



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

FEB 04 2016

Ref: 8ENF-UFO

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED
AND ELECTRONIC TRANSMISSION

D. Kirk Jenkins, Registered Agent
for E. M. Systems, Inc.
1931 West 2425 South
Woods Cross, Utah 84087

Re: STOP SALE, USE OR REMOVAL ORDER
E. M. Systems, Inc.

Dear Mr. Jenkins:

Enclosed is a Stop Sale, Use or Removal Order (Order) issued by the United States Environmental Protection Agency Region 8 to E. M. Systems, Inc. (E. M. Systems) for producing, distributing or selling misbranded pesticide products and those pesticide products that have compositions that differ from the Confidential Statement of Formula as described in the Order. ***The Order is effective immediately upon receipt by you, as registered agent for E. M. Systems.***

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, E. M. Systems has been and is producing, distributing, or selling misbranded pesticide products.

If you or E. M. Systems 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. For any legal questions, please contact Brenda Morris, Senior Enforcement Attorney by phone (303-312-6891) or by email at 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 FEB -4 AM 9:41

In the Matter of:)

E. M. Systems, Inc.)
1931 West 2425 South)
Woods Cross, UT 84087)

Respondent)

STOP SALE, USE,
OR REMOVAL ORDER

DOCKET NO. : FIFRA-08-2016-0003

FILED
EPA REGION VIII
HEARING CLERK

I. AUTHORITIES

1. The United States Environmental Protection Agency 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)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), makes it unlawful for any person in any State to distribute or sell to any person any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under section 3 of FIFRA, 7 U.S.C. § 136a.
5. 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.”
6. 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.
7. Section 2(s) of FIFRA, 7 U.S.C. § 136, defines a “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

8. Section 2(y) of FIFRA, 7 U.S.C. § 136, defines “registrant” as “a person who has registered any pesticide pursuant to the provisions of [FIFRA].”
9. Section 2(gg), 7 U.S.C. § 136 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.”
10. Section 2(t) of FIFRA, 7 U.S.C. § 136, 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].”
11. Section 2(u) of FIFRA, 7 U.S.C. § 136, defines a “pesticide,” in part, as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”
12. Section 2(w) of FIFRA, 7 U.S.C. § 136 defines “producer” as “the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device.”

II. BACKGROUND

13. E. M. Systems, Inc. (E.M. Systems) is a corporation organized under the laws of and authorized to do business in the state of state of Utah.
14. E. M. Systems is a “person” as defined in section 2(s) of FIFRA, 7 U.S.C. § 136(s).
15. E. M. Systems produces and distributes a product, Klor 300, marked EPA Reg. No. 7726-24.
16. E. M. Systems has been reporting production and distribution to the EPA as Chem Mark of Utah, Inc. (Chem Mark).
17. Chem Mark has an EPA Establishment Number of 74700-UT-001. Chem Mark also is located at the same address as E. M. Systems.
18. Chem Mark International is a registrant as defined in section 2(y) of FIFRA, 7 U.S.C. § 136(y), with the EPA-assigned company number 7726. The Klor 300, EPA Reg. No. 7726-24 is registered to Chem Mark International of Beverly Hills, California.
19. On February 11, 2015, Chem Mark filed EPA Form 3540-16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments, for reporting year 2014. Chem Mark reported production and sales in 2014 of EPA Reg. No. 7726-24.
20. On February 11, 2014, Chem Mark filed EPA Form 3540-16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments, for reporting year 2013. Chem Mark reported production and sales in 2013 of EPA Reg. No. 7726-24.

III. BASIS FOR ORDER

21. On May 14, 2014, an EPA inspector conducted a FIFRA inspection at the E. M. Systems facility located at 1931 West 2425 South, Woods Cross, Utah 84087.
22. During the inspection, the inspector obtained sales invoices for Klor 300, marked EPA Reg. No. 7726-24.
23. During the inspection, the inspector requested and obtained a label that was currently applied to Klor 300, marked EPA Reg. No. 7726-24. All further references to the Klor label refer to the label obtained during the inspection unless otherwise noted.
24. The May 14, 2014 inspection revealed that E. M. Systems was not in compliance with FIFRA.
25. The label for Klor 300 states that the registrant is E. M. Systems of Woods Cross, Utah.
26. Neither Chem Mark International nor E. M. Systems submitted this label change to the EPA.
27. 40 C.F.R. § 156.10(a) states: *(a) General—(1) Contents of the label. Every pesticide product shall bear a label containing the information specified by the Act and the regulations in this part. The contents of a label must show clearly and prominently the following: (i) The name, brand, or trademark under which the product is sold as prescribed in paragraph (b) of this section; (ii) **The name and address of the producer, registrant, or person for whom produced as prescribed in paragraph (c) of this section;***
28. The label for Klor 300 is in violation of 40 C.F.R. § 156.10(a)(1)(ii).
29. The label for Klor 300, EPA Reg. No. 7726-24, was accepted by the EPA on October 20, 1994. The EPA issued guidance in 2007 alerting registrants to update their Storage Disposal/Container Handling requirements (PR Notice 2007-4).
30. PR Notice 2007-4, available at <http://www2.epa.gov/sites/production/files/2014-04/documents/pr2007-4.pdf>, requires: *a statement identifying the container as refillable or nonrefillable and a reuse statement appropriate to that container; for nonrefillable containers, a recycling or reconditioning statement providing additional instructions for managing an empty container; for nonrefillable containers, a batch code for the product contained; and for some nonrefillable containers and all refillable containers, a statement providing cleaning instructions prior to container disposal.*
31. Pesticide Registration Notice 2007-4 directed pesticide manufacturers to update their labels to comply with 40 C.F.R. part 156 established by Final Rule “Pesticide Management and Disposal; Standards for Pesticide Containers and Containment” (71 FR 47330, August 16, 2006). As specified in the final rule, by August 17, 2009, all pesticide products distributed or sold by a registrant must have labels that comply with the new requirements (40 C.F.R. § 156.159).
32. The Klor 300 label is not in compliance with 40 C.F.R. § 156.159.

33. The stationary storage tanks should only possess one pesticide label. Two or more pesticide labels were found on each storage tank at the E. M. Systems facility.
34. 40 C.F.R. § 156.10(a)(4)(ii)(B) states: *When pesticide products are stored in bulk containers, whether mobile or stationary, which remain in the custody of the user, a copy of the label of labeling, including all appropriate directions for use, shall be securely attached to the container in the immediate vicinity of the discharge control valve.*
35. The stationary storage tanks are in violation of 40 C.F.R. § 156.10(a)(4)(ii)(B).
36. According to the Confidential Statement of Formula submitted to the EPA, Form 8570-4, the active ingredients for Klor 300, EPA Reg. No. 7726-24, should come from Luseaux Laboratories. When the inspector asked for purchase invoices of the active ingredients, invoices for a Brenntag product and a Thatcher product (Brenntag and Thatcher are registrants) were provided.
37. 40 C.F.R. § 158.325 includes the following language: *The following information must be submitted on the materials used to produce the product: (1) For each active ingredient that is derived from an EPA-registered product: (i) The name of the EPA-registered product. (ii) The EPA registration number of that product.*
38. The Klor 300 product produced by E. M. Systems did not contain the active ingredients as specified on the Confidential Statement of Formula for EPA Reg. No. 7726-24.
39. The Klor 300, EPA Reg. No. 7726-24 products produced at E. M. Systems in Woods Cross, Utah were in violation of 40 C.F.R. § 158.325 at the time of the inspection.
40. E. M. Systems has been and is producing, distributing, or selling a pesticide listing E.M. Systems as the registrant for Klor 300 EPA Reg. No. 7726-24, in violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).
41. E. M. Systems has been and is producing, distributing, or selling a pesticide, Klor 300 EPA Reg. No. 7726-24, which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration, in violation of section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C).
42. E. M. Systems has been and is producing, distributing, or selling a misbranded pesticide, Klor 300 EPA Reg. No. 7726-24, in violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).


IV. ORDER

43. The EPA hereby orders E. M. Systems to stop the sale, use, or removal of all pesticide products subject to this Order, which includes Klor 300, marked EPA Reg. No. 7726-24, that have misbranded labels EFFECTIVE IMMEDIATELY.
44. The EPA hereby orders E. M. Systems to only place one label which conforms to the requirements given by 40 C.F.R. § 156.10(a)(4)(ii)(B) on their stationary storage tanks. All unrelated labels should be removed.
45. The EPA hereby orders E. M. Systems to stop the sale, use, or removal of all pesticide products subject to this Order, which includes Klor 300, marked EPA Reg. No. 7726-24, that have compositions that differ from the Confidential Statement of Formula EFFECTIVE IMMEDIATELY.
46. This Order pertains to all quantities and sizes of the pesticide products subject to this Order.
47. 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
48. Any violation of the terms or provisions of this Order by an officer, agent, or other person acting for or employed by E.M. Systems may subject such person as well as E.M. Systems to civil or criminal penalties as prescribed in section 14 of FIFRA, 7 U.S.C. § 136l.
49. 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.
50. This Order shall be EFFECTIVE IMMEDIATELY upon receipt by E.M. Systems.
51. E.M. Systems may seek federal judicial review of this Order pursuant to section 16 of FIFRA, 7 U.S.C. § 136n.

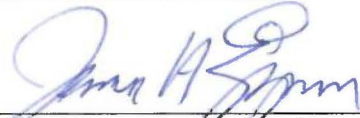
52. If any provision(s) of this Order are subsequently held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and shall remain in full force and effect. The terms of this Order shall remain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

2/3/16
Date

2/3/16
Date



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



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