

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)
)
The Scotts Miracle-Gro Company,)
The Scotts Company LLC,)
The Ortho Business Group d/b/a)
The Scotts Company,)
14111 Scottslawn Road)
Marysville, Ohio 43041; and)
)
Smith & Hawken, Ltd.)
4 Hamilton Landing)
Novato, California 94949)
)
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 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 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. 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. The Ortho Business Group d/b/a The Scotts Company is a “person” within the definition of FIFRA.

10. The Scotts Company merged into The Scotts Company LLC.
11. The Scotts Company LLC, is a “person” within the meaning of FIFRA.
12. 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.
13. The Scotts Miracle-Gro Company is a “person” within the meaning of FIFRA.
14. The Scotts Miracle-Gro Company acquired Smith & Hawken, Ltd. in 2004.
15. Smith & Hawken, Ltd. is a “person” within the definition of FIFRA.
16. The Ortho Business Group d/b/a The Scotts Company, The Scotts Company, The Scotts Company LLC, and Smith & Hawken, Ltd. are affiliated with The Scotts Miracle-Gro Company. This Order refers to Ortho Business Group d/b/a The Scotts Company, The Scotts Company, The Scotts Company LLC, The Scotts Miracle-Gro Company, Smith & Hawken, Ltd., and all of its stores, divisions, offices, franchises, branches and subsidiaries, collectively as “the Respondents.”
17. The Respondents have distributed or sold or intend to distribute or sell “Citronella Lamp Oil” with labeling that claims “Deters Insects” and “...deters mosquitoes, no-see-ums, and other insects from crashing outdoor parties.”
18. Therefore, “Citronella Lamp Oil” is intended for preventing, destroying, repelling, or mitigating pests.
19. Therefore, “Citronella Lamp Oil” is a “pesticide” within the definition of Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
20. “Citronella Lamp Oil” has never been registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

21. Therefore “Citronella Lamp Oil” is an unregistered pesticide in violation of Sections 3(a) and 12 (a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).
22. Therefore, Respondents have distributed or sold this unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

III. Order

23. The Respondents are hereby ordered to **immediately** cease the distribution or sale of the pesticide product identified in this Order as “Citronella Lamp Oil” including but not limited to all of this products’ optional and alternative brand names (“collectively, the “unregistered pesticide product”).
24. This Order shall pertain to all quantities of the unregistered pesticide product which are within the ownership, control, or custody of the Respondents, wherever the unregistered pesticide product is located.
25. The unregistered 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 unregistered pesticide product.
26. Respondents may only return the unregistered pesticide product to Golden Gate Design, Inc., 166 Greenwood Avenue, San Rafael California, 94901, the original manufacturer.
27. 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.

28. 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.
29. This Order shall be effective IMMEDIATELY upon receipt by Respondents.

IV. OTHER MATTERS

30. 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, Jeffery M. Trevino, Associate Regional Counsel, at (312) 886-6729.

Tony Martey, acting for M. K. Brown
Mardi Klévs, Chief
Chemicals Management Branch

2/12/05
Date