



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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June 7, 2021

Received by  
EPA Region VIII  
Hearing Clerk

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**SENT BY ELECTRONIC MAIL**  
**DELIVERY RECEIPT REQUESTED**

From: David Cobb  
Section Chief, Toxics Enforcement Unit  
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 BFDSA-2 U-Serve Water Dispensers  
in shipment with entry number 551-00703161 FIFRA-08-2021-0055

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. section 12.114. The entry was marked "Hold Intact," "Refused," and "Re-Export" in ACE by the EPA on June 2, 2021.

The following information pertains to the shipment:

- The importer is Precision Design & Manufacturing, 9024 100 Street, Westlock, Alberta, T7P2L4 Canada.
- The consignee is Water Specialties Inc., 4118 S 500 W Murray, Utah 84123-7801.
- The broker is A.N. Deringer, Inc, point of contact, Kurt Bush, [kbush@anderinger.com](mailto:kbush@anderinger.com).
- The bill number is ODFL20200329249.
- The entry file date was May 25, 2021.
- The release date was May 26, 2021.
- The quantity is BFDSA-2 U-Serve Water Dispensers, weighing 478 pounds.
- The port of entry is Sweetgrass, Montana 3310.
- The country of origin as entered in ACE is Canada.

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(h) of FIFRA, 7 U.S.C. § 136(h), defines “device” as “any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately.”

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....”

Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), provides that, “a pesticide is misbranded if –

- (A) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
- (B) it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to section 136w(c)(3) of this title;
- (C) it is an imitation of, or is offered for sale under the name of, another pesticide;
- (D) its label does not bear the registration number assigned under section 7 to each establishment in which it was produced;
- (E) any word, statement, or other information required by or under the authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared to other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (F) the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of this Act, are adequate to protect health and the environment; [or]
- (G) the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment[....]”

In accordance with 40 C.F.R. § 156.10(a)(5), a pesticide or a device is misbranded if its labeling is false or misleading in any particular including both pesticidal and non-pesticidal claims. Examples of statements or representations in the labeling which constitute misbranding include: A false or misleading statement concerning the effectiveness of the product as a pesticide or device. 40 C.F.R. § 156.10(a)(5)(ii).

40 C.F.R. § 158.2203 defines the term “Sterilant” as “a substance, or mixture of substances, that destroys or eliminates all forms of microbial life in the inanimate environment, including all forms of vegetative bacteria, bacterial spores, fungi, fungal spores, and viruses.”

Section 12(a)(1)(F) of FIFRA, 7 U.S.C. 136j(a)(1)(F) provides that it shall be unlawful for any person in any State to distribute or sell to any person any device which is misbranded.

The shipment of BFDSA-2 U-Serve Water Dispensers that arrived at the border for import has labeling with the following language:

- “UV Sterilizer”

Because “sterilant” is “a substance, or mixture of substances, that destroys or eliminates all forms of microbial life in the inanimate environment, including all forms of vegetative bacteria, bacterial spores, fungi, fungal spores, and viruses[,]” the product would need to be capable of destroying or eliminating all forms of microbial life in the inanimate environment (including all forms of vegetative bacteria, bacterial spores, fungi, fungal spores, and viruses) to include the claim “sterilizer.” Review of the product’s labeling, marketing, and provided materials demonstrate that such a claim is not substantiated. Therefore, these BFDSA-2 U-Serve Water Dispensers are misbranded pursuant to 7 U.S.C. § 136(q)(1) and 40 C.F.R. § 156.10(a)(5), because they contain statements that are false or misleading as defined by the regulation.

Importing the shipment referenced above is a violation of FIFRA section 12(a)(1)(F), 7 U.S.C. § 136j(a)(1)(F), as a distribution or sale of a misbranded device.

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 the Act. 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, the BFDSA-2 U-Serve Water Dispensers in the shipment referenced above cannot be allowed entry into the United States.

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 June 2, 2021, 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](mailto:tokarz.christine@epa.gov) if you have any questions concerning this matter.