

Chapter Ten

STOP SALE, USE OR REMOVAL ORDERS

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STOP SALE, USE OR REMOVAL ORDERS

AUTHORITY

Stop Sale, Use or Removal Orders

Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, authorizes the Administrator to issue a written or printed Stop Sale, Use or Removal Order (SSURO) to any person who owns, controls, or has in their custody any pesticide or device that the Administrator has reason to believe (on the basis of inspection or tests) is in violation of any provision of the Act. After a SSURO has been issued against a pesticide or device, no person shall sell, use, or remove the pesticide or device except in accordance with the provisions of the order. See section 13(a) of FIFRA, as amended, for more information on SSUROs.

Seizures

Section 13(b) of FIFRA, as amended, authorizes the seizure of any pesticide or device for confiscation and condemnation in any federal district. See section 13(b)(1) of FIFRA, as amended, for more information.

Unlawful Act

Section 12(a)(2)(I) states that it is unlawful for any person to violate any order issued under section 13.

OBJECTIVE

The objective of a Federal SSURO is to prevent the sale, use, or removal of any pesticide or device found to be in violation of any provision of the Act or when the registration of the pesticide or device has been canceled by a final order or has been suspended.

POLICY

Only EPA Headquarters or Regions may issue Federal SSURO's. State inspectors, however, may be requested to serve the orders at

specified locations. SSUROs can be an effective and efficient legal tool available for protecting humans and the environment. The policy of EPA is to issue SSUROs whenever EPA has reason to believe based on inspection or tests that: (1) a pesticide or device is in violation of any provision of the Act; (2) a pesticide or device has been or is intended to be distributed in violation of the Act; or (3) when registration of a pesticide has been canceled by a final order or has been suspended. The criteria for the issuance of a SSURO may be found in Chapter 5 of the *FIFRA Case Development Training Manual*.

Special Considerations

SSUROs may be issued any time a pesticide is in violation of the Act. SSUROs, however, are generally reserved for situations involving a potential hazard to health or the environment. A SSURO:

- < Can be expeditiously issued on the basis of a “reason to believe” a hazard exists.
- < Extends to all of the pesticide material under the custody or control of the person.
- < Keeps the responsibility for disposal of the material with the person receiving the order.

Process

The following summarizes the steps in the SSURO process:

- < Identify the violation and develop evidence to support the existence of a violation.
- < Prepare a complete description of the material to be stop sold, including batch codes.
- < Prepare and issue the SSURO.
- < Monitor compliance with the order.
- < Amend the order as necessary to allow movement of the product for final disposition.
- < Vacate the order upon disposal or reconditioning of the material, or if the SSURO has been vacated.

PROCEDURES

Service of Order by United States Mail

Regional Office

In certain instances the Regional office may elect to serve the order via U.S. certified mail.

Headquarters

In instances such as the emergency suspension of a pesticide, EPA Headquarters may elect to issue the order. Any such orders will be served via U.S. certified mail.

Service of Order by Inspector

SSUROs may be served by an inspector in certain circumstances, such as during an inspection.

SSUROs are issued against pesticide products and devices when EPA has reason to believe they may be in violation of FIFRA. SSUROs for pesticide products may be specific for a particular batch or lot but, the norm is to issue the order against all products bearing the registration that is in violation of the Act.

The inspector will determine the amount of the product that is under the control of the person to whom the order is served.

The order is served to the owner, operator, or agent in charge of the establishment which has custody of the violative pesticide product or device. The inspector must explain to the recipient the scope and meaning of the order and the obligation which it places on him/her as recipient. The explanation must include the fact that the product covered by order cannot be sold, used, or removed unless vacated by a further order issued by the Regional office. The inspector must also provide the name of the Regional contact person (named in the order).

The inspector must also follow any Regional policies regarding the serving of such orders.

If the inspector is assigned to deliver a SSURO, it may be appropriate to begin the service of the SSURO like an inspection, with presentation of credentials and Notice of Inspection. The "Violation Suspected" section of the Notice of Inspection must match the violation described in the SSURO. The inspector can then review and collect records, as necessary, to document violative activity, and take inventories, if not done previously. If any samples or documents are collected, the proper inspection procedures must continue to be followed.

Refusal to Accept Order

In the event that the person to whom the order is served refuses to accept the order, the inspector shall leave a copy of the order at the establishment and explain the following to the recipient:

- < The order becomes effective when delivered and is binding on the recipient whether or not he/she accepts it.
- < The recipient has the prerogative of discussing the order with the contact person at the Regional office who is named in the order.
- < The recipient is liable for a civil or criminal penalty for violating the terms of the order as well as for the violation itself.

The inspector must make a detailed record in his/her field notebook of this conversation and his/her actions for possible use at any subsequent hearing or court action.

No One Available to Accept Order

If an inspector attempts to deliver an order and the owner or custodian is not present, a copy of the order may be attached to the entry door of the establishment, but another copy must be served by U.S. certified mail. The inspector must keep a record of his/her actions.

Disposition

The original order must be amended or terminated to permit movement of the product. A subsequent order may be issued to permit the custodian of the product to bring the product into compliance or to properly dispose of it. Such orders can either be served in person or by U.S. certified mail.

Violations of Orders

If a violation of such order is discovered, the inspector must proceed as follows:

- < Report the violation to the Regional office immediately.
- < Document the violation (including the name, title, and duties of the person responsible for the violation) and send a written report to the Regional office.

Follow-up Inspections

Follow-up inspections shall be performed to determine compliance with the SSURO. Standard inspection procedures must be followed. A written Notice of Inspection must be issued and state that the purpose of the inspection is to determine compliance with the SSURO issued on the pesticide(s) listed in the order. The inspector must confirm that the owner or custodian received the order and record the date received, if possible. The stock affected by the order must be counted and documented, including package sizes and lot numbers. Any discrepancies between quantities in inventory and amounts stated in the order must be resolved.

If the follow-up is to an order issued by the Regional office, the above documentation and appropriate statements and records may be sufficient. Orders issued by EPA Headquarters, however,

usually require more information. An example would be an order for a pesticide suspended in accordance with FIFRA section 3(c)(2)(B). In addition to the above information, the inspector might also take the following actions, as appropriate:

- < Confirm that the company satisfied (not just submitted) the data requirements that were the basis of the Notice of Inspection to suspend or voluntarily cancel the registration. If they were officially notified by the Office of Pesticide Programs (OPP) that the requirements were satisfied, and the SSURO was lifted, document those facts and terminate the inspection.
- < Determine if the company has requested or received any additional guidance from EPA concerning disposal. If so, copy and identify the guidance document(s). Provide the name of the State organization that will assist the company with disposal.
- < Determine if the company has informed producing distributors and/or contacted manufacturers. If so, copy and identify record(s) of these contacts.
- < Inspect production records for products named in the order and compare them to the effective date of the SSURO. Photograph or photocopy records showing production after the effective date or last production prior to the effective date. Production is not prohibited. The reason for looking at production records is to determine that, as a minimum, the volume of production after the notification remains in physically accountable stock. Production records also help determine the dates of sales invoices and shipping records to review. (Note: Some information obtained during these inspections may be claimed as FIFRA confidential business information (CBI). If the establishment is inspected by a State inspector using State credentials and State statutory authority, any CBI information/documents in question should be: (1) only provided to the State inspector on a consensual or voluntary basis after the State informs the establishment they are cleared (by State statute) to view, obtain, or copy FIFRA CBI or (2) if claimed CBI, request the responsible company official to send the information/documents directly to the EPA Regional FIFRA Document Control Officer (DCO). The inspector should provide the responsible company official with a listing of all requested documents/information to be sent to the EPA Regional office). The inspector should notify the DCO that documents are being submitted to the Region from the company and specify who in the Region is expecting them. The inspector should not rely upon the company to send a cover letter explaining the reasons the documents were sent.

- < If available, check inventory records for the date of the inspection and the effective date of the order. If those records are not the same, copy them and determine why they differ and/or inspect sales invoices and bills of lading for the named pesticide from the date of inspection back through the effective date of the order. Copy or photograph those invoices/bills which appear to indicate a violation.