

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:** )  
 )  
**The Scotts Miracle-Gro Company,** )  
**The Scotts Company LLC, and** )  
**The Scotts Company** )  
**14111 Scottslawn Road** )  
**Marysville, Ohio 43041** )  
 )  
**Respondents.** )  
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**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)(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.

4. 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.
5. 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.
6. 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.
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 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.
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. See also 40 C.F.R. §§ 156.10(a)(5), 156.10(a)(5)(ii).

11. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as “misbranded” if its label does not contain a warning or caution statement which may be necessary 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.
12. The Scotts Miracle-Gro Company is the parent corporation of The Scotts Company, LLC; claims to own and market the Scotts and Miracle-Gro brands through its subsidiaries; and is a “person” within the definition of FIFRA.
13. The Scotts Company merged into The Scotts Company, LLC; is the registrant of record for the EPA company number “538;” and is a “person” within the definition of FIFRA.
14. The Scotts Company, LLC, is a “person” within the definition of FIFRA.
15. The Scotts Company and The Scotts Company, LLC, are both affiliated with The Scotts Miracle-Gro Company. This Order refers to The Scotts Miracle-Gro Company; The Scotts Company; The Scotts Company, LLC; and all of their divisions, offices, branches and subsidiaries, collectively as “the Respondents.”
16. “Turf Builder Pre/Post 2” (EPA Registration Number 538-299, also known by names including “Scotts Turf Builder Max Plus 2 Weed & Feed And Crabgrass Preventer”) is a “pesticide” within the definition of FIFRA and is intended for preventing, destroying, repelling, or mitigating weeds.

17. One or more of the Respondents have distributed or sold or intend to distribute or sell “Turf Builder Pre/Post 2” with labeling that falsely or misleadingly states in multiple places, “Kills weeds completely.”
18. “Turf Builder Pre/Post 2” is misbranded.
19. “SouthernMax” (EPA Registration Number 538-301, also known by names including “Scotts Bonus S Max Southern Weed & Feed And Fire Ant Killer”) is a “pesticide” within the definition of FIFRA and is intended for preventing, destroying, repelling, or mitigating weeds and insects.
20. One or more of the Respondents have distributed or sold or intend to distribute or sell “SouthernMax” with labeling that falsely and misleadingly states that the product “controls/kills” carpenter ants, pharaoh (sugar) ants and centipedes.
21. One or more of the Respondents have distributed or sold or intend to distribute or sell “SouthernMax” with labels that do not contain the warning or caution statement, “Call a poison control center or doctor for treatment advise [sic],” in the “If In Eyes” part of the first aid statement. This warning or caution statement may be necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, is adequate to protect health and the environment.
22. One or more of the Respondents have distributed or sold or intend to distribute or sell “SouthernMax” with labels that do not contain the warning or caution statement to wash thoroughly with soap and water “before eating, drinking, chewing gum, or using tobacco.” This warning or caution statement may be necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, is adequate to protect health and the environment.

23. "SouthernMax" is misbranded.

### **III. Order**

24. The Respondents are hereby ordered to **immediately** cease the distribution or sale of the pesticide products identified in this Order as "Turf Builder Pre/Post 2;" "SouthernMax;" any pesticide distributed or sold with EPA Registration Numbers 538-299 or 538-301, 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 "misbranded pesticide products").
25. This Order shall pertain to all quantities of the misbranded pesticide products which are within the ownership, control, or custody of the Respondents, wherever the misbranded pesticide products are located.
26. The misbranded 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 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 products.
27. The misbranded pesticide products shall not be sold or offered for sale via the Internet, either from [www.scottscountry.com](http://www.scottscountry.com); [www.scottscountry.com](http://www.scottscountry.com); [www.scottscountry.com](http://www.scottscountry.com); [www.scottslawnservice.com](http://www.scottslawnservice.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. As part of its compliance with this paragraph, Respondents are hereby ordered to immediately excise all references to the misbranded pesticide products from

www.scottscopany.com; www.scottscosco.com; www.scottscos.com;

www.scottslawnservice.com; and from any other web site, web page or Internet address that Respondents own or control or whose contents Respondents can control or have modified.

28. 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. § 136f.
29. 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.
30. This Order shall be effective IMMEDIATELY upon receipt by The Scotts Miracle-Gro Company.

#### IV. OTHER MATTERS

31. 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, or Nidhi O'Meara, at (312) 886-0568.

*Mardi Klevs*

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Mardi Klevs, Chief  
Chemicals Management Branch

*4-25-08*

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Date