

**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219
BEFORE THE ADMINISTRATOR**

In the Matter of)	
)	
Plant Health Care, Inc.)	Docket No. FIFRA-07-2018-0247
)	
Respondent.)	

STOP SALE, USE, OR REMOVAL ORDER

Jurisdiction

1. The following SSURO is issued pursuant to the authority of Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136k(a), as amended. Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), authorizes the Administrator of the U.S. Environmental Protection Agency (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.

Parties

2. Complainant, by delegation from the Administrator of the EPA, the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands, and Pesticides Division, Region 7.

3. Respondent is Plant Health Care, Inc., a corporation under the laws of the state of Nevada and doing business in the state of Missouri.

Statutory and Regulatory Authority

4. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it is unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.

5. A pesticide is misbranded if:
 - a. The labeling accompanying it does not contain direction for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), are adequate to protect health and the environment. 7 U.S.C. § 136(q)(1)(F).
 - b. The label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), is adequate to protect health and the environment. 7 U.S.C. § 136(q)(1)(G).
 - c. The label does not bear an ingredient statement on that part of the immediate container which is presented or displayed under customary conditions of purchase. 7 U.S.C. § 136(q)(2)(A).
 - d. The labeling does not contain a statement of the use classification under which the product is registered. 7 U.S.C. § 136(q)(2)(B).

6. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

7. 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.

8. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines “pesticide” as, *inter alia*, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

9. 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-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

10. The regulations found at 40 C.F.R. § 152.15(a)(1) and (b) further defines the term “pesticide” as any substance intended for a pesticidal purpose, and thus requiring registration, if 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; or the substance consists of or

contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than use for pesticidal purpose.

11. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines “label” as the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

12. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” 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....

13. Section 2(y) of FIFRA, 7 U.S.C. § 136(y) defines “registrant” as a person who has registered any pesticide pursuant to the provisions of FIFRA.

Findings of Fact and Conclusions of Law

14. Respondent is a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

15. Respondent is the registrant of ProAct, EPA Registration Number (EPA Reg. No.) 71771-3.

16. On June 7, 2018, a representative of the EPA conducted a federal, for-cause inspection (the inspection) at the warehouse located at 3600 Midwest Drive, Kansas City, Missouri 64161 (the warehouse). The inspection was conducted under the authority of Section 9 of FIFRA, 7 U.S.C. § 136g, to evaluate Respondent’s compliance with the requirements of FIFRA and the federal regulations promulgated thereunder.

17. The inspection revealed that Respondent is holding 720, 55-pound, bags of ProAct, EPA Reg. No. 71771-3, for sale, distribution or shipment at the warehouse that does not contain the following label information:

- a. Directions for use, as required by 7 U.S.C. § 136(q)(1)(F).
- b. A warning or caution statement, as required by 7 U.S.C. § 136(q)(1)(G).
- c. An ingredient statement, as required by 7 U.S.C. § 136(q)(2)(A).
- d. A statement of the use classification under which the product is registered, as required by 7 U.S.C. § 136(q)(2)(B).

Basis for the Order

18. EPA has reason to believe, based on the information described in paragraphs 14 through 17, that Respondent's pesticidal product ProAct, EPA Reg. No. 71771-3, is misbranded and intended to be sold or distributed, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. 136j(a)(1)(E).

Order

19. Pursuant to the authority of Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), Respondent is hereby to **immediately cease** the sale, use, or removal of the 720, 55-pound, bags of ProAct, EPA Reg. No. 71771-3, located at the warehouse (the product), except in accordance with the provisions of this Order.

20. This Order shall apply to all quantities and container types and sizes of all of the product controlled or within the custody of Respondent and any agent, contractor, employee, consultant, firm successor, and/or assign or other persons or entities acting on behalf of Respondent.

21. All quantities and sizes of the product, shall be removed and transferred by Plant Health Care, Inc., or Plant Health Care Inc.'s designee, from the warehouse to Pony Express Warehousing, LLC, located at, 415 Oak Street, St. Joseph, Missouri 64501, Establishment Number 75596-MO-1 (Pony Express Warehouse) within seven (7) calendar days of the Effective Date of this Order, for the purpose of labeling the product in accordance with the requirements of FIFRA, 7 U.S.C. § 136 *et seq.*

22. Upon delivery of the product to Pony Express Warehouse, the product shall be held and stored at Pony Express Warehouse and not sold, used, or removed from Pony Express Warehouse.

23. Within forty-eight (48) hours of transferring the product to Pony Express Warehouse, Respondent shall send written confirmation of the transfer of the product to Tracey Ramsey at ramsey.tracey@epa.gov.

24. Any subsequent proposal for movement of the product shall be submitted to Tracey Ramsey, and shall include:

- a. Documentation demonstrating that the product is in compliance with all requirements of FIFRA, 7 U.S.C. § 136 *et seq.*, and all the regulations promulgated thereunder, including, but not limited to, photographs of the labeled product and a copy of the product label as applied to the product;

- b. A signed certification that the product is in compliance with all requirements of FIFRA, 7 U.S.C. § 136 *et seq.*, and all the regulations promulgated thereunder;
- c. The purpose for which movement is being requested; and
- d. An accounting of the quantities of product to be moved, including location(s), quantities from each location and container size for the products to be moved.

General Provisions

25. Violation of the terms or provisions of this Order may subject the violator to **CIVIL OR CRIMINAL PENALTIES** as prescribed in Section 14 of FIFRA, 7 U.S.C. § 136*l*.

26. Respondent may seek federal judicial review of the Order pursuant to Section 16 of FIFRA, 7 U.S.C. § 136*n*.

27. If any provision or authority of the Order or the application of the Order to Respondent is held by federal judicial authority to be invalid, the application to Respondent of the remainder of the Order shall remain in full force and effect and shall not be affected by such a holding.

28. The issuance of this Order shall not act as a waiver by the EPA of any enforcement or other authority available to the EPA under FIFRA.

29. This Order does not affect the obligation of Respondent to comply with all federal, state and local statutes, regulations and permits.

30. This Order shall be **EFFECTIVE IMMEDIATELY** upon receipt by **RESPONDENT**.

31. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

32. This Order shall remain in effect until a **written notice of termination** is issued by an authorized representative of EPA. Such notice shall not be given until all requirements of this Order have been met.

33. EPA may subsequently amend this Order, in writing, in accordance with the authority of FIFRA. Any amendment will be transmitted to Respondent. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified in the original Order.

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original of the Stop Sale, Use or Removal Order to the Regional Hearing Clerk, United States Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

CH Mills
Name

06/27/2018
Date

I further certify that on the date noted below, I sent by certified mail, return receipt requested, a true and correct copy of the signed original Stop Sale, Use or Removal Order, to:

The Corporation Trust Company of Nevada
Plant Health Care, Inc.
701 S. Carson St, Ste. 200
Carson City, Nevada 89701-5239

CH Mills
Name

06/26/2018
Date