



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

AUG - 3 2015

Ref: 8ENF-UFO

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

Fran Tulley, Registered Agent
for Freshwater Organics
11089 Justin Park Drive
Sandy, UT 84092

Re: STOP SALE, USE OR REMOVAL ORDER
Freshwater Organics

Dear Mr. Tulley:

Enclosed is a Stop Sale, Use or Removal Order (Order) issued by the United States Environmental Protection Agency Region 8 (EPA) to Freshwater Organics for the misbranded and unregistered Bye Bye Bugs pesticide and for the unregistered Lifestings product. ***The Order is effective immediately upon receipt by you, as registered agent for Freshwater Organics.***

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, Freshwater Organics has been and is producing, distributing, or selling, misbranded and unregistered pesticide products. In addition, the Order informs Freshwater Organics that false and misleading claims were found multiple times on the company's freshwaterorganics.com website.

If you or Freshwater Organics 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 Charles L. Figur, Senior Enforcement Attorney by phone (303-312-6915) or by email at figur.charles@epa.gov.

Sincerely,

A handwritten signature in black 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

2015 AUG -3 AM 8: 08

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:

Mr. Fran Tulley)
Freshwater Organics)
11089 Justin Park Drive)
Sandy, UT 84092)

Respondent)
_____)

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

DOCKET NO. : FIFRA-08-2015-0004

I. AUTHORITIES

1. The United States Environmental Protection Agency Region 8 (EPA) 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, which 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(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.”

8. 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.”
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 microorganism (except viruses, bacteria, or other microorganisms 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. A “pesticide product” is defined at 40 C.F.R. § 152.3 as “a pesticide in a particular form (including composition, packaging and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.”
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. According to 40 C.F.R. § 152.132, registrants may distribute or sell their registered product under another company’s name and address instead of (or in addition to) their own. Such distribution and sale is termed “supplemental distribution” and the product is referred to as a “supplemental registration” or “distributor product.”
13. According to 40 C.F.R. § 152.132(a), supplemental distribution is permitted upon notification to the Agency if all the following conditions are met: “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.”
14. The registrant of the federally registered product for which a second party wishes to obtain supplemental registration must have submitted to the Agency a statement (EPA form 8570-5, Notice of Supplemental Registration of Distributor) signed by both the registrant of the basic registered product and the second party (“the distributor”). As explained in 40 C.F.R. § 152.132(a), the basic registrant is the only one who can submit EPA form 8570-5.
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].”
16. According to 40 C.F.R. § 152.13(b), a “registrant may distribute or sell a product under labeling bearing any subset of the approved directions for use, provided that in limiting the uses listed on the label, no changes would be necessary in precautionary statements, use classification, or packaging of the product.”
17. In accordance with 40 C.F.R. § 152.25, exemptions for pesticides of a character not requiring FIFRA regulation include products containing active ingredients that are exempt from the requirements of FIFRA, provided that all of the criteria of 40 C.F.R. § 152.25(f) are met.

II. BACKGROUND

18. Mr. Fran Tully is doing business as Freshwater Organics, which is located in the State of Utah.
19. Mr. Tully and Freshwater Organics each is a “person” as defined in section 2(s) of FIFRA, 7 U.S.C. § 136(s).
20. Freshwater Organics is a producer with the EPA-assigned number 88726.
21. Freshwater Organics currently produces and distributes Bye Bye Bugs, which carries a label that is marked EPA Reg. No. 67197-2-88726.
22. EPA Reg. No. 67197-2 is the registration number of Perma Guard Household Insecticide D-20, which is registered to Perma-Guard Inc., 60 North Cutler Drive Suite 202, North Salt Lake, Utah 84010. The approved label for Perma Guard states that the product is “For control of ants, fire ants, bedbugs, box-elder bugs, crickets, scorpions, fleas, flies, roaches and silverfish,” and the label includes directions for use of the product in treating each listed insect.
23. Perma-Guard Inc. has not filed EPA form 8570-5 to obtain supplemental registration for Bye Bye Bugs.
24. Freshwater Organics offers the product Bye Bye Bugs for sale on a website (freshwaterorganics.com).
25. The label applied to Bye Bye Bugs states that the product is “For control of bedbugs, ants, fire ants, box-elder bugs, crickets, scorpions, fleas, flies, roaches, lice, mites, and silverfish,” however, the label includes directions only for treating “bedbugs,” and “fleas and other insects,” the directions do not include all the instructions found in the approved label, and “lice” and “mites” are not included in the approved label.
26. On the website, Freshwater Organics makes pesticidal claims for a product named Lifestings.
27. Lifestings is not registered with the EPA.
28. Freshwater Organics offers the unregistered product Lifestings for sale on a website (freshwaterorganics.com).

III. BASIS FOR ORDER

29. On January 21, 2015, an inspector from the State of Utah, using federal credentials, conducted a FIFRA inspection at the Freshwater Organics facility located at 11089 Justin Park Drive, Sandy, Utah 84092.
30. During the inspection, the inspector obtained a label for Bye Bye Bugs. The label states that the EPA registration number for Bye Bye Bugs is EPA Reg. No. 67197-2-88726. This registration number is not registered with the EPA.
31. Bye Bye Bugs is an unregistered product.

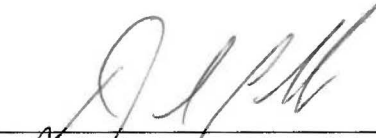
32. The Bye Bye Bugs product does not contain labeling currently approved by the Agency. It adds two insects that do not appear on the currently approved label, and it has incomplete application instructions for “fleas and other insects.”
33. Bye Bye Bugs is misbranded.
34. Freshwater Organics makes pesticidal claims on its website for Lifestings, including the following:
- “Say good-bye to mosquitoes, ticks, black flies, no see ums, chiggers and more!”
 - “Lifestings safe effective bug repellent . . . proven 10x more effective than Deet”
 - “Scientifically proven to be 10 times more powerful than Deet”
 - “natural bug repellent”
35. Lifestings does not qualify as a minimum risk pesticide because it does not meet the criteria of 40 C.F.R. § 152.25(f): none of the ingredients listed on the Lifestings label is included on the list of active ingredients that are exempt from the requirements of FIFRA, and only three of the twenty-four (24) listed ingredients are on the list of permitted inert ingredients.
36. Freshwater Organics has been and is producing, distributing, or selling one misbranded and one unregistered pesticide in a violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

IV. ORDER

37. The EPA hereby orders Freshwater Organics to stop the sale, use, or removal of all pesticide products subject to this Order, namely Bye Bye Bugs and Lifestings, EFFECTIVE IMMEDIATELY.
38. The EPA hereby orders Freshwater Organics to remove from its website all advertising related to Bye Bye Bugs and Lifestings, EFFECTIVE IMMEDIATELY.
39. The EPA hereby orders Freshwater Organics to remove all false and misleading statements from their website and any other forms of advertising media for the products Bye Bye Bugs and Lifestings.
40. This Order pertains to all quantities and sizes of Bye Bye Bugs and Lifestings.
41. Questions concerning this Order may be submitted to the following:
- Dan Webster
US EPA Region 8 (ENF-UFO)
1595 Wynkoop Street
Denver, CO 80202
42. Any violation of the terms or provisions of this Order by an officer, agent, or other person acting for or employed by Freshwater Organics may subject such person as well as Freshwater Organics to civil or criminal penalties as prescribed in section 14 of FIFRA, 7 U.S.C. § 136l.

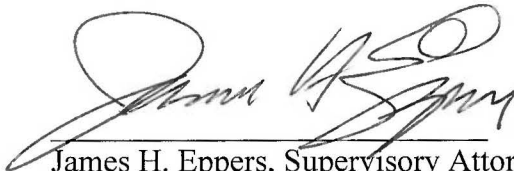
43. The issuance of this Order shall not constitute a waiver by the EPA of its remedies, either judicial or administrative, under FIFRA or any other Federal environmental law, to address this matter or any other matters or unlawful acts not specified in this Order.
44. This Order shall be EFFECTIVE IMMEDIATELY upon receipt by Respondent.
45. Respondent may seek federal judicial review of this Order pursuant to section 16 of FIFRA, 7 U.S.C. § 136n.
46. 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.

7/29/15
Date



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

7/30/15
Date



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