



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

FILED

12/21/2023

10:36 AM

U.S. EPA REGION 8
HEARING CLERK

Ref: 8ENF-AT-P

SENT BY ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

From: David Cobb
Section Supervisor, Toxics & Pesticides Enforcement Section
Enforcement and Compliance Assurance Division

To: U.S. Department of Homeland Security
Bureau of Customs and Border Protection
Denver, Colorado POE 3307

Subject: Requested action to be taken regarding the Sani-Spray in shipment with entry number EVJ-1205530-0 FIFRA-08-2024-0008

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 entries was marked “Hold Intact,” “Refused,” and “Re-Export” in ACE by the EPA on December 12, 2023.

The following information pertains to the shipment:

- The consignee is and importer is Organic Nails USA, 3200 W 72nd Avenue, Suite B, Westminister, Colorado 80030.
- The broker is Omega CHB International, Juliette Couderc juliette@omegachb.com.
- The bill number is GDL2300072.
- The entry date was December 12, 2023.
- The quantity is 200 bottles of Sani-Spray, weighing 23.6 pounds.
- The port of entry is Denver, Colorado 3307.
- The country of origin as entered in ACE is Mexico.

The shipment that arrived at the border for import is 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, 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. Section 2(u) of FIFRA, 7 U.S.C. § 136(u). (See also 40 C.F.R. § 152.15.)

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 for Sani-Spray has the following language:

- “Sani-Spray”
- “Instructions: Remove the cap. Spray 20 cm distance over hands, tools, or area that need sanitized.”

These claims demonstrate a pesticidal intent pursuant to the definitions above. The Sani-Spray is thus a pesticide and subject to FIFRA regulation.

Sani-Spray is not registered pursuant to section 3 of FIFRA, 7 U.S.C. § 136a. Therefore, this is an unregistered pesticide. Importing these products 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 unregistered pesticides.

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. section 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, none of the products referenced above in the shipment with entry number EVJ-1205530-0 should 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 December 19, 2023, the Customs and Border Patrol unit chief in Denver, Colorado, 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.