

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)
)
Meijer, Inc.)
2929 Walker Avenue NW)
Grand Rapids, Michigan)
Respondent,)
_____)

**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 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been canceled or suspended.

4. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide which is misbranded.
5. 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.”
6. 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.
7. 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.
8. 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.
9. 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 microorganism (except viruses, bacteria, or other microorganisms 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.
10. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as “misbranded” if its labeling bears any statement, design, or graphic representation

relative thereto or to its ingredients which is false or misleading in any particular.

11. Meijer, Inc. is a “person” within the definition of FIFRA. This Order refers to Meijer, Inc. and all of its stores, divisions, offices, franchises, branches and subsidiaries, collectively as “the Respondent.”
12. “Miracle Gro Shake ‘n Feed All Purpose Plant Food Plus Weed Preventer” or “Garden Weed Preventer + Plant Food” is a “pesticide” within the definition of FIFRA and is intended for preventing, destroying, repelling, or mitigating weeds.
13. The Respondent has distributed or sold or intends to distribute or sell “Miracle Gro Shake ‘n Feed All Purpose Plant Food Plus Weed Preventer” or “Garden Weed Preventer + Plant Food” with labeling displaying EPA Registration Number (Reg. No.) 62355-4.
14. EPA has not accepted the pesticide “Miracle Gro Shake ‘n Feed All Purpose Plant Food Plus Weed Preventer” or “Garden Weed Preventer + Plant Food” for registration pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a; therefore ““Miracle Gro Shake ‘n Feed All Purpose Plant Food Plus Weed Preventer” is an unregistered pesticide.
15. EPA has not assigned EPA Reg. No. 62355-4 to “Miracle Gro Shake ‘n Feed All Purpose Plant Food Plus Weed Preventer” or “Garden Weed Preventer + Plant Food” or to any other pesticide product; therefore the purported EPA registration number appearing on the label of “Miracle Gro Shake ‘n Feed All Purpose Plant Food Plus Weed Preventer” or “Garden Weed Preventer + Plant Food” is false and misleading.

III. Order

16. The Respondent is hereby ordered to **immediately** cease the distribution or sale of the pesticide product identified in this Order as ““Miracle Gro Shake ‘n Feed All Purpose Plant Food Plus Weed Preventer,” “Garden Weed Preventer + Plant Food,” and any


pesticide distributed or sold with purported EPA Reg. No. 62355-4; and all of these products' optional and alternative brand names (collectively, the "unregistered pesticide products").

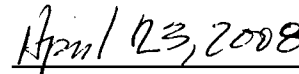
17. This Order shall pertain to all quantities of the unregistered pesticide products which are within the ownership, control, or custody of the Respondent, wherever the unregistered pesticide products are located.
18. The unregistered pesticide products shall not be sold, offered for sale, held for 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 Respondent, 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 unregistered pesticide products or within the terms of any recall agreed upon by EPA.
19. The unregistered pesticide products shall not be sold or offered for sale via the Internet, either from www.meijer.com, or any other web site, web page or Internet address that the Respondent owns or controls or whose contents Respondent can control or have modified. As part of its compliance with this paragraph, Respondent is hereby ordered to immediately excise all references to the unregistered pesticide products from www.meijer.com and from any other web site, web page or Internet address that Respondent owns or control or whose contents Respondent can control or have modified.
20. Any agent, owner, or operator of the Respondent 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.

21. 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.
22. This Order shall be effective IMMEDIATELY upon receipt by Meijer, Inc. .

IV. OTHER MATTERS

23. 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, Kris Vezner, Associate Regional Counsel, at (312) 886-6827.


Mardi Klevs, Chief
Chemicals Management Branch


Date