



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Ref: 8ENF-AT-P

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DELIVERY RECEIPT REQUESTED

August 5, 2020
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Received by

EPA Region VIII

Hearing Clerk

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

Digitally signed by DAVID

DAVID COBB

COBB

Date: 2020.08.04 14:19:46

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To: U.S. Department of Homeland Security
Bureau of Customs and Border Protection
Port of Pembina, North Dakota

Subject: Requested action to be taken regarding the Gas Separator Device in shipment with entry number SCS-13231842 FIFRA-08-2020-0051

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 Atlas Ozone Generator/Gas Separator Device 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, 7 U.S.C. § 136o(c), and the implementing regulations at 19 C.F.R. section 12.114.

The following information pertains to the shipment of the Atlas Ozone Generator/Gas Separator Device:

- The importer is Oxidation Technologies LLC, 214 West Highway 18, Inwood, Iowa, point of contact, julie@oxidationtech.com.
- The manufacturer is Absolute Systems, Inc, 10712 181 Street, Edmonton, AB, Canada, T5S 1K8 point of contact, Mikhail (Misha) Shifrin, office@absoluteozone.com.
- The broker is UPS Supply Chain Solutions, Box 369, Pembina, North Dakota 58271 0369.
- The airway bill number is UPSCR9528AGKHMMI.
- The ship date is July 14, 2020.
- The quantity is 1 unit, 69.4 pounds,
- The product is Atlas Ozone Generator/Gas Separator Device.
- The port of entry is Pembina, North Dakota 3401.
- The country of origin is Canada.

The shipment that arrived at the border for import was in violation of FIFRA section 12(a)(2)(L), 7 U.S.C. § 136j(a)(2)(L), which states that it is unlawful for any person who is a producer to violate the provisions of FIFRA section 7(a), 7 U.S.C. § 136e(a), by producing a pesticide or pesticidal device subject to the Act in an unregistered establishment. 40 C.F.R. § 167.20. (See 40 C.F.R. section 152.500 for requirements for devices.)

Under FIFRA, a device that makes pesticidal claims is a pesticidal device, and it must be produced in an establishment registered with the EPA prior to distribution or sale. According to the end user, the intended use of this product, Atlas Ozone Generator/Gas Separator Device is to disinfect medical waste. The following is their intended use statement:

“The 200 g/hr Absolute Ozone ozone generator we have ordered is going to be used for medical waste disinfection. The end-use will be in an OMW-400 system marketed by Clean Waste Systems, from Maple Lake, MN. This particular system will be used by a medical waste processor in Texas to process medical waste from hospitals.”

A product used to disinfect is considered a pesticide. There is no exception for pests in or on medical waste in the FIFRA section 2(t) definition of pest, nor in 40 C.F.R. § 152.5. There is no exception for products used against pests in or on medical waste in FIFRA section 2(u), nor in 40 C.F.R. §§ 152.6-152.10. The EPA has several pesticides registered to treat medical waste, <https://www.epa.gov/pesticide-registration/list-j-epas-registered-antimicrobial-products-medical-waste-treatment>. Therefore, this product cannot be allowed entry into the United States.

On April 20, 2020, the import coordinator for EPA Region 8, Christine Tokarz, informed Absolute Systems, Inc. that a similar ozone generator was subject to FIFRA regulations. Ms. Tokarz further recommended that Absolute Systems, Inc. obtain a pesticidal device determination from the EPA Office of Pesticide Programs through a PRIA application, <https://www.epa.gov/pria-fees>. Ms. Tokarz noted that the basis of that NORA was related to the pesticidal claims made in the advertisement of the product and that the shipment would be denied entry with or without that determination.

EPA hereby notifies you that your merchandise has been refused admission. You must export this merchandise, under supervision of the U.S. Customs and Border Protection, within ninety (90) calendar days from the date of this Notice (or within such time as otherwise specified by EPA) or within such additional time as the district director of CBP specifies. Failure to do so may result in either the destruction of the merchandise as authorized by FIFRA or, if the shipment has been released to you under bond, in any action necessary to enforce the terms of said bond.

On August 3, 2020, the Customs and Border Patrol unit chief at Pembina, North Dakota, 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.