



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 26 2009

REPLY TO THE ATTENTION OF:
LC-8J

EXPRESS MAIL AND ELECTRONIC

Mr. James Hagedorn
The Scotts Company
14111 Scottslawn Road
Marysville, Ohio 43041

Re: Stop Sale, Use or Removal Order
The Scotts Company LLC and The Scotts Company

Dear Mr. Hagedorn:

Enclosed is a Stop Sale, Use, and Removal Order (Order) from the United States Environmental Protection Agency (EPA) concerning the pesticide product identified in this Order as "Scotts 33-0-0 Extended Residual Fertilizer Plus Preemergent Weed Control" also known as "Scotts Lawn Service Turf Fertilizer Plus Preemergent Weed Control 22-0-6" (EPA Registration Number 538-213). The Order shall extend to all quantities and sizes of the violative pesticide product and related pesticide products, as described in the enclosed Order. The Order is effective immediately.

Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), authorizes the Administrator of the EPA to issue an order prohibiting the sale, use, or removal of any pesticide by any person who owns, controls, or has custody of such pesticide whenever there is reason to believe that the pesticide is in violation of any provision of FIFRA or has been or is intended to be distributed or sold in violation of any provision of FIFRA. The EPA has reason to believe that The Scotts Company LLC and The Scotts Company have been and intend to distribute and sell the violative pesticide products.

If you have any questions about this matter or wish to request an informal conference to discuss these alleged violations, you may contact Terence Bonace (LC-8J), Enforcement Officer, Pesticides and Toxics Compliance Section, at the above address, or by telephone at

(312) 886-3387. For any legal matters concerning this Order, please contact Jeffery Trevino (C-14J), Associate Regional Counsel, at the above address, or by telephone at (312) 886-6729.

Sincerely,

A handwritten signature in black ink that reads "Mardi Klevs". The signature is written in a cursive, flowing style.

Mardi Klevs, Chief
Chemicals Management Branch

Enclosure



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Sincerely,

A handwritten signature in black ink that reads "Mardi Klevs". The signature is written in a cursive style with a prominent loop at the end of the last name.

Mardi Klevs, Chief
Chemicals Management Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)
)
The Scotts Company, LLC)
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 U.S. Environmental Protection Agency 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 EPA Administrator to the Chief of the Chemicals Management Branch, Land and Chemicals Division, EPA, Region 5.

II. Background

3. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), states that it shall be unlawful for any person in any state to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA.

4. Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(I), states that it shall be unlawful for any person to violate any order issued under Section 13 of FIFRA.
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(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. The Scotts Company is the Registrant of Record for the company number 538 assigned by EPA.
9. The Scotts Company merged into The Scotts Company, LLC.
10. The Scotts Company and The Scotts Company, LLC are “persons” within the definition of FIFRA.
11. This Order refers to the The Scotts Company and The Scotts Company, LLC and all of their divisions, offices, branches and subsidiaries, collectively, as “the Respondents.”
12. “Scotts 33-0-0 Extended Residual Fertilizer Plus Preemergent Weed Control” also known as “Scotts Lawn Service Turf Fertilizer Plus Preemergent Weed Control 22-0-6” (EPA Registration Number 538-213) is a “pesticide” within the meaning of FIFRA and is intended for preventing, destroying, repelling, or mitigating weeds.

13. EPA has reason to believe that “Scotts 33-0-0 Extended Residual Fertilizer Plus Preemergent Weed Control” is in violation of FIFRA, or that Respondents have distributed or sold or intend to distribute or sell “Scotts 33-0-0 Extended Residual Fertilizer Plus Preemergent Weed Control” in violation of FIFRA.

III. Order

14. The Respondents are hereby ordered to **immediately** cease the distribution or sale of the “Scotts 33-0-0 Extended Residual Fertilizer Plus Preemergent Weed Control” including but not limited to all of these products’ alternate brand names and products distributed under supplemental registration agreements per 40 C.F.R. § 152.312 (collectively, the “violative pesticide product”) which are within the ownership, control, or custody of the Respondents, wherever the violative pesticide products are located.
15. 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 violative pesticide products.
16. Respondents may immediately begin shipping or distributing the violative pesticide product for the purpose of transporting the product from its current location at 791 Science Drive, Gahanna, Ohio to 710 Cross Pointe Road, Gahanna, Ohio.
17. In addition, Respondents may distribute, for the purposes of disposal, the violative pesticide product in compliance with federal, state and local laws and regulations for such disposal.

18. Respondents must retain custody of at least 5 unaltered and uncompromised violative units of each SKU of the product; and release those retained units into EPA custody upon EPA's request.
19. Respondents must create and maintain a daily record of the disposal of the products. This record must list the following information for each day, with separate entries for each location where disposal occurred on that day: 1) location of disposal, including name, address, contact person and telephone number; 2) product EPA Reg. No. and SKU; and 3) number of units disposed of each SKU of each product. Respondent must maintain this documentation for five years from each date of disposal and must produce this documentation to EPA or to state pesticide regulatory agencies upon request. Until it receives written notice from EPA to the contrary, Respondent must also provide this documentation to EPA monthly and must provide to EPA an annual summary of this documentation. Respondent must submit documents to the following person, or to such other person as EPA designates in writing:

Terence Bonace
Enforcement Officer
Land & Chemicals Division
U.S. EPA Region 5
77 W. Jackson Blvd. (LC-8J)
Chicago IL 60604

bonace.terence@epamail.epa.gov

20. Respondents may resume distribution and production of the pesticide product, provided it complies with the terms and conditions of its latest accepted label, any subsequent label changes submitted to EPA as notifications or amendments and accepted by EPA and is

produced according to the Confidential Statement of Formula accepted by the Office of Pesticide Programs, and the terms and conditions of this order.

21. 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.
22. 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.
23. This Order shall be effective IMMEDIATELY upon receipt by the Respondents.

IV. OTHER MATTERS

24. For any additional information about this Stop Sale, Use, or Removal Order, please contact Terence 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.



Mardi Klevs
Chief
Chemicals Management Branch



Date