84025

Re: STOP SALE, USE OR REMOVAL ORDER  
Energy Mizer, Inc.

Dear Mr. Foster:

Enclosed is a Stop Sale, Use or Removal Order (Order) issued by the United States Environmental Protection Agency Region 8 to Energy Mizer, Inc. (Energy Mizer) for producing, distributing, or selling the misbranded and unregistered pesticide products listed in the Order. ***The Order is effective immediately upon receipt by you, as registered agent for Energy Mizer.***

Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136k(a), authorizes the EPA to issue an order prohibiting the sale, use, or removal of any pesticide by any person who owns, controls, or has custody of such pesticide whenever there is reason to believe the pesticide is in violation of any provision of FIFRA or such pesticide has been or is intended to be distributed or sold in violation of FIFRA. As explained further in the enclosed Order, Energy Mizer has been and is producing, distributing, or selling misbranded and unregistered pesticide products.

If you or Energy Mizer have any questions about this matter, you may contact Dan Webster of my staff at 303-312-7076, or by email at [webster.daniel@epa.gov](mailto:webster.daniel@epa.gov). For any legal questions, please contact Brenda Morris, Senior Enforcement Attorney by phone (303-312-6891) or by email at [morris.brenda@epa.gov](mailto:morris.brenda@epa.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Cobb", written over a horizontal line.

David Cobb, Acting Unit Chief  
Technical Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice

Enclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2016 JAN 13 PM 12: 20

FILED  
EPA REGION VIII  
HEARING CLERK

In the Matter of: )

Energy Mizer, Inc. )  
1160 West 725 North #G )  
Centerville, UT 84014 )

Respondent )

**STOP SALE, USE,  
OR REMOVAL ORDER**

**DOCKET NO. : FIFRA-08-2016-0002**

**I. AUTHORITIES**

1. The United States Environmental Protection Agency (EPA) Region 8 issues this Stop Sale, Use, or Removal Order (Order) pursuant to the authority vested in the Administrator of the EPA by section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136k(a), which authorizes the Administrator of the EPA to issue orders prohibiting the sale, use, or removal of any pesticide or device by any person who owns, controls, or has custody of such pesticide or device whenever there is reason to believe the pesticide or device is in violation of any provision of FIFRA, or that such pesticide or device has been or is intended to be distributed or sold in violation of any such provisions, or when the registration has been cancelled by a final order.
2. Supervisors in the technical enforcement program and the legal enforcement program of EPA Region 8 have been jointly delegated the authority to issue such orders.
3. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states “it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under section 136a of this title or whose registration has been cancelled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter.”
4. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states “it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is adulterated or misbranded.”
5. Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(I), states “it shall be unlawful for any person to violate any order issued under section 13 of FIFRA, 7 U.S.C. § 136k.”
6. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”
7. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines “registrant” as “a person who has registered any pesticide pursuant to the provisions of [FIFRA].”
8. Section 2(gg), 7 U.S.C. § 136(gg) defines “to distribute or sell” as “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.”



9. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “pest,” in part, as a “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 [25(c)(1) of FIFRA].”
10. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” in part, as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”
11. Section 2(w) of FIFRA, 7 U.S.C. § 136(w) defines “producer” as “the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device.”
12. As stated at 40 C.F.R. § 152.132, “the registrant may distribute or sell his registered product under another person’s name and address instead of (or in addition to) his own. Such distribution and sale is termed ‘supplemental distribution’ and the product is referred to as a ‘distributor product.’”
13. As stated at 40 C.F.R. § 152.132, “the distributor is considered an agent of the registrant for all intents and purposes under the Act, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.”
14. Supplemental distribution is permitted upon notification to the Agency if, according to 40 C.F.R. § 152.132(a), “The registrant has submitted to the Agency for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor’s company number, the additional brand names to be used, and the registration number of the registered product.”
15. As stated at 40 C.F.R. § 152.15, with certain exceptions not applicable in this circumstance, “[n]o person may distribute or sell any pesticide product that is not registered under [FIFRA].”

## **II. BACKGROUND**

16. Energy Mizer, Inc. (Energy Mizer) is a corporation organized under the laws of and authorized to do business in the state of Utah.
17. Energy Mizer is a “person” as defined in section 2(s) of FIFRA, 7 U.S.C. § 136(s).
18. Energy Mizer is a registrant as defined in section 2(y) of FIFRA, 7 U.S.C. § 136(y), with the EPA-assigned company number 89075.
19. Energy Mizer produces and distributes a pesticide product, Sanitizer 2000, marked EPA Reg. No. 9768-7-89075.
20. Thatcher Company Inc. (Thatcher) is a corporation organized under the laws of the state of Utah, located at 1905 Fortune Road Salt Lake City, UT 84104.
21. Thatcher is a registrant as defined in section 2(y) of FIFRA, 7 U.S.C. § 136(y), with the EPA-assigned company number 9768.
22. At the time of the inspection Thatcher, the registrant of T-Chlor, EPA Reg. No. 9768-7, had not submitted to the Agency EPA form 8570-5, Notice of Supplemental Distribution of a Registered

Pesticide Product, signed by Thatcher and Energy Mizer. This form should include the names and addresses of the registrant, Thatcher, and the distributor, Energy Mizer; Energy Mizer's company number, 89075; the brand name Sanitizer 2000; and the registration number of the registered product, 9768-7 as required by 40 C.F.R. § 152.132.

23. The EPA has not registered the pesticide product Sanitizer 2000, which has no EPA-approved registration number.
24. On February 17, 2015, Energy Mizer filed EPA Form 3540-16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments, for reporting year 2014. Energy Mizer reported production and sales in 2014 for EPA Reg. No. 9768-7-89075.
25. On February 25, 2014, Energy Mizer filed EPA Form 3540-16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments, for reporting year 2013. Energy Mizer reported production and sales in 2013 for EPA Reg. No. 9768-7-89075.
26. On February 25, 2013, Energy Mizer filed EPA Form 3540-16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments, for reporting year 2012. Energy Mizer reported production and sales in 2012 for EPA Reg. No. 9768-7-89075.

### **III. BASIS FOR ORDER**

27. On March 7, 2012, Energy Mizer was informed by the EPA when Energy Mizer obtained their company number that they needed to complete the Notice of Supplemental Registration of Distributor (EPA form 8570-5). This form includes directions that supplemental labels must bear the same claims as the basic product.
28. On July 23, 2012, during pre-filing negotiations Energy Mizer was instructed to work with Thatcher to obtain current and approved labeling for their Sanitizer 2000.
29. On September 4, 2012, Energy Mizer was issued a Final Order by the EPA for selling or distributing an unregistered product.
30. On May 14, 2014, an EPA inspector conducted a FIFRA compliance inspection at the Energy Mizer facility located at 1160 West 725 North #G, Centerville, Utah 84014.
31. During the inspection the inspector obtained sales invoices for Sanitizer 2000.
32. During the inspection, the inspector requested and obtained the label that was currently applied to Sanitizer 2000. This label included EPA Reg. No. 9768-7-89075. All further references to the Sanitizer 2000 label refer to the label obtained during the inspection unless otherwise noted.
33. The May 14, 2014 inspection revealed that Energy Mizer was not in compliance with FIFRA.
34. The label obtained during the inspection for the Sanitizer 2000 should be nearly identical to the September 26, 2012 label for T-Chlor, EPA Reg. No. 9768-7, but several discrepancies were found.
35. The label for Sanitizer 2000 is missing the required statement "Refillable Container – Refill this container with pesticide only. Do not reuse this container for any other purpose."



36. 40 C.F.R. § 156.140(b) states: *For refillable containers, one of the following statements is required, except as provided in paragraphs (c), (d), and (e) of this section. If placed on the label, the statement must be under the heading "Storage and Disposal." If the statement is placed on the container, an appropriate referral statement, such as "Refilling limitations are on the container." must be placed under the heading "Storage and Disposal."*
- (1) *"Refillable Container. Refill this container with pesticide only. Do not reuse this container for any other purpose."*
- (2) *"Refillable Container. Refill this container with [common chemical name] only. Do not reuse this container for any other purpose."*
37. The label for Sanitizer 2000 is in violation of 40 C.F.R. § 156.140(b).
38. The label for Sanitizer 2000 is also missing Residue Removal instructions.
39. 40 C.F.R. § 156.156 states: *The label of each pesticide product packaged in a refillable container must include the residue removal instructions in this section. Instructions must be given for all pesticide products that are distributed or sold in refillable containers, including those that do not require dilution prior to application.*
40. The label for Sanitizer 2000 is in violation of 40 C.F.R. § 156.156.
41. The label for Sanitizer 2000 is also missing "or doctor" in the "If in Eyes" language found in the First Aid section.
42. Pesticide Registration (PR) Notice 2001-1, available at <http://nepis.epa.gov/Adobe/PDF/2000000OR.PDF>, provides guidance regarding the format and content of first aid statements on all pesticide product labels.
43. 40 C.F.R. § 156.68(a) states: *Product as sold and distributed. Each product must bear a first aid statement if the product has systemic effects in Category I, II, or III, or skin or eye irritation effects in Category I or II.*
44. The label for Sanitizer 2000 did not incorporate the requirements given by PR Notice 2001-1, therefore the label for Sanitizer 2000 is in violation of 40 C.F.R. § 156.68(a).
45. The label for EPA Reg. No. 9768-7 obtained during this inspection has two EPA Establishment Numbers on it: 89075-UT-002 and 9768-UT-1-89075. A label may contain more than one establishment number but there must be an indication which facility last repackaged the product. Additionally, 9768-UT-1-89075 is not an establishment number.
46. 40 C.F.R. 156.10(f) states: *The producing establishment registration number preceded by the phrase "EPA Est. ", of the final establishment at which the product was produced may appear in any suitable location on the label or immediate container.*
47. The label for Sanitizer 2000 is in violation of 40 C.F.R. 156.10(f).
48. Energy Mizer has been and is producing, distributing, or selling a misbranded pesticide, Sanitizer 2000, EPA Reg. No. 9768-7-89075, in violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

49. Thatcher and Energy Mizer have a repackaging agreement dated October 4, 2012, which states that Thatcher will supply Energy Mizer with product labels.
50. No labels from Thatcher were identified on the repackaged products at the time of the inspection; only Sanitizer 2000 labels were identified. Since Energy Mizer is placing their own labels on the products, they are also acting as a supplemental distributor.
51. No Notice of Supplemental Distribution of a Registered Pesticide Product, EPA Form 8570-5, can be found in the EPA database.
52. Energy Mizer has been and is producing, distributing, or selling an unregistered pesticide, Sanitizer 2000, marked EPA Reg. No. 9768-7-89075, in violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

#### **IV. ORDER**

53. The EPA hereby orders Energy Mizer to stop the sale, use, or removal of all pesticide products subject to this Order, including Sanitizer 2000, marked EPA Reg. No. 9768-7-89075, that have noncompliant labels EFFECTIVE IMMEDIATELY.
54. This Order pertains to all quantities and sizes of the pesticide products subject to this Order.
55. The EPA hereby orders Energy Mizer to use the most recently approved labels supplied and approved by Thatcher on all pesticides they manufacture.
56. The EPA hereby orders Energy Mizer to ensure an EPA form 8570-5, Notice of Supplemental Distribution of a Registered Pesticide Product has been submitted to the EPA by Thatcher prior to Energy Mizer's distribution of any Thatcher pesticide products.
57. Any questions concerning this Order may be submitted to the following:  


Dan Webster  
US EPA Region 8 (ENF-UFO)  
1595 Wynkoop Street  
Denver, CO 80202  
(303) 312-7076
58. Any violation of the terms or provisions of this Order by an officer, agent, or other person acting for or employed by Energy Mizer may subject such person as well as Energy Mizer to civil or criminal penalties as prescribed in section 14 of FIFRA, 7 U.S.C. § 136l.
59. The issuance of this Order shall not constitute a waiver by the EPA of its remedies, either judicial or administrative, under FIFRA or any other Federal environmental law, to address this matter or any other matters or unlawful acts not specified in this Order.
60. This Order shall be EFFECTIVE IMMEDIATELY upon receipt by Energy Mizer.

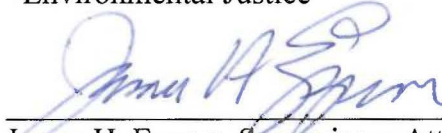
61. Energy Mizer may seek federal judicial review of this Order pursuant to section 16 of FIFRA, 7 U.S.C. § 136n.

62. If any provision(s) of this Order are subsequently held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and shall remain in full force and effect. The terms of this Order shall remain in effect unless and until the EPA modifies or terminates either the Order or certain provisions of the Order in writing.

1/8/16  
Date

1/11/16  
Date

  
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David Cobb, Acting Unit Chief  
Technical Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice

  
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James H. Eppers, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice