



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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

**JAN 29 2009**

Ref: 8ENF-UFO

**Certified Mail 7005-0390-0000-4847-2245**

**Return Receipt Requested**

Bob Greenawalt, Importer of Entry Number 144-1552319-3  
Bayer Crop Science  
2 T.W. Alexander Drive  
P.O. Box 12014  
Research Triangle Park, NC 27709

Re: Stop Sale, Use or Removal Order for  
Liberty SL 150 Herbicide

Dear Mr. Greenawalt:

On January 20, 2009, Perry Kemitz of Norman G. Jensen, Inc., a Broker and/or Registered Agent of Bayer Crop Science filed a Notice of Arrival (EPA Form 3540-1) with the United States Environmental Protection Agency (EPA). According to the EPA Notice of Arrival, Liberty SL 150 Herbicide was shipped into the United States in error. Liberty SL 150 Herbicide is not a pesticide registered with EPA. Furthermore, EPA has not approved the pesticide for entry into the United States. Liberty SL 150 Herbicide is a pesticide subject to the Federal Insecticide Fungicide and Rodenticide Act and its impending regulations.

According to information furnished by Bayer Crop Science, Huskie (EPA Reg. No. 264-1023) was intended to be shipped into the United States. In addition, information provided by Bayer Crop Science, the wrong truck was shipped carrying Liberty SL 150 Herbicide and came into the United States on January 16, 2009 through U.S. Customs and Border Patrol at Pembina, ND. The shipment was sent to Ag Depot of Grand Forks, ND.

On January 26, 2009, the North Dakota Department of Agriculture (NDDA) conducted an inspection of the Liberty SL 150 Herbicide at Ag Depot. NDDA verified that the product was the unregistered Liberty SL 150 Herbicide and the quantity declared on the Notice of Arrival matched the Bill of Lading and Notice of Arrival. NDDA observed 16 x 864 liter containers that arrived into the United States on January 16, 2009 without prior approval from EPA.

EPA noticed that there were discrepancies on the Notice of Arrival Entry Number 144-1552319-3 signed and dated January 20, 2009. The volume amount and entry date differed from information documented by NDDA. On January 27, 2009, EPA requested Bayer Crop Science to resubmit the Notice of Arrival for Entry Number 144-1552319-3 to accurately reflect the shipment volume and entry date of Liberty SL 150 Herbicide.

As the seller and distributor of a pesticide, you are in violation of FIFRA § 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), which provides in relevant part that that 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 canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter.

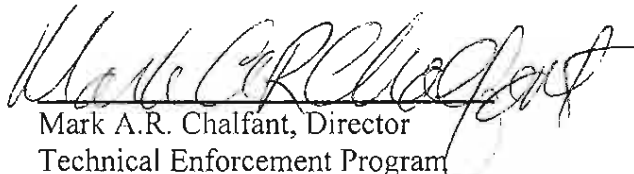
Based on this violation, EPA is issuing the enclosed Stop Sale, Use, Or Removal Order (Enclosure 1) pertaining to all quantities of Liberty SL 150 Herbicide under your control of Entry Number 144-1552319-3 and strongly recommend that your company take immediate steps to correct the problems with this product.

EPA has agreed to allow Bayer Crop Science to export Liberty SL 150 Herbicide back to Canada, the country of origin as indicated by the Notice of Arrival. At a minimum, Bayer Crop Science must also provide EPA with shipping and receiving records and export records showing that the product has been returned to Canada.

The Agency will monitor and supervise this action through the Office of Enforcement, Compliance & Environmental Justice, U.S. EPA Region VIII, 1595 Wynkoop Street, Denver, CO 80202. You are requested to contact Amy Hambrick at (303) 312-6883 to discuss your proposed follow-up. Regardless of your actions, the Agency is issuing a Stop Sale, Use or Removal Order (SSURO) pursuant to FIFRA Section 13, 7 U.S.C. § 136k, at this time and may also issue a civil administrative action pursuant to FIFRA Sections 14, 7 U.S.C. § 136l.

You have the opportunity to discuss this action with EPA. You are encouraged to present your views either orally or in writing. Thank you for your cooperation.

Sincerely,

  
Mark A.R. Chalfant, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

cc: Perry Kemnitz, Broker Norman G. Jensen  
Joni Telken, Commercial Service Manager Ag Depot  
Dave Phillips, Enforcement Coordinator North Dakota Department of Agriculture  
Margaret Collins, Import Specialist EPA Region 8  
Suzanne Stevenson, EPA Region 8 Agricultural Advisor

Enclosures: Stop Sale, Use, or Removal Order

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2009 JAN 29 08:10:14

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Bayer Crop Science )  
2 T.W. Alexander Drive )  
P.O. Box 12014 )  
Research Triangle Park, NC 27709 )  
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**STOP SALE, USE, OR  
REMOVAL ORDER**

**DOCKET NO.: FIFRA-08-2009-0001**

**A. INTRODUCTION**

1. The United States Environmental Protection Agency (EPA) is authorized under Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136(k)(a), to issue orders prohibiting the sale, use, or removal of any pesticide whenever there is reason to believe the pesticide is in violation of any provision of FIFRA.

2. The Director of the Technical Enforcement Program has been duly delegated the authority to issue such orders.

3. FIFRA § 12(a)(1)(A), 7 U.S.C. § 136(j)(a)(1)(A), provides that 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 canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter.

4. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), the term "pesticide" includes "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest." Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), the term "pest" includes fungus, bacteria, and "other microorganisms." The regulations implementing FIFRA give further guidance on what constitutes a pesticidal purpose, stating that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if, among other things, the person who distributes or sells the substance "claims, states or implies (by labeling or otherwise)...that the substance...can or should be used as a pesticide," 40 CFR § 152.15(a)(1). In addition, a substance is considered to be a pesticide requiring registration if the person who distributes or sells the substance "has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose."

## **B. ORDER**

5. EPA hereby orders Bayer Crop Science to stop the sale, use, or removal of Liberty SL 150 Herbicide, an unregistered pesticide, which is owned by, controlled by, or in the custody of Bayer Crop Science.
6. This Order pertains to all quantities and sizes of Liberty SL 150 Herbicide within the ownership, control, or custody of Bayer Crop Science Import Entry Number 144-1552319-3 (approximately 16 totes totaling 13,824 liters equaling 43,265 pounds). Liberty SL 150 Herbicide shall not be sold, used, or removed other than in accordance with the provisions of this Order or any further Stop Sale, Use, or Removal Order that may be issued to Bayer Crop Science in connection with Liberty SL 150 Herbicide.
7. Any person violating the terms or provisions of this Order shall be subject to CIVIL or CRIMINAL PENALTIES or both as set forth in FIFRA § 14, 7 U.S.C. § 136f.
8. This order shall be EFFECTIVE IMMEDIATELY upon receipt by any representative of Liberty SL 150 Herbicide.

## **C. BASIS FOR ORDER**

9. On January 20, 2009, Perry Kemitz of Norman G. Jensen, Inc., a Broker and/or Registered Agent of Bayer Crop Science filed a Notice of Arrival (EPA Form 3540-1) with EPA. EPA reviewed the Notice of Arrival which stated that Liberty SL 150 Herbicide was shipped into the United States in error.
10. Liberty SL 150 Herbicide is not registered with EPA, and is not approved for entry into the United States.
11. According to information furnished by Bayer Crop Science, Huskie (EPA Reg. No. 264-1023) was intended to be shipped into the United States. In addition, information provided by Bayer Crop Science, the wrong truck was shipped carrying Liberty SL 150 Herbicide and came into the United States on January 16, 2009 through U.S. Customs and Border Patrol at Pembina, ND. The shipment was sent to Ag Depot of Grand Forks, ND.
12. On January 26, 2009, the North Dakota Department of Agriculture (NDDA) conducted an inspection using EPA Federal Credentials of the Liberty SL 150 Herbicide at Ag Depot. NDDA verified that the product was the unregistered Liberty SL 150 Herbicide and the quantity declared on the Notice of Arrival matched the Bill of Lading and Notice of Arrival. NDDA observed 16 x 864 liter containers that arrived into the United States on January 16, 2009 without prior approval from EPA.
13. EPA noticed that there were discrepancies on the Notice of Arrival Entry Number 144-1552319-3 signed and dated January 20, 2009. The volume amount and entry date differed from information documented by NDDA. On January 27, 2009, EPA requested Bayer Crop Science

to resubmit the Notice of Arrival for Entry Number 144-1552319-3 to accurately reflect the volume and entry date of Liberty SL 150 Herbicide.

14. As the seller and distributor of a pesticide, you are in violation of FIFRA § 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), which provides in relevant part that that 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 canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter. FIFRA § 2(gg), 7 U.S.C. § 136(gg) states, "the term, 'to distribute or sell' means 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."

15. EPA has agreed to allow Bayer Crop Science to export Liberty SL 150 Herbicide back to Canada, the country of origin as indicated by the Notice of Arrival. Bayer Crop Science must provide EPA with shipping and receiving records and export records showing that the product has been returned to Canada.

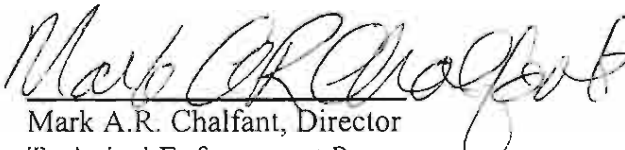
#### OTHER MATTERS

16. For resolution of this Order, you are encouraged to contact:

Amy Hambrick  
US EPA Region 8 (ENF-UFO)  
1595 Wynkoop Street  
Denver, CO 80202  
(303) 312-6883

17. This Stop, Sale, Use or Removal Order will be supervised by the EPA Region 8 Technical Enforcement Program unless you are otherwise notified.

1-28-2009  
Date

  
Mark A.R. Chalfant, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice