

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)
)
The Scotts Miracle-Gro Company,)
The Scotts Company LLC, and)
The Ortho Business Group d/b/a)
The Scotts Company)
14111 Scottslawn Road)
Marysville, Ohio 43041)
)
Respondents.)
_____)

**STOP SALE, USE, OR
REMOVAL ORDER**

I. Authorities

1. Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. § 136k(a), authorizes the Administrator of the United States 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, *inter alia*, the pesticide or device is in violation of FIFRA, or the pesticide or device has been or is intended to be distributed or sold in violation of FIFRA.
2. This authority has been delegated from the Administrator of the EPA to the Chief of the Chemicals Management Branch, Land and Chemicals Division, EPA, Region 5.

II. Background

3. 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.

4. 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.
5. 40 C.F.R. § 152.132 defines “supplemental distribution” as when a registrant distributes or sells his registered product under another person’s name and address instead of (or in addition to) his own.
6. Section 2(aa) of FIFRA, 7 U.S.C. § 136(aa), defines “state” as a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.
7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. *See also* 40 C.F.R. § 152.15.
8. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any other 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) of FIFRA, 7 U.S.C. § 136w(c)(1). *See also* 40 C.F.R. § 152.5.
9. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as “misbranded” if the labeling accompanying it does not contain directions 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), is adequate to protect health and the environment.
10. FIFRA makes it unlawful to distribute or sell any pesticide that is misbranded. 7 U.S.C. § 136j(a)(1)(E).
 11. FIFRA makes it unlawful to distribute or sell registered pesticides if any of the claims made for it as part of its distribution or sale substantially differ from any claims made for it as part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136j(a)(1)(B).
 12. The Ortho Business Group d/b/a The Scotts Company is the Registrant of Record for the company number 239 assigned by EPA.
 13. The Ortho Business Group d/b/a The Scotts Company is a “person” within the definition of FIFRA.
 14. The Scotts Company merged into The Scotts Company, LLC.
 15. The Scotts Company, LLC, is a “person” within the meaning of FIFRA.
 16. The Scotts Miracle-Gro Company is the parent corporation of The Scotts Company, LLC, and claims to own and market the Scotts and Ortho brands through its subsidiaries.
 17. The Scotts Miracle-Gro Company is a “person” within the meaning of FIFRA.
 18. The Ortho Business Group d/b/a The Scotts Company, The Scotts Company, and The Scotts Company, LLC, are affiliated with The Scotts Miracle-Gro Company.
 19. This Order refers to the Ortho Business Group d/b/a The Scotts Company, The Scotts Company, The Scotts Company, LLC, The Scotts Miracle-Gro Company, and all of their divisions, offices, branches and subsidiaries, collectively, as “the Respondents.”
 20. “ORTHO HomeDefense Indoor & Outdoor Insect Killer” (EPA Registration Number 239-2663, also known by names including “ORTHO® Home Defense® Max® Perimeter

& Indoor Insect Killer”) is a “pesticide” within the meaning of FIFRA and is intended for preventing, destroying, repelling, or mitigating pests.

21. One or more of the Respondents distributed or sold or intend to distribute or sell “ORTHO HomeDefense Indoor & Outdoor Insect Killer” with labeling that claims “Kills Bugs Inside Keeps Bugs Out All Year!”
22. One or more of the Respondents distributed or sold or intends to distribute or sell “ORTHO HomeDefense Indoor & Outdoor Insect Killer” with labeling that claims “*12 month control indoors for ants . . . scorpions”
23. The 12 month or year long residual claims such as those identified in paragraphs 21 and 22, and broad claims of insecticidal efficacy, were not accepted in connection with the product’s registration under EPA Reg. No. 239-2663.
24. One or more of the Respondents distributed or sold or intend to distribute or sell “ORTHO HomeDefense Indoor & Outdoor Insect Killer” with labeling that excludes necessary directions for outdoor surface use such as “[H]old sprayer 12 inches from surfaces being sprayed,” which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under Section 136a(d) of FIFRA, are adequate to protect health and the environment. 7 U.S.C. § 136(q)(1)(F).
25. Therefore, “ORTHO HomeDefense Indoor & Outdoor Insect Killer” bears unaccepted claims and is misbranded in violation of FIFRA 7 U.S.C. § 136j(a)(1)(B) and (F).

III. Order

26. The Respondents are hereby ordered to **immediately** cease the distribution or sale of the pesticide product identified in this Order as “ORTHO HomeDefense Indoor & Outdoor Insect Killer;” any pesticide distributed or sold with EPA Registration No. 239-2663, including but not limited to any pesticide “supplementally distributed” within the meaning of 40 C.F.R. § 152.132; and all of these products’ optional and alternative brand names (collectively, the “violative pesticide product”).
27. This Order shall pertain to all quantities of the violative pesticide product which are within the ownership, control, or custody of the Respondents, wherever the violative pesticide product is located.
28. The violative pesticide product shall not be sold, offered for sale, held for sale, shipped, delivered for shipment, received; or having been so received, shall not be delivered, offered for delivery, moved, or removed for disposal from any facility or establishment of the Respondents, for any reason, other than in accordance with the provisions of this Order; or such further Orders as may be issued by EPA in connection with the misbranded pesticide product; or pursuant to written approval from EPA to conduct such activity under this Order and using a label that EPA accepts in writing for that specific purpose under this Order.
29. The violative pesticide product shall not be sold or offered for sale via the Internet, either from www.thescottsmiraclegrocompany.com; www.orthohomedefense.com; www.scottscompany.com; www.scottscsco.com; www.scottslawnservice.com; www.scotts.com; or any other web site, web page or Internet address that the

Respondents own or control or whose contents Respondents can control or have modified.

30. Any agent, owner, or operator of the Respondents 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 of unlawful acts not specified in this Order.
32. This Order shall be effective IMMEDIATELY upon receipt by The Scotts Miracle-Gro Company.

IV. OTHER MATTERS

33. For any additional information about this Stop Sale, Use, or Removal Order, please contact Terry Bonace, Enforcement Officer at (312) 886-3387. For any legal matters concerning this Order, you are encouraged to contact Jeffrey M. Trevino, Associate Regional Counsel, at (312) 886-6729.

Anton Marty, for M. Klevs
Mardi Klevs, Chief
Chemicals Management Branch

6/26/08
Date