

July 20, 2020

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Received by

EPA Region VIII

Hearing Clerk

IN THE MATTER OF:)	
)	Docket No. FIFRA-08-2020-0045
KARACIDE, LLC)	
1104 East 8th Street)	FIFRA SECTION 13(a)
Sioux Falls, South Dakota 57103)	
Respondent.)	STOP SALE, USE, or
)	REMOVAL ORDER
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I. AUTHORITY

1. This Stop Sale, Use, or Removal Order (Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. § 136k(a), which authorizes the Administrator of the EPA to issue an order 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 that the pesticide or device is in violation of any provision of FIFRA or the pesticide or device has been or is intended to be distributed or sold in violation of any provision of FIFRA.
2. This Order is issued under the authority vested in the Administrator of the EPA by section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136k(a). The undersigned EPA official has been duly authorized to issue this Order.

II. GOVERNING LAW

4. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person in any state to distribute or sell to any person “any pesticide that is not registered . . . or whose registration has been cancelled or suspended.”
5. “The term ‘pesticide’ means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” FIFRA § 2 (u), 7 U.S.C. § 136 (u).
6. “The term ‘pest’ means (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-organisms . . . which the Administrator declares to be a pest under section 136w(c)(1) of this title.” FIFRA § 2 (t), 7 U.S.C. § 136 (t).
7. 40 C.F.R. section 152.15 states “A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if ...[t]he person who distributes or sells the

substance claims, states, or implies (by labelling or otherwise) ...[t]hat the substance...can or should be used as a pesticide.”

8. Section 2 (gg) of FIFRA, 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.”
9. The regulation at 40 C.F.R. section 152.3 further defines “distribute or sell” as “the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any state.”
10. Section 2 (w) of FIFRA, 7 U.S.C. § 136 (w), defines “produce,” , as “to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.”
11. The regulations at 40 C.F.R. section 167.3 further defines “produce” as “to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to section 5 of [FIFRA], any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.”

III. ALLEGATIONS OF FACT AND LAW

12. Respondent, Karacide, LLC, is a “person” as that term is defined by section 2 (s) of FIFRA, 7 U.S.C. § 136 (s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
13. Respondent is a corporation organized under the laws of the state of South Dakota and is authorized to do business in the state of South Dakota.
14. Respondent’s principal place of business is located at 1104 East 8th Street, Sioux Falls, South Dakota 57103.
15. Karacide, LLC, establishment number 61804-SD-01, became an active establishment in 2007.
16. On January 28, 2020, Karacide, LLC, establishment number 61804-SD-01, submitted their 2019 annual pesticide production report, EPA form 3540-16.
17. The 2019 annual pesticide production report listed production of the pesticide, Karacide, EPA Reg. No. 41399-1.
18. Karacide, LLC has reported the production of Karacide, EPA Reg. No. 41399-1, in 12 of the last 13 years.
19. The Notice of Intent to Cancel for Karacide, EPA Reg. No. 41399-1, was posted in the Federal Register, at 51 Fed. Reg. 45548-45549 (December 19, 1987). The registration was cancelled 30 days from the date of publication.

IV. BASIS FOR THE ORDER

20. As demonstrated in section III, Respondent distributed or sold a pesticide whose registration has been cancelled in violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

V. ORDER

21. Pursuant to the authority of section 13(a) of FIFRA, 7 U.S.C. § 136k(a), EPA hereby orders Karacide, LLC to immediately cease the sale, use, or removal of the cancelled product, Karacide, EPA Reg. No. 41399-1, under its ownership, control, or custody, wherever such products are located, except in accordance with the provisions of this Order.
22. This Order extends to all quantities of Karacide, EPA Reg. No. 41399-1, intended for sale, distribution, and any stocks returned to Karacide, LLC from its sellers, customers, or other end users.
23. Karacide, EPA Reg. No.41399-1, shall not be used, sold, offered for sale, held for sale, shipped, delivered for shipment, received, or having so received, shall not be delivered, or offered for delivery.
24. Karacide, LLC may move or remove any Karacide, EPA Reg. No. 41399-1, from any facility or establishment ONLY after obtaining prior written approval from EPA, in accordance with the following:
- a. Movement or removal requests must be made in writing addressed to Christine Tokarz, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202, or at tokaz.christine@epa.gov.
 - b. Any request for movement or removal must include a written accounting of the products to be moved, the address of the facility from which the products will be moved, the address of the destination facility, and a description of the reasons for the movement or removal.
 - c. If the movement or removal is for the purposes of disposal, Karacide, LLC must provide written proof of disposal to EPA and the disposal must comply with all applicable federal, state, and local laws.
 - d. Any movement or removal of any Karacide, EPA Reg. No. 41399-1, made without prior written authorization from EPA in accordance with this paragraph constitutes a violation of this Order and distribution and sale of illegal pesticides in violation of FIFRA.
25. Within 30 days of receipt of this Order, Karacide, LLC must submit to EPA a written accounting of Karacide, EPA Reg. No. 41399-1, subject to this Order. The accounting must be submitted to Christine Tokarz, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202, or at tokaz.christine@epa.gov, and must include an accounting of all existing product inventory, including the locations(s) where

the products are held, quantities, and container sizes. Karacide, LLC must provide EPA with an updated accounting at least every 30 days until 150 days following receipt of this order or when Karacide, LLC no longer has any Karacide, EPA Reg. No. 41399-1, in its ownership, custody or control, whichever occurs earlier.

26. The information requested in paragraphs 24 and 25 must be provided whether Karacide, LLC regards part or all of it as a trade secret or confidential business information. Karacide, LLC is entitled to assert a claim of business confidentiality covering all or any required information, in the manner described at 40 C.F.R. section 2.203(b) by labeling such information at the time it is submitted to EPA as “trade secret” or “proprietary” or “company confidential” or other suitable notice. Information subject to a claim of business confidentiality will be disclosed by EPA to the public only in accordance with the procedures set forth at 40 C.F.R. part 2, subpart B. Unless Karacide, LLC makes a claim at the time that it submits the information in the manner described in 40 C.F.R. section 2.203(b), EPA may make this information available to the public without further notice to Karacide, LLC.
27. Karacide, LLC may seek federal judicial review of this Order pursuant to section 16 of FIFRA, 7 U.S.C. § 136n. The issuance of this Order shall not constitute a waiver by 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.
28. This Order shall be effective immediately upon receipt by Karacide, LLC or any agents of Karacide, LLC.
29. This Order shall remain in effect unless and until revoked, terminated, suspended, or modified in writing by EPA.
30. If any provision of this Order is 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 they shall remain in full force and effect.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8**

DAVID COBB

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Date: _____

By: _____

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