



CERTIFIED MAIL

August 24, 2017

Advanced Nutrients
Amy Serafin
P.O. Box 584
East Troy, WI 53120

Re: Issuance of Statewide Stop Sale, Use, or Removal Order (SSURO or the Order) and Notice of Statewide Detainment, Seizure or Embargo (the Notice),
ODA Pesticides Investigation Case No. 180114, Fertilizer Inspection No. 2017-34

The Oregon Department of Agriculture hereby orders Advanced Nutrients and/or its agents to immediately cease all sales, offers of sale, or other distribution, and detains, seizes or embargos any quantities of the product Advanced Nutrients, Bud Factor X Intense Resin Production within Oregon or transported into Oregon by any type of business transaction or other method. This order is the result of laboratory analysis indicating that Advanced Nutrients, Bud Factor X Intense Resin Production contains salicylic acid at a concentration of 4,400 parts per million (ppm). The active ingredient salicylic acid is not identified in product labeling. This compound is a plant regulator; plant regulators are defined or regulated by U.S. federal and Oregon law as pesticides; ORS 634.006(8)(g).

The Department issues this order under the provisions of Oregon Revised Statutes (ORS), 633.445 (fertilizers), 634.322(3) (pesticides), and ORS 561.605 to 561.620.

Regarding Pesticide Concerns:

Pesticide Product Adulteration

ORS 634.036 states that a pesticide is considered adulterated if: "... (2) The strength or purity of the pesticide is below the purported or professed standard of quality as expressed in its labeling, or any substance has been substituted wholly or in part for any ingredient of the pesticide, or any valuable constituent thereof has been omitted wholly or in part. (3) The contents of the package or container of pesticide do not meet their purported standard of quality in any other manner. (4) The contents of the package or container represented to be a pesticide are not definitely effective for the purpose for which recommended." Advanced Nutrients, Bud Factor X Intense Resin Production contains salicylic acid, a pesticide active ingredient that is not identified in the product formulation. ORS 634.372(16) prohibits formulating, delivering, distributing, selling or offering for sale any pesticide that is adulterated.

Pesticide Product Misbranded

ORS 634.372(15) prohibits delivering, distributing, selling or offering for sale any pesticide that is misbranded. The Advanced Nutrients, Bud Factor X Intense Resin Production product is considered misbranded if the package, label or container does not contain the required information or statements in accordance with ORS 634.026 or bears any false or misleading statements. The salicylic acid content was not provided on the package labeling of Advanced Nutrients, Bud Factor X Intense Resin Production.



Pesticide Registration

ORS 634.016 requires that pesticide products sold or distributed in Oregon be annually registered with ODA. ORS 634.372(17) prohibits delivering, distributing, selling or offering for sale any pesticide that is not so registered. Advanced Nutrients, Bud Factor X Intense Resin Production is not registered as a pesticide with ODA.

As the product Advanced Nutrients, Bud Factor X Intense Resin Production is considered both mislabeled and adulterated, distribution of this product is prohibited in Oregon under ORS 634.372 (15 & 16). The Department will address any violations of ORS Chapter 634 arising from sales or distribution of these products in Oregon.

Furthermore, It is a violation of ORS 634.372(22) to sell, use, or remove any product subjected to a SSURO until the product has been released in accordance with ORS 561.630. A violation of ORS Chapter 634.372(22) may result in further enforcement action including civil penalties up to \$10,000 per incident.

Regarding Fertilizer Concerns:

Product Mislabeled

A product is considered mislabeled when the product label or labeling is false, misleading or deceptive; ORS 633.366(2)(a). Advanced Nutrients, Bud Factor X Intense Resin Production contains salicylic acid, but this information is not provided on the product label. Thus the label is false, misleading or deceptive, and the product is mislabeled under ORS 633.366(2)(a). In addition, the label did not contain the necessary precautionary or warning statements or directions for use that would be necessary to protect humans, animals, water, aquatic life, soil or beneficial plant life. Under ORS 633.366(2)(c) such a product is considered mislabeled.

Product Adulteration

A product is considered adulterated if the product differs in composition from the composition claimed on the label; ORS 633.366(3)(b). Advanced Nutrients, Bud Factor X Intense Resin Production contains salicylic acid, but this information is not provided on the product label. As this label differs in composition from the composition claimed on the label, the product is considered adulterated under ORS 633.366(3)(b).

As Advanced Nutrients, Bud Factor X Intense Resin Production is mislabeled and adulterated, distribution of this product is prohibited in Oregon under ORS 633.366(1)(a) and ORS 633.366(1)(c). The Department will address any violations of ORS Chapter 634 arising from sales or distribution of these products in Oregon.

Any Oregon location in possession of the product listed on the attached form must possess a written release issued by the Department prior to ANY product disposition.

It is a violation of ORS 633.366(1)(a) to sell, offer for sale, or distribute a fertilizer, agricultural amendment, agricultural mineral, or lime product that is mislabeled under ORS 633.321.

It is a violation of ORS 633.366(1)(c) to sell, offer for sale, or distribute a fertilizer, agricultural amendment, agricultural mineral, or lime product that is adulterated under ORS 633.366(3).

It is a violation of ORS 633.366(1)(e) to sell, offer for sale, or distribute unregistered fertilizer, agricultural amendment, agricultural mineral, or lime products in the State of Oregon.

It is a violation of ORS 633.366(1)(j) to sell, use, or remove any product subjected to a SSURO until the product has been released in accordance with ORS 633.445.

A violation of ORS Chapter 633 may result in further enforcement action including civil penalties up to \$10,000 per incident.

It is the responsibility of Advanced Nutrients to declare to the Oregon Department of Agriculture, in writing within 14 calendar days of this order, the proposed disposition of any Advanced Nutrients, Bud Factor X Intense Resin Production product within Oregon. This includes product in commerce as well as in end users' possession. All disposition of this pesticide product in Oregon must be first approved in writing by the Oregon Department of Agriculture. Please read the instructions on the SSURO carefully.

Please review the attached SSURO and Detainment Order. I will serve as your primary point of contact to assist with this matter. I would appreciate the opportunity to discuss this matter with you. Please contact me at your earliest convenience to schedule a conference call to discuss this matter.

Regards,



Dale L. Mitchell
Pesticide Program Manager
Natural Resource Policy Area
Oregon Department of Agriculture
635 Capitol Street NE, Salem, Oregon 97301
(503) 986-4646 Tel (503) 986-4735 Fax
dmitchell@oda.state.or.us

Encl: Stop Sale, Use, or Removal Order and Notice of Detainment, Seizure or Embargo



STOP SALE, USE, OR REMOVAL ORDER / NOTICE OF DETENTION, SEIZURE OR EMBARGO

Oregon Revised Statutes (ORS) Chapter 634 (State Pesticide Control Act), and ORS 633.311 to 633.996 (Fertilizer Control law)
Oregon Administrative Rules (OAR) Chapter 603, Division 057 (Pesticides), Division 059 (Fertilizers)

Pesticides Case No: 180114 Fertilizer Inspection No.: 2017-34
Date: August 24, 2017

TO: Advanced Nutrients OWNER

ADDRESS: P.O. Box 584 ~ East Troy, WI 53120

PHONE: 262-684-5258 PERSON IN POSSESSION

This is an official Stop Sale, Use, or Removal Order for the products itemized below. These products have been found in violation of ORS Chapter 634, ORS 633.311 to 633.996, OAR 603-057, or OAR 603-059. YOU ARE NOTIFIED THAT THE FOLLOWING ARTICLES OR PRODUCTS ARE DETAINED, SEIZED OR EMBARGOED AT THEIR CURRENT LOCATION FOR AN INDEFINITE PERIOD OF TIME. FOR EACH LISTED PRODUCT THIS ORDER AND NOTICE APPLIES TO ALL QUANTITIES UNDER YOUR CONTROL AT ANY LOCATION IN OREGON:

MANUFACTURER & PRODUCT NAME	EPA Reg. No.	REASON FOR SSURO
Advanced Nutrients, Bud Factor X Intense Resin Production	none	1,2,3,5,6

REASONS FOR STOP SALE, USE, OR REMOVAL ORDER (SSURO):

- 1: Found misbranded pesticide products, violation of ORS 634.372(15)
- 2: Found adulterated pesticide products, violation of ORS 634.372(16)
- 3: Found unregistered pesticide products, violation of ORS 634.372(17)
- 4: Found improperly packaged pesticide products, violation of ORS 634.372(19)
- 5: Found mislabeled fertilizer, agricultural amendment, agricultural mineral, or lime products, violation of ORS 633.366(1)(a)
- 6: Found adulterated fertilizer, agricultural amendment, agricultural mineral, or lime products, violation of ORS 633.366(1)(c)
- 7: Found unregistered fertilizer, agricultural amendment, agricultural mineral, or lime products, violation of ORS 633.366(1)(e)
- 8: Other: _____

REASON FOR DETAINMENT, SEIZURE OR EMBARGO: The Oregon Department of Agriculture has determined that the article or product subject to this detainment, seizure or Oregon Stop Sale Order and Detainment Notice



embargo Advanced Nutrients, Bud Factor X Intense Resin Production contains salicylic acid and is a misbranded and adulterated product in violation of ORS 634.372 and/or 633.366. This detainment, seizure or embargo is in force indefinitely and prevents moving the product from any place in Oregon at which it is being held without written permission from the department.

LEGAL AUTHORITY FOR DETAINMENT: ORS 561.605 TO ORS 562.630 generally; ORS 633.445, and ORS 634.322(3).

NOTICE IS ALSO HEREBY GIVEN THAT:

1. IT IS UNLAWFUL FOR ANY PERSON TO REMOVE THE DETAINED, SEIZED OR EMBARGOED ITEMS FROM WHERE THEY ARE LOCATED WITHOUT THE WRITTEN PERMISSION OF THE OREGON DEPARTMENT OF AGRICULTURE AND A RELEASE FROM DETAINMENT, SEIZURE OR EMBARGO FROM THE DEPARTMENT. THE ATTACHED POSTING SHOULD BE POSTED ON ANY PRODUCT LOCATED IN OREGON.
2. A WRITTEN REQUEST FOR A HEARING ON THE PROPRIETY OF THE DETAINMENT MUST BE FILED WITH THE DEPARTMENT WITHIN 10 DAYS FROM THE DATE THE OWNER OR PERSON IN POSSESSION HAS RECEIVED A NOTICE OF DETAINMENT, SEIZURE OR EMBARGO.

By Order of the Director of the Oregon
Department of Agriculture:

Pesticides Program representative:



Dale L. Mitchell

Pesticides Compliance Program Manager

Date: August 24, 2017

This Order and Notice does not affect the timing or validity of any previous Order or Notice ODA may have issued on this product.

INSTRUCTIONS TO THE PERSON IN CUSTODY OF ITEMS SUBJECT TO THIS STOP SALE, USE OR REMOVAL ORDER

It is the responsibility of the person in custody of the item(s) listed on the front of this order to declare to the Department the method of disposition of each item. You must report this disposition to the issuing investigator in writing within 14 calendar days of this order. The report must be made **PRIOR** to product sale, use, or removal, including for instance disposal as hazardous waste, or personal use, or return to a manufacturer or distributor. The following are options that may be available to you:

- Contact the manufacturer or distributor to get the product registered in Oregon.
- Dispose of the product in accordance with Oregon Department of Environmental Quality requirements.
- Use the material yourself without delivering, distributing, selling or offering it for sale if the use is appropriate, and is permitted and approved by the Department.
- Have the product correctly relabeled in accordance with ORS Chapter 633 and/or Chapter 634.

- Repackage the product.
- Return the product to the manufacturer or distributor.

YOU MUST PROVIDE WRITTEN DOCUMENTATION OF THE DISPOSITION OF ALL PRODUCTS IN OREGON.

ALL PRODUCT DISPOSITION MUST BE FIRST APPROVED IN WRITING BY THE OREGON DEPARTMENT OF AGRICULTURE.

Non-approved Sale, Use, or Removal of any pesticide product listed on this order is a violation of ORS 634.372(22) and/or 633.366(1)(j), and may result in further enforcement action including civil penalties up to \$10,000 per incident.

Correspondence or questions concerning this order should be sent to:

Toby Primbs
Fertilizer Program
Oregon Department of Agriculture
635 Capitol St. NE ~ Salem, OR 97301
Phone 503-986-4648

CONTESTED CASE RIGHTS for the STOP SALE, USE OR REMOVAL ORDER

This Stop Sale, Use, or Removal Order is an effective order upon issuance. However, you are entitled to a hearing to contest this order as provided by the Administrative Procedures Act, ORS Chapter 183, including ORS 183.413 to 183.470, and OAR 137-003-0501 to 137-003-0700. **Your request for a hearing must be made in writing and filed with the Department so that it is received by the Department within 10 days from the date of Actual Notice, ORS 634.322(3), 633.445, 183.415, and 561.610.** The request should be made to Toby Primbs at the address given above. If the recipient of the enforcement notice is a corporation, partnership, limited liability company, unincorporated association, trust, or other entity that is not a natural person, it must be represented in the contested case process by an attorney. Furthermore, the attorney representing such a corporation or other entity must ratify the request for hearing, in writing, within 28 days of the date that the request is received by the agency; OAR 137-003-0550.

If you make a timely request for a hearing you will be notified of the time, date, and place of the hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing. An Administrative Law Judge from the Office of Administrative Hearings will preside at any hearing. ORS 183.635 If you do not make a timely request for a hearing, or if you request a hearing but fail to appear at the hearing, withdraw the request for hearing, or notify the agency or administrative law judge that you will not appear at the hearing, then the Department may issue a Final Order by Default. If the Department issues a final order by default the Department designates the agency file in this matter, including any materials submitted by you that relate to this matter, as the record for purposes of proving a *prima facie* case.

CONTESTED CASE RIGHTS for the NOTICE OF DETENTION, SEIZURE OR EMBARGO

You are entitled to a hearing as provided by the Administrative Procedures Act, ORS 183 and OAR 137-003. You have the right to be represented by legal counsel. **If you wish to receive a hearing you must file a written request with the Oregon Department of Agriculture within 10 days of receiving this Notice of Detainment.** The request for hearing may be filed

either by the owner or the person in possession of the raw agricultural commodities described in the Notice of Detainment. The time for filing such request is computed from the time the Notice is first received by either of such persons. A hearing request is considered filed when actually received by the Department; OAR 137-003-0520(1). You may send or deliver a request for hearing to Toby Primbs at the address given above.

When the Oregon Department of Agriculture receives a request for a hearing, the Department will designate the time and place of the hearing. The Department will give you information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before the commencement of the hearing.

The hearing shall not be held sooner than 10 days after the request for a hearing has been received by the Oregon Department of Agriculture. However, if the subject matter of the Department's action is a perishable good, or if, in the opinion of the Department, other good and sufficient reason appears, the hearing may, at the request of the owner or person in possession of such goods, be held at an earlier date.

If the owner or person in possession of such goods does not request a hearing within 10 days, withdraws a hearing request, notifies the Oregon Department of Agriculture or Administrative Law Judge that he/she will not appear, fails to have the request timely ratified by an attorney if you are required to do so by OAR 137-003-0550, or fails to appear at a scheduled hearing, the Department will continue the detainment, seizure or embargo uncontested by the owner or person in possession of such goods. In the event of default, the Department designates its files in this matter as the record for the purpose of proving a prima facie case.

A collaborative dispute resolution process is available as an alternative to a contested case hearing, if requested within 10 days of receiving this notice. Choosing an alternative dispute resolution process will not affect the right to a contested case hearing if a hearing request is received by the Department within 10 days of receiving this notice and the matter is not resolved through the collaborative process.

THIS STOP SALE ORDER and NOTICE OF DETAINMENT SERVED:

BY REGISTERED OR CERTIFIED MAIL ON DATE: _____
 IN PERSON BY: _____ DATE: _____

COPY
RECEIVED
BY:

SIGNATURE POSITION/TITLE FIRM NAME

COPIED
TO:

Stop Sale, Use, or Removal Order is in Effect on this Product

**Date Effective:
August 24, 2017**

**Point of Contact:
503-986-4635
pestx@oda.state.or.us**



**Product name:
Advanced Nutrients/ Bud
Factor X Intense Resin
Production**

**Mfg by:
Advanced Nutrients
P.O. Box 584
East Troy, WI 53120**

**DO NOT USE, MOVE, OR DISPOSE OF THIS
PRODUCT WITHOUT WRITTEN PERMISSION FROM
THE OREGON DEPARTMENT OF AGRICULTURE**

Oregon Revised Statutes (ORS) 634, 634.372(22), 561.605, 633.366(1)(j), and 633.445