

5/30/2023



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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Ref: 8ENF-AT-P

SENT VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

From: David Cobb
Supervisor, Toxics 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 DynaTrap Mosquito Trap in the shipment described below FIFRA-08-2023-0050

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. § 12.114. The shipment was inspected by FDA Officers at the Sweetgrass, Montana Port of Entry on May 25, 2023, and in coordination with EPA was determined to be out of compliance.

The following information pertains to the shipment of DynaTrap Mosquito Trap:

- The importer is Shopville C/O Consolidated Returns, Shazaar USA, 204 N Fehr Way, Unit C, Bay Shore, New York 11706.
- The consignees are Candace Johnson 5308 Delta Blush Lane, Cindy Brink 1423 Mohrman Drive, Colin Martin 11933 County Road, Denise Edwards, 510 Shoshoni Trail.
- The broker is Deal 4 K.
- The reference number is DYKPA3437647.
- The entry date was May 25, 2023.
- The quantity is 4 DyanTrap Mosquito Traps, weighing 20 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(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(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 therefrom.” (See also 40 C.F.R. § 152.500(a)).

The DynaTrap Mosquito Trap has the following language on its label:

- “Mosquito Trap”
- “Attract, Trap, and Kill Mosquitos”
- “EPA Establishment Number 088119-CHN-001”

These claims demonstrate that the DynaTrap Mosquito Trap is a pesticide device and thus subject to FIFRA regulation.

The shipment that arrived at the border for import is 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 product referenced above cannot be allowed entry into the United States.

On May 25, 2023, 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 if you have any questions concerning this matter.