

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94103-3901

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Certified Mail
7014 1820 0000 4720 9997

Jim Glessner
President, WellPlant, Inc.
President, GST International, Inc.
855 E Greg Street, Ste103
Sparks, NV 89431

DEC 04 2015

Re: STOP SALE, USE, OR REMOVAL ORDER
WellPlant, Inc. and GST International, Inc.

Dear Mr. Glessner:

Enclosed is a Stop Sale, Use, or Removal Order ("Order") issued by the U.S. Environmental Protection Agency Region 9 (EPA) to WellPlant Inc. and GST International, Inc., concerning all pesticide products bearing the name Mold Manager and any alternate brand names. **The order is effective immediately upon receipt.**

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 on the basis of inspection that such pesticide is in violation of any provision of FIFRA or that such pesticide has been or is intended to be distributed or sold in violation of FIFRA. As explained further in the enclosed Order, WellPlant, Inc. and/or GST International, Inc. has been and is producing, distributing, or selling, misbranded and unregistered pesticide products in violation of FIFRA.

EPA developed an information sheet entitled "U.S. EPA Small Business Resource Information Sheet" to help small businesses understand federal and state environmental laws and rights under the Small Business Regulatory Enforcement Fairness Act. The information sheet is enclosed.

If you have any questions about this matter, please contact Scott McWhorter, Enforcement Case Officer, at 415-972-3584. For any legal matters concerning this matter, please contact Margaret Alkon, Assistant Regional Counsel, at 415-972-3890.

Sincerely,

Claire Trombadore
Assistant Director
Water and Pesticides Branch, Enforcement Division
U.S. Environmental Protection Agency, Region IX

Enclosures

cc: Shawn Pearson, registered agent for Wellplant Inc. and GST International Inc.

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US EPA ARCHIVE DOCUMENT

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105**

In the matter of:)	ORDER
WellPlant, Inc.)	SECTION 13(a)
And)	
GST International, Inc.)	FEDERAL INSECTICIDE, FUNGICIDE
855 E Greg Street 103)	AND RODENTICIDE ACT
Sparks, Nevada 89431)	
Respondents.)	Docket No. FIFRA-09-2016-02
_____)		

I. AUTHORITIES

1. The United States Environmental Protection Agency (“EPA”) is authorized under Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136k(a), 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 a reason to believe that, inter alia, 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 authority has been delegated from the EPA Administrator to the Director, Deputy Director, Assistant Directors, and Managers of the Enforcement Division, EPA, Region IX.
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 . . . or whose registration has been suspended or cancelled.”
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)(1) of FIFRA, 7 U.S.C. § 136j(a)(2)(1), states that it shall be unlawful for any person to violate any order issued under section 13 of FIFRA.

6. Under Section 2(q) of FIFRA, 7 U.S.C. § 136(q), a pesticide is “misbranded” if “the label does not bear an ingredient statement....” or if “any word, statement, or other information required by or under the authority of [FIFRA] to appear on the label or labeling is not prominently placed thereon...” 7 U.S.C. §§ 136(q)(1)(E) and 136(q)(2)(A).
7. Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “labeling” in part, as “all labels and all other written, printed, or graphic matter . . . accompanying the pesticide or device at any time,” and defines “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.”
8. 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.”
9. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “pest,” in part, as any “form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1).” Pursuant to the authority in section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1), the Administrator declared that a pest includes “any plant growing where not wanted, including any moss, alga, liverwort...” and “[a]ny fungus, bacterium, virus, prion, or other microorganism, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs . . . and cosmetics. . . .” 40 C.F.R. § 152.5.
10. 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.”
11. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “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.”
12. Pursuant to the authority in section 25(a) of FIFRA, 7 U.S.C. § 136w(a), the Administrator declared that products that are intended to exclude pests only by providing a physical barrier against pest access, and which contain no toxicants, such as certain pruning paints to trees, are not considered to be pesticides unless a pesticide claim is made on their labeling or in connection with their sale and distribution. 40 C.F.R. §152.10.

13. Pursuant to the authority in section 25(a) of FIFRA, 7 U.S.C. § 136w(a), the Administrator promulgated the labeling requirements for pesticides found at 40 CFR Part 156, requiring every pesticide to bear a label containing an ingredient statement “which contains the name and percentage by weight of each active ingredient, the total percentage by weight of all inert ingredients...” as required by 40 CFR § 156.10(g) and the name and address of the person for whom produced as prescribed by 40 CFR § 156.10(c), which states “if the name of the person for whom the pesticide was produced appears on the label, it must be qualified by appropriate wording such as “Packed for***” “Distributed by***” or “Sold by***” to show that the name is not that of the producer.”

II. BACKGROUND

14. WellPlant, Inc. (“WellPlant”) is a corporation organized under the laws of the State of Nevada.
15. WellPlant distributes and sells Mold Manager products, including Mold Manager Ready to Use and Mold Manager concentrate (“Mold Manager”), to customers located throughout the United States including North Carolina, California and Oregon. Wellplant is not the producer of Mold Manager.
16. GST International, Inc. (“GSTII”) is a corporation organized under the laws of the State of Nevada. WellPlant and GSTII share an office or place of business located at 855 E Greg Street, #103, Sparks Nevada. James Glessner is president of WellPlant and GSTII.
17. The label of Mold Manager states that Mold Manager “PREVENTS THE GROWTH & REGROWTH OF MOLD, MILDEW, ALGAE & MOSS FOR ONE FULL YEAR ON MOST HARD SURFACES!”
18. The statement that a product prevents the growth and regrowth of mold, mildew, algae & moss is a pesticidal claim.
19. Mold Manager is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3.
20. Mold Manager is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

III. BASIS FOR ORDER

21. On August 19, 2015, an Inspector from the Nevada Division of Agriculture conducted an inspection of the facility at 855 E Greg Street, #103, Sparks Nevada.
22. During the inspection by the Nevada Division of Agriculture, the GSTII Director of Operations had access to WellPlant records of distribution and sale of Mold Manager, and provided the inspector with access to the facility including where Mold Manager was being held for distribution and sale.
23. EPA has determined that Mold Manager does not bear a label containing an ingredient statement as required by 40 CFR § 156.10(g) and the name and address of WellPlant on the Mold Manager label is not qualified by appropriate wording as prescribed by 40 CFR § 156.10(c) such as "Packed for****" "Distributed by****" or "Sold by****" to show that the name "WellPlant" is not that of the producer.
24. Because Mold Manager is a pesticide but not a registered pesticide, WellPlant has distributed and sold Mold Manager, and WellPlant and GSTII are under common control and conduct business together at the same facility, EPA has reason to believe that WellPlant and GSTII distributed or sold pesticides that were unregistered in violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).
25. Because EPA has determined that Mold Manager does not bear information specified by FIFRA and its labeling regulations, WellPlant has distributed and sold Mold Manager, and WellPlant and GSTII are under common control and conduct business together at the same facility, EPA has reason to believe that WellPlant and GSTII distributed or sold pesticides that were misbranded, as that term is defined by section 2(q) of FIFRA, 7 U.S.C. § 136(q), in violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

III. ORDER

26. Pursuant to the authority in section 13(a) of FIFRA, 7 U.S.C. § 136k(a), EPA hereby orders WellPlant and GSTII to **immediately stop** the sale, use or removal of Mold Manager under its ownership, control, or custody, wherever such products are located, except in accordance with the provisions of this Order.
27. This Order shall extend to all quantities and sizes of the product Mold Manager intended for sale or distribution, including:
 - A. Any Mold Manager products marketed under alternate brand names; and

- B. Any Mold Manager products returned to WellPlant or GSTII from its distributors, customers, or other end-users.
28. The products described in paragraph 27 shall not be used, sold, offered for sale, held for sale, shipped, delivered for shipment, received, or having so received, shall not be delivered, offered for delivery, moved or removed for disposal from any facility or establishment for any reason, unless approved by EPA in writing. Any proposal for movement of the products so described shall be submitted to Scott McWhorter, Water and Pesticides Branch, Enforcement Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and shall include:
- A. The purpose for which the movement is being requested;
- B. An accounting of the quantities of the product to be moved, including location(s), quantities from each location, and container size for the products to be moved; and
- C. The destination location to which the product will be moved.
29. Within 10 days of receipt of this Order, WellPlant and GSTII shall submit to EPA an accounting of all products subject to this Order. The report shall be submitted to Scott McWhorter, Water and Pesticides Branch, Enforcement Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and shall include:
- A. A description of all existing product inventory, including the location(s) where the products are held, quantities, and container size. This information must be updated on a weekly basis for four weeks, on a monthly basis for the following six months, and thereafter only upon further change to the information;
- B. A complete list of WellPlant and GSTII's distributors and direct-sale customers and records of all sales and distributions made to such entities; and
- C. Provisions to maintain records of the distribution (e.g., reformulation, repackaging, relabeling, disposal) of products and to make the records available to EPA upon request. Such records must include information on the method, the quantity, and the location of the disposition and/or disposal.
30. Any agent, owner, or operator of WellPlant or GSTII violating 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. § 136l.

- 31. 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.
- 32. This Order shall be effective immediately upon receipt by WellPlant, GSTII, or any agents of WellPlant or GSTII.
- 33. This Order shall remain in effect unless and until revoked, terminated, suspended, or modified in writing by EPA.
- 34. Respondent may seek federal judicial review of this Order pursuant to Section 16 of FIFRA, 7 U.S.C. § 136n.
- 35. If any provision or provisions of this Order is/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 they shall remain in full force and effect.

V. OTHER MATTERS

- 36. For additional information about this Order, please contact Scott McWhorter, Enforcement Case Officer, at 415-972-3584. For any legal matters concerning this matter, please contact Margaret Alkon, Assistant Regional Counsel, at 415-972-3890.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, COMPLAINANT

DATE: 12/4/2015

By: 

CLAIRE TROMBADORE
Assistant Director
Water and Pesticides Branch
Enforcement Division
U.S. EPA, Region IX