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## Don't Bug Me: Failure to Comply with FIFRA Can Be Costly (/full-blog/2013/01/dont-bug-me-failure-to-comply-with.html)

"Daifuku Trading Corp." (/full-blog?category=%22Daifuku+Trading+Corp.%22), "Environmental Protection Agency" (/full-blog?category=%22Environmental+Protection+Agency%22), "FIFRA" (/full-blog?category=%22FIFRA%22), "Federal Insecticide" (/full-blog?category=%22Federal+Insecticide%22), "Fungicide" (/full-blog?category=%22Fungicide%22), "Scotts Miracle-Gro" (/full-blog?category=%22Scotts+Miracle-Gro%22), "and Rodenticide Act" (/full-blog?category=%22and+Rodenticide+Act%22)



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By: Rachel King, Staff Member

In 2012, the U.S. Environmental Protection Agency issued legal complaints against companies that the agency felt had violated the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).[1] Upon its initial conception, FIFRA established protocols regarding the registration of pesticides;[2] however, the true focus of this Act seemed to be on monitoring the effectiveness of these products.[3] Following amendments in 1972 and 1996, FIFRA's scope has been greatly enlarged: "[The] EPA is specifically authorized to: (1) strengthen the registration process by shifting the burden of proof to the chemical manufacturer, (2) enforce compliance against banned and unregistered products, and (3) promulgate the regulatory framework missing from the original law." [4] These newer duties enable the EPA to control the sale and use of pesticides.[5] It is important to note, however, that FIFRA does not fully preempt state and local law.[6]

In order to be in compliance with FIFRA, several key processes must be performed.[7] First, a company must register the product with the EPA.[8] The registration requirements vary depending on whether the pesticide is one that has been approved for registration in the past or is one that is new or imported.[9] For those that are new or imported, the registration must specify its projected use and chemical components[10] as well as provide data to the EPA for testing.[11] Desired data includes the effect of the pesticide's residues on the environment and the toxicity and irritation risk to humans and non-target animals.[12] For imported pesticides, a "Notice of Arrival" must be filed prior to the arrival of the pesticide within the United States;[13] this form allows the EPA to preemptively determine whether the product is approved for use in the country.[14] If the pesticide is barred from admission, the company has 90 days to export the product or it will be destroyed at the company's expense.[15]

In light of FIFRA, an action was initiated against Daifuku Trading Corp. for the company's sale of unregistered pesticides in late 2012.[16] Additional fines may be imposed on the company for improper labeling and importation of the products as well; "Under federal law, products used to kill pests must be registered with the EPA and contain labels written in English with instructions on their proper use." [17] Earlier in 2012, Scotts Miracle-Gro agreed to pay the EPA \$6 million in penalties and spend \$2 million on environmental projects in addition to criminal fines and penalties for similar violations.[18] To-date, this is the largest civil settlement under FIFRA.[19]

Companies that seek to sell pesticides within the U.S. can avoid the ever-watchful eye of the EPA by ensuring that the products stocked on their shelves fall within the purview of FIFRA or can take steps to ensure that newer products meet the EPA's strict requirements.

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[1] John Martin, *EPA Takes Action Against Companies That Sell and Import Illegal Pesticides*, ENVIRONMENTAL PROTECTION AGENCY (Dec. 28, 2012), <http://yosemite.epa.gov/opa/admpress.nsf/d0c6f6618525a9e7b85257359003fb69d2be923c665cc076d85257ae200633725?OpenDocument>.

[2] *Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)*, ENVIRONMENTAL PROTECTION AGENCY, available at <http://www.epa.gov/ocaa/gst/lfra.html#Summary%20of%20the%20Federal%20Insecticide,%20Fungicide,%20and%20Rodenticide%20Act> (last visited Jan. 16, 2013).

[3] *Id.*

[4] *Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)*, *supra* note 2; See also 7 U.S.C. § 136 et. seq. (2013).

[5] *Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)*, *supra* note 2.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] Martin, *supra* note 1.

[12] EPA, *supra* note 2.

[13] *Id.*

[14] Martin, *supra* note 1.

[15] EPA, *supra* note 2.

[16] Martin, *supra* note 1.

[17] *Id.*

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