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

SEP 7 2012

Via Certified Mail
Return Receipt Requested

Steven P. Solow
Katten Muchin Rosenman LLP
2900 K Street NW, North Tower
Suite 200
Washington, DC 20007-5118

Re: In the Matter of Scotts Miracle-Gro Company
Consent Agreement and Final Order
Docket No: **FIFRA-05-2012-0024**

Dear Mr. Solow:

Enclosed please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed with the Regional Hearing Clerk on September 7, 2012.

Please pay the civil penalty in the amount of $6.05 million in the manner prescribed in paragraphs 126 and 127 of the CAFO, and reference the check with number:

BD **2751245P022** and docket number **FIFRA-05-2012-0024**

Payment is due within 30 calendar days of the effective date of the CAFO. Thank you for your cooperation in resolving this matter.

Sincerely,

Peter Felitti
Office of Regional Counsel

Enclosure

cc: Terry Bonace, LC-8J (w/ enclosure)
Brian Barwick, C-14J (w/enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. FIFRA-05-2012-0024**
	)	
The Scotts Miracle-Gro Company,	)	
	)	**Proceeding to Assess a Civil Penalty Under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136*l*(a)**
	)	
	)	
	)	
	)	
Respondent.	)	

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PROTECTION AGENCY

Consent Agreement and Final Order

I. Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136*l*(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

II. Parties

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent The Scotts Miracle-Gro Company (SMG) is a corporation doing business in the State of Ohio by and through its subsidiaries including The Scotts Company LLC d/b/a The Ortho Group, a limited liability corporation doing business in the State of Ohio and the former Scotts-Sierra Horticultural Products Company, a corporation previously owned by SMG that did business in the State of Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

III. Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is in full compliance with respect to the violations alleged in this Consent Agreement.

IV. Statutory and Regulatory Background

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered or whose registration has been canceled except to the extent that distribution or sale has otherwise been authorized under Section 3 of FIFRA, 7 U.S.C. § 136a.

11. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful

for any person in any state to distribute or sell to any person any registered pesticide which is adulterated or misbranded.

12. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states that a pesticide is "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.

13. Further, Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states that a pesticide is "misbranded" if the 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.

14. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), states that it is unlawful for any person in any state to distribute or sell to any person any registered pesticide if any claims made for it as 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, 7 U.S.C. § 136a.

15. Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), states that it is unlawful for any person in any state to distribute or sell to any person any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

16. A "pesticide" is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. Section 2(u) of FIFRA,

7 U.S.C. § 136(u); and 40 C.F.R. § 152.3.

17. A "person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not. Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

18. The term "distribute or sell" means 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. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg); and 40 C.F.R. § 152.3.

19. The term "label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1).

20. The term "labeling" means generally all labels and all other written, printed, or graphic matter 1) accompanying the pesticide at any time; or 2) to which reference is made on the label or in literature accompanying the pesticide. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2).

21. The term "registrant" means a person who has registered any pesticide under the provisions of FIFRA. Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

22. A registrant may distribute or sell his registered product under another person's name and address instead of (or in addition to) his own. Such distribution or sale is termed "supplemental distribution" and any product so distributed or sold is referred to as a "distributor product." 40 C.F.R. §152.132. In supplemental distribution, the distributor is considered an agent of the registrant for all intents and purposes under FIFRA. 40 C.F.R. §152.132.

23. A condition of supplemental distribution is that the label of the distributor product is the same as that of the registered product, except for differences including: 1) the product name of the distributor product may be different (but may not be misleading); 2) the name and address of the distributor may appear instead of that of the registrant; 3) the registration number of the registered product must be followed by a dash, followed by the distributor's company number; and 4) specific claims may be deleted, provided that no other changes are necessary. 40 C.F.R. §152.132(d).

24. Each applicant for registration of a pesticide shall file with EPA a statement which includes, among other things, a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use. Section 3(c)(1)(C) of FIFRA, 7 U.S.C. § 136a(c)(1)(C).

25. Each applicant for registration of a pesticide shall file with EPA a statement which includes, among other things, the complete formula of the pesticide. Section 3(c)(1)(D) of FIFRA, 7 U.S.C. § 136a(c)(1)(D). This statement includes, among other things, a description of the materials used to produce the product; a description of the production process; and a description of the formulation process. 40 C.F.R. §§ 158.325-158.335.

26. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA up to $5,500 for each offense occurring between January 30, 1997, and March 15, 2004 and up to $6,500 for each offense occurring after March 15, 2004, through January 12, 2009, pursuant to Section 14(a)(l) of FIFRA, 7 U.S.C. § 136*l*(a)(l), and 40 C.F.R. Part 19.

V. Background and Factual Allegations

27. From its incorporation on or about November 22, 2004, SMG was an Ohio corporation.

28. Scotts-Sierra Horticultural Products Company was a subsidiary of SMG or its predecessor. In or about February 2011, Scotts-Sierra Horticultural Products Company was sold by SMG to ICL Specialty Fertilizers and is now named Everris NA, Inc. (Everris). Everris is not a party to this agreement.

29. Respondent has a place of business at or about 14111 Scottslawn Road, Marysville, Union County, Ohio.

30. Respondent is a "person," as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

31. Respondent is engaged in the manufacturing, marketing and sale of consumer branded products for lawn and garden care. Its primary customers include home centers, mass merchandisers, warehouse clubs, large hardware chains, independent hardware stores, nurseries, garden centers and food and drug stores located throughout the United States.

32. In April 2008, EPA began an investigation of several of Respondent's pesticide products.

33. As a result of this investigation, EPA issued stop sales orders for several products. Respondent conducted a consumer-level recall of certain consumer lawn and garden products and a Scotts LawnService® product.

34. On or about May 23, 2008, Respondent and EPA agreed to a Compliance Review Plan through which a third-party reviewer funded by Respondent would review the compliance status of all of Respondent's pesticides that were either 1) distributed or sold on

any date within the past five years; or 2) registered with EPA as of April 1, 2008.

35. By the terms of the Compliance Review Plan, the third-party reviewer would submit reports to Respondent and EPA regarding the compliance status of each pesticide reviewed. In or about June 2008, Respondent retained Quality Associates, Inc. (QAI) as the third party reviewer under the Compliance Review Plan.

36. Pursuant to the Compliance Review Plan, QAI reviewed substantially all of Respondent's U.S. pesticide product registrations and associated advertisements. The EPA investigation and the QAI review process resulted in the temporary suspension of sales and shipments of certain products.

37. QAI identified potential compliance issues with in excess of 100 of Respondent's products. In addition, based on the results of the QAI audit, inspections conducted by EPA and a review of information provided by Respondent, EPA determined that Respondent distributed products in violation of FIFRA due to misbranding of labels; sale of unregistered or canceled pesticides; differing claims on labels; and sale of products with differing composition.

38. In response to its compliance issues, Respondent implemented new compliance assurance procedures at its facilities.

39. In a 2011 filing with the Securities Exchange Commission, Respondent reported pre-tax charges of $51.9 million for the period October 2008 through September 30, 2011. These charges were attributed to actions taken by Respondent to address registration and recall matters including compliance with stop sale orders, product recalls, the QAI audit, and development and implementation of new measures to facilitate compliance with FIFRA requirements.

40. On June 30, 2011, Respondent received a Notice of Intent to File Administrative Complaint from EPA Region 5 with respect to alleged FIFRA violations.

VI. Alleged Violations

Misbranding Allegations

Ortho Malathion 50 Insect Spray

41. From on or about November 12, 2005 through on or about December 31, 2008, Ortho Malathion 50 Insect Spray was a registered pesticide, EPA Reg. No. 239-739, with EPA accepted labels dated April 9, 1997 and May 11, 2004.

42. From on or about November 12, 2005 through on or about December 31, 2008, Respondent distributed or sold Ortho Malathion 50 Insect Spray (SKU 030306025) with labeling which did not include all the information required by the EPA accepted labels including, among other things, directions for first aid, directions for eye protection, and a "home use" only restriction. Further, the label Respondent used included an image of a man applying the product without eye protection.

43. Because Respondent's label on Ortho Malathion 50 Insect Spray did not contain warning or caution statements which may have been necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), adequate to protect health and the environment and further bore a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading, Respondent's product was "misbranded" as that term is defined in Section 2(q) of FIFRA, 7 U.S.C. § 136(q).

44. Therefore, Respondent's sale and distribution of Ortho Malathion 50 Insect

Spray from on or about November 12, 2005 through on or about December 31, 2008 constitutes distribution and sale of a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Ortho Weed B Gon Weed Killer for Lawns Concentrate

45. From on or about November 16, 2004 through on or about December 31, 2008, Trimec Herbicide, was a registered pesticide, EPA Reg. No. 2217-570, with an EPA accepted label dated May 15, 2003.

46. A June 2001 Notice of Supplemental Distribution under 40 C.F.R. § 152.132 allowed Respondent to distribute Trimec Herbicide under the brand name, Ortho Weed B Gon Weed Killer for Lawns Concentrate, EPA Reg. No. 2217-570-239.

47. From on or about November 16, 2004 through on or about December 31, 2008, Respondent distributed or sold Ortho Weed B Gon Weed Killer for Lawns Concentrate (SKU 039681025) with labeling which did not include all the information required by the EPA accepted label including, among other things, directions for first aid and storage and disposal.

48. Because Respondent's label on Ortho Weed B Gon Weed Killer for Lawns Concentrate did not contain warning or caution statements which may have been necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), adequate to protect health and the environment and further bore a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading, Respondent's product was "misbranded" as that term is defined in Section 2(q) of FIFRA, 7 U.S.C. § 136(q).

49. Therefore, Respondent's sale and distribution of Ortho Weed B Gon Weed

Killer for Lawns Concentrate from on or about November 16, 2004 through on or about December 31, 2008 constitutes distribution and sale of a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Ortho Home Defense Max,

50. From on or about May 10, 2007 through on or about June 30, 2008, Ortho Home Defense Indoor and Outdoor Insect Killer was a registered pesticide, EPA Reg. No. 239-2663, with an EPA accepted label dated November 9, 2005.

51. From on or about May 10, 2007 through on or about June 30, 2008, Respondent distributed or sold Ortho Home Defense Max (SKUs: 019501008, 019521005, and 019531005) with labeling which did not include all the information required by the EPA accepted label including, among other things, directions for application and use.

52. Because Respondent's label on Ortho Home Defense Max bore a statement, design or graphic representation relative thereto or to its ingredients which was false or misleading, Respondent's product was "misbranded" as that term is defined in Section 2(q) of FIFRA, 7 U.S.C. § 136(q).

53. Therefore, Respondent's sale and distribution of Ortho Home Defense Max from on or about May 10, 2007 through on or about June 30, 2008 constitutes distribution and sale of a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Ortho ProSelect Roach, Ant & Spider Killer

54. From on or about December 16, 2005 through on or about December 31, 2008, ORTHO ProSelect Roach, Ant & Spider Killer was a registered pesticide, EPA Reg. No.

239-2679, with an EPA accepted label dated June 15, 2004.

55. From on or about December 16, 2005 through on or about December 31, 2008, Respondent distributed or sold ORTHO ProSelect Roach, Ant & Spider Killer (SKU 012431020) with labeling which did not include all the information required by the EPA accepted label including, among other things, complete directions for first aid.

56. Because Respondent's labeling for ORTHO ProSelect Roach, Ant & Spider Killer, did not contain warning or caution statements which may have been necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), adequate to protect health and the environment, and labeling bearing a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading, Respondent's product is "misbranded" as that term is defined in Section 2(q) of FIFRA, 7 U.S.C. § 136(q).

57. Therefore, Respondent's sale and distribution of ORTHO ProSelect Roach, Ant & Spider Killer from on or about December 16, 2005 through on or about December 31, 2008 constitutes distribution and sale of a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Ortho Bug B Gon Garden & Landscape Ready-to-Use Insect Killer Dust

58. From on or about January 1, 2005 through on or about December 31, 2007, Unicorn Permethrin Dust, also known as Permethrin Dust was a registered pesticide, EPA Reg. No. 28293-126, with EPA accepted labels dated January 23, 2002 and April 7, 2005.

59. An August 2002 Notice of Supplemental Distribution under 40 C.F.R.§152.132 allowed Respondent to distribute Permethrin Dust under the brand name Ortho Bug B Gon Garden & Landscape Ready-to-Use Insect Killer Dust, EPA Reg. No. 28293-126-239.

60. From on or about January 1, 2005 through on or about December 31, 2007, Respondent distributed or sold Ortho Bug B Gon Garden & Landscape Ready-to-Use Insect Killer Dust (SKU 017201026), with labeling which included language not authorized by the EPA accepted labels including a statement that the product was "specially formulated for residential use."

61. Because Respondent's labeling for Ortho Bug B Gon Garden & Landscape Ready-to-Use Insect Killer Dust bore a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading, Respondent's product is "misbranded" as that term is defined in Section 2(q) of FIFRA, 7 U.S.C. § 136(q).

62. Therefore, Respondent's sale and distribution of Ortho Bug B Gon Garden & Landscape Ready-to-Use Insect Killer Dust from on or about January 1, 2005 through on or about December 31, 2007 constitutes distribution and sale of a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Ortho Orthonex Insect & Disease Control Concentrate

63. From on or about October 6, 2003 through on or about December 31, 2008, Ortho Orthonex Insect & Disease Control Concentrate was a registered pesticide, EPA Reg. No. 239-2594, with EPA accepted labels dated February 24, 1997, December 31, 2003 and May 14, 2004.

64. From on or about October 6, 2003 through on or about December 31, 2008,

Respondent distributed or sold Ortho Orthonex Insect & Disease Control Concentrate (SKU 035511025) with labeling which did not include all the information required by one or more of the EPA accepted labels including, among other things, a statement that the product was only for residential use. In addition, Respondent's labeling included a statement not authorized by the EPA accepted labels indicating that the product contained a systemic mitacide.

65. Because Respondent's labeling for Ortho Orthonex Insect & Disease Control Concentrate bore a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading, Respondent's product is "misbranded" as that term is defined in Section 2(q) of FIFRA, 7 U.S.C. § 136(q).

66. Therefore, Respondent's sale and distribution of Ortho Orthonex Insect & Disease Control Concentrate from on or about October 6, 2003 through on or about December 31, 2008 constitutes distribution and sale of a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Bug-B-Gon MAX Insect Killer Concentrate

67. From on or about October 23, 2006 through on or about December 31, 2008, EVERCIDE Emulsifiable Concentrate 2668 was a registered pesticide, EPA Reg. No. 1021-1645, with an EPA accepted label dated February 22, 2005

68. A July 2003 Notice of Supplemental Distribution under 40 C.F.R. §152.132 allowed Respondent to distribute EVERCIDE Emulsifiable Concentrate 2668 under the brand name, ORTHO Bug-B-Gon MAX Lawn & Garden Insect Killer Concentrate, EPA Reg. No. 1021-1645-239.

69. From on or about October 23, 2006 through on or about December 31, 2008, Respondent distributed or sold ORTHO Bug-B-Gon MAX Lawn & Garden Insect Killer Concentrate (SKU 017551030) with labeling which did not include all the information required by the EPA accepted label including, among other things, directions for use, directions for first aid, information on hazards to human and animals and precautionary statements.

70. Because Respondent's labeling for ORTHO Bug-B-Gon MAX Lawn & Garden Insect Killer Concentrate did not contain warning or caution statements which may have been necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), adequate to protect health and the environment, and labeling bearing a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading, Respondent's product is "misbranded" as that term is defined in Section 2(q) of FIFRA, 7 U.S.C. § 136(q).

71. Therefore, Respondent's sale and distribution of ORTHO Bug-B-Gon MAX Lawn & Garden Insect Killer Concentrate from on or about October 23, 2006 through on or about December 31, 2008 constitutes distribution and sale of a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Basic Solutions Weed & Grass Killer Concentrate

72. From on or about January 11, 2005 through on or about December 31, 2008, Glyphosate 18% Concentrate was a registered pesticide, EPA Reg. No. 71995-6, with an EPA accepted label dated July 10, 2003.

73. A June 2003 Notice of Supplemental Distribution under 40 C.F.R. §152.132

allowed Respondent to distribute Glyphoshate 18% Concentrate under the brand name, Basic Solutions Weed & Grass Killer Concentrate, EPA Reg. No. 71995-6-239.

74. From on or about January 11, 2005 through on or about December 31, 2008, Respondent distributed or sold Basic Solutions Weed & Grass Killer Concentrate (SKU 063654020) with labeling which did not include all the information required by the EPA accepted label including, among other things, complete directions for first aid and direction for storage and disposal.

75. Because Respondent's labeling for Basic Solutions Weed & Grass Killer Concentrate did not contain warning or caution statements which may have been necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), adequate to protect health and the environment, and labeling bearing a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading, Respondent's product is "misbranded" as that term is defined in Section 2(q) of FIFRA, 7 U.S.C. § 136(q).

76. Therefore, Respondent's sale and distribution of Basic Solutions Weed & Grass Killer Concentrate from on or about January 11, 2005 through on or about December 31, 2008 constitutes distribution and sale of a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Brush-B-Gon Poison Ivy & Poison Oak Killer

77. From on or about February 8, 2008 through on or about December 31, 2008, Brush-B-Gon Poison Ivy & Poison Oak Killer was a registered pesticide, EPA Reg. No. 239-2587, with an EPA accepted label dated August 7, 2006.

78. From on or about February 8, 2008 through on or about December 31, 2008, Respondent distributed or sold Brush-B-Gon Poison Ivy & Poison Oak Killer (SKU 043311025) with labeling which did not include all the information required by the EPA accepted label including, among other things, directions for use, first aid, information on hazards to humans and animals, and precautionary statements.

79. Because Respondent's labeling for Brush-B-Gon Poison Ivy & Poison Oak Killer did not contain warning or caution statements which may have been necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), adequate to protect health and the environment, and labeling bearing a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading, Respondent's product is "misbranded" as that term is defined in Section 2(q) of FIFRA, 7 U.S.C. § 136(q).

80. Therefore, Respondent's sale and distribution of Brush-B-Gon Poison Ivy & Poison Oak Killer from on or about February 8, 2008 through on or about December 31, 2008 constitutes distribution and sale of a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Contrast 70 WSP

81. From on or about January 1, 2006 through on or about December 31, 2007 ProStar® 70 WP Fungicide was a registered pesticide, EPA Reg. No. 432-1223, with EPA accepted labels dated July 20, 2001 and June 28, 2007.

82. An August 2000 Notice of Supplemental Distribution under 40 C.F.R. § 152.132 allowed Respondent to distribute ProStar® 70 WP Fungicide under the brand name Contrast

70 WSP, EPA Reg. No. 432-1223-58185.

83. From on or about January 1, 2006 through on or about December 31, 2007, Respondent distributed, or sold Contrast 70 WSP (SKU 95216) with labeling which did not include all of the information required by the EPA accepted labels including, among other things, directions for application, directions for use, and directions for personal protective equipment.

84. Because Respondent's labeling for Contrast 70 WSP did not contain warning or caution statements which may have been necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), adequate to protect health and the environment, and labeling bearing a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading, Respondent's product is "misbranded" as that term is defined in Section 2(q) of FIFRA, 7 U.S.C. § 136(q).

85. Therefore, Respondent's sale and distribution of Contrast 70 WSP from on or about January 1, 2006 through on or about December 31, 2007 constitutes distribution and sale of a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Differing Claims Allegations

Bug-B-Gon MAX Insect Killer Spray

86. From on or about January 1, 2005 through on or about December 31, 2006, Evercide Emulsifiable Concentrate 28061 was a registered pesticide, EPA Reg. No. 1021-1778, with an EPA accepted label dated September 22, 2003.

87. A July 2003 Notice of Supplemental Distribution under 40 C.F.R. § 152.32

allowed Respondent to distribute Evercide Emulsifiable Concentrate 28061 under the brand name, ORTHO Bug-B-Gon MAX Lawn & Garden Insect Killer Ready-To-Spray, EPA Reg. No. 1021-1778-239.

88. From on or about January 1, 2005 through on or about December 31, 2006, Respondent distributed or sold ORTHO Bug-B-Gon MAX Lawn & Garden Insect Killer Ready-To-Spray (SKU 017551030) with claims on the labeling regarding use of this pesticide as a Diazinon replacement that EPA had not accepted.

89. Therefore, from on or about January 1, 2005 through on or about December 31, 2006, Respondent distributed or sold to persons ORTHO Bug-B-Gon MAX Lawn & Garden Insect Killer Ready-To-Spray with claims that substantially differed from claims made as part of the statement required in connection with the product registration under Section 3 of FIFRA, 7 U.S.C. § 136a in violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

Ortho Home Defense Max

90. From on or about January 1, 2006 through on or about June 30, 2008, Ortho Home Defense Indoor and Outdoor Insect Killer, also known as Ortho Home Defense Max was a registered pesticide, EPA Reg. No. 239-2663, with an EPA accepted label dated November 9, 2005.

91. From on or about January 1, 2007 through on or about June 30, 2008, Respondent distributed or sold Ortho Home Defense Max with claims on the labeling regarding an "advanced formula" (SKU 019521005), "advanced technology (SKU 019531005), an "Invisishield™ Bug Barrier", an "Ortho & Your Environment" statement

(SKUs: 019501008, 019521005 and 019531005), and efficacy statements that EPA had not accepted.

92. Therefore, from on or about January 1, 2007 through on or about June 30, 2008, Respondent distributed or sold to persons Ortho Home Defense Max with claims that substantially differed from claims made as part of the statement required in connection with the product registration under Section 3 of FIFRA, 7 U.S.C. § 136a in violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

Ortho Bug-B-Gon MAX Lawn & Garden Insect Killer Concentrate

93. From on or about January 1, 2005 through on or about December 31, 2008, EVERCIDE Emulsifiable Concentrate 2668 was a registered pesticide, EPA Reg. No. 102I-1645, with an EPA accepted labels dated January 29, 1999 and February 22, 2005.

94. A July 2003 Notice of Supplemental Distribution under 40 C.F.R. § 152.132 allowed Respondent to distribute EVERCIDE Emulsifiable Concentrate 2668 under the brand name, ORTHO Bug-B-Gon MAX Lawn & Garden Insect Killer Concentrate, EPA Reg. No. 1021-1645-239.

95. From on or about January 1, 2005 through on or about December 31, 2008, Respondent distributed or sold ORTHO Bug-B-Gon MAX Lawn & Garden Insect Killer Concentrate (SKU 017531030) with claims on the labeling regarding use of this pesticide as a Diazinon replacement that EPA had not accepted.

96. Therefore, from on or about January 1, 2005 through on or about December 31, 2008, Respondent distributed or sold to persons ORTHO Bug-B-Gon MAX Lawn & Garden Insect Killer Concentrate with claims that substantially differed from claims made as part of

the statement required in connection with the product registration under Section 3 of FIFRA, 7 U.S.C. § 136a in violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

Basic Solutions Weed & Grass Killer

97. From on or about January 1, 2005 through on or about July 31, 2008, Glyphosate 18% Concentrate was a registered pesticide, EPA Reg. No. 71995-6, with an EPA accepted label dated July 10, 2003.

98. A June 2003 Notice of Supplemental Distribution under 40 C.F.R. § 152.132 allowed Respondent to distribute Glyphosate 18% Concentrate under the brand name, Basic Solutions Weed & Grass Killer Concentrate, EPA Reg. No. 71995-6-239.

99. From on or about January 1, 2005 through on or about July 31, 2008, Respondent distributed or sold Basic Solutions Weed & Grass Killer Concentrate with claims on the labeling regarding product efficacy that EPA had not accepted.

100. Therefore, from on or about January 1, 2005 through on or about December 31, 2007, Respondent distributed or sold to persons Basic Solutions Weed & Grass Killer Concentrate EPA Reg. No. 71995-6-239 with claims that substantially differed from claims made as part of the statement required in connection with the product registration under Section 3 of FIFRA, 7 U.S.C. § 136a in violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

Cancelled/Unregistered Allegations

ORTHO Bug-B-Gon Multi-Purpose Insect Killer Ready-To-Use Granules

101. From on or about January 1, 2001 through on or about February 17, 2006,

Granular Carbaryl Insecticide was a registered pesticide, EPA Reg. No. 28293-233.

102. An August 2001 Notice of Supplemental Distribution under 40 C.F.R. § 152.132 allowed Respondent to distribute Granular Carbaryl Insecticide under the brand name, ORTHO Bug-B-Gon Multi-Purpose Insect Killer Ready-To-Use Granules. An October 2002 Notice of Supplemental Distribution under 40 C.F.R. § 152.132 allowed Respondent to distribute Granular Carbaryl Insecticide under the brand name, ORTHO Bug-B-Gon Garden & Landscape RTU Insect Killer Granules, EPA Reg. No. 28293-233-239.

103. On or about February 17, 2006, EPA issued a final cancellation order for the registration for Granular Carbaryl Insecticide, EPA Reg. No. 28293-233.

104. After February 17, 2006, Granular Carbaryl Insecticide was not registered as a pesticide under Section 3 of FIFRA, 7 U.S.C. §136a.

105. From on or about August 18, 2006 through on or about December 31, 2008, Respondent distributed or sold a pesticide bearing EPA Reg. No. 28293-233-239 and the brand name ORTHO Bug B Gon Multi-Purpose Insect Killer Ready-To-Use Granules/ORTHO Bug B Gon Lawn & Soil Lawn Insect Killer With Grub Control.

106. Therefore, from on or about August 18, 2006 through on or about December 31, 2008, Respondent distributed or sold to persons a cancelled and unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Contrast 70 WSP

107. From on or about January 1, 1999 through on or about February 21, 2000, ProStar 70 WP Fungicide was a registered pesticide, EPA Reg. No. 45639-208.

108. An August 1999 Notice of Supplemental Distribution under 40 C.F.R. § 152.132

allowed Respondent to distribute ProStar® 70 WP Fungicide under the brand name, Contrast 70 WSP, EPA Reg. No. 45639-208-58185.

109. Beginning on or about February 22, 2000, EPA Reg. No. 45639-208-58185 was no longer valid and Contrast 70 WSP was not registered as a pesticide under Section 3 of FIFRA, 7 U.S.C. §136a.

110. From on or about October 6, 2003 through on or about December 31, 2007, Respondent distributed or sold Contrast 70 WSP.

111. Therefore, from on or about October 6, 2003 through on or about December 31, 2007, Respondent distributed or sold an unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Differing Composition

Banrot Fungicide

112. From on or about January 1, 2006 through on or about December 31, 2008, Banrot Broad Spectrum Fungicide 40% Wettable Powder , also known as Banrot Fungicide, was a registered pesticide, EPA Reg. No. 58185-10, with an EPA accepted composition dated April 16, 1993.

113. From on or about January 1, 2006 through on or about December 31, 2008, Respondent distributed or sold Banrot Fungicide with a composition that differed from the composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

114. Therefore, from on or about January 1, 2006 through on or about December 31, 2008, Respondent distributed or sold to persons a registered pesticide Banrot Fungicide the

composition of which differed at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a in violation of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C).

Duosan Fungicide

115. From on or about January 1, 2006 through on or about December 31, 2009, Duosan WSB Wettable Powder Turf and Ornamental Fungicide, also known as Duosan Fungicide was a registered pesticide, EPA Reg. No. 58185-31, with an EPA accepted composition dated July 8, 1996.

116. From on or about January 1, 2006 through on or about December 31, 2009, Respondent distributed or sold Duosan Fungicide (SKU 95735) with a composition that differed from its composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

117. Therefore, from on or about January 1, 2006 through on or about December 31, 2009, Respondent distributed or sold to persons a registered pesticide Duosan Fungicide the composition of which differed at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a in violation of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C).

Weed B Gon Weed Killer for Lawns Concentrate

118. From on or about November 19, 2005 through on or about December 31, 2008,

Trimec Herbicide was a registered pesticide, EPA Reg. No. 2217-570, with an EPA accepted composition dated May 18, 2004.

119. A June 2001 Notice of Supplemental Distribution under 40 C.F.R. § 152.132 allowed Respondent to distribute to distribute Trimec Herbicide under the brand name, Weed B Gon Weed Killer for Lawns Concentrate, EPA Reg. No. 2217-570-239.

120. From on or about November 19, 2005 through on or about December 31, 2008, Respondent distributed or sold Weed B Gon Weed Killer for Lawns Concentrate (SKU 039681025) with a composition that differed from the composition described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

121. Therefore from on or about November 19, 2005 through on or about December 31, 2008, Respondent distributed or sold to persons a registered pesticide Weed B Gon Weed Killer Concentrate, EPA Reg. No. 2217-570, in violation of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C).

Total Kill Lawn Weed Killer

122. From on or about January 1, 2006 through on or about December 31, 2008, Weed-Be-Gon Spot Weed Killer (alternate trade names including Total Kill Lawn Weed Killer and Basic Solutions Lawn Weed Killer), was a registered pesticide, EPA Reg. No. 239-2691 with an EPA accepted composition dated August 4, 2004.

123. From on or about January 1, 2006 through on or about December 31, 2008, Respondent distributed or sold Total Kill Lawn Weed Killer with a composition that differed from the composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

124. Therefore from on or about January 1, 2006 through on or about December 31, 2008, Respondent distributed or sold to persons a registered pesticide Total Kill Lawn Weed Killer, EPA Reg. No. 239-2691, in violation of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C).

VII. Civil Penalty

125. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is $6.05 million. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the alleged violations, and Respondent's agreement to perform a $2 million dollar supplemental environmental project. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

126. Within 30 days after the effective date of this CAFO, Respondent must pay a $6.05 million civil penalty for the alleged FIFRA violations by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name, the docket number of this CAFO and the billing document number.

127. Respondent must send a notice of payment that states Respondent's name,

complete address, the case docket number and the billing document number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Brian Barwick (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604]

128. This civil penalty is not deductible for federal tax purposes.

129. If Respondent does not pay timely the civil penalty, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136*l*(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

130. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a $15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

VIII. Supplemental Environmental Project

131. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by facilitating the acquisition, restoration, and conservation of land. The SEP will eliminate the direct application of pesticides to the land identified in the Attachment and mitigate pesticides in runoff received from adjacent land. The scope, nature and schedule for the SEP are set forth in the Attachment to this CAFO.

132. Respondent must complete the SEP pursuant to the schedule set forth in the Attachment.

133. Respondent must spend at least $2 million dollars to complete the requirements of the SEP set forth in the Attachment.

134. Respondent certifies as follows:

> I certify that The Scotts Miracle-Gro Company or its subsidiaries is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that The Scotts Miracle-Gro Company or its subsidiaries has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.
>
> I certify that The Scotts Miracle-Gro Company or its subsidiaries is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

135. EPA may monitor Respondent's compliance with this CAFO's SEP requirements.

136. Respondent must submit the reports required by the scope of work to EPA according to the schedule in the Attachment.

137. Respondent must submit a SEP completion report to EPA pursuant to the schedule set forth in the Attachment. This report must contain the following information:

a. Detailed description of the SEP as completed including the activities and associated costs for the acquisition, restoration, and endowment aspects of the SEP;

b. Description of any operating problems and the actions taken to correct the problems;

c. Documentation such as bills of sales and cancelled checks showing the amount Respondent spent implementing the SEP and copies of titles for the acquired properties as well as conservation easements;

d. Certification that Respondent has completed the SEP in compliance with this CAFO; and

e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

138. Respondent must submit all SEP notices and reports required by this CAFO by first class mail to Terence Bonace of the Region V Pesticides and Toxics Compliance Section, or such other person as EPA designates in writing.

139. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

> I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

140. Following receipt of the SEP completion report described in paragraph 137, above, EPA must notify Respondent in writing that:

a. It has satisfactorily completed the SEP and the SEP report;

b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent Scotts sixty (60) days to correct the deficiencies; or

c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 142 of this CAFO.

141. If EPA exercises options b or c, above,

a. Respondent may object to the deficiency notice within 10 days of receiving the notice.

b. The parties will use their best efforts to informally and in good faith resolve all disputes or differences of opinion. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement to resolve the objection, unless the period is extended by agreement of the Parties.

c. If the parties cannot reach an informal agreement, Respondent may pursue the matter formally by placing its objections in writing within 15 days of the termination of informal negotiations. A written objection must state the specific points in dispute, the basis for Respondent's position, and any matters which it considers necessary for determination.

d. EPA will give Respondent a written response to its objection within 30 days of its receipt of Respondent's objection.

e. EPA and Respondent will in good faith attempt to resolve the dispute through formal negotiations within 21 days, or a longer period if agreed in writing by the parties, of Respondent's receipt of EPA's written response.

f. If the parties are unable to reach an agreement through formal negotiations, within 14 business days after any formal negotiations end, Respondent and

EPA may submit additional written information to the Director of the Land and Chemicals Division, EPA Region 5. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to contain all statements of position and any other documentation submitted pursuant to this Section. EPA will allow timely submission of relevant supplemental statements of position by the parties to the dispute. Based on the record, EPA will respond to Respondent's arguments and evidence and provide a written decision on the dispute signed by the Director of the Land and Chemicals Division, EPA Region 5.

g. Respondent will comply with the decision of the Director of the Land and Chemicals Division. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 142, below.

142. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO including the schedule in the Attachment, Respondent must pay a penalty of $2 million dollars. Upon payment under this subparagraph, the obligation of Respondent to complete the SEP shall terminate.

b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 133 of this CAFO, Respondent will not be liable for any stipulated penalty under subparagraph a, above.

c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 133 of this CAFO, Respondent must pay a penalty that is the difference between the amount spent and $2 million dollars.

d. If Respondent did not submit timely the SEP completion report or any other report required by the Attachment, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

Penalty per violation per day	Period of violation
$250	1st through 14th day
$500	15 through 30th day
$1,000	31st day and beyond

143. Stipulated penalties shall continue to accrue as provided in paragraph 142 above during any dispute but need not be paid until the dispute is resolved by agreement or a decision by the Director of the Lands and Chemicals Division.

144. EPA's determinations of whether Respondent satisfactorily completed the SEP and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

145. Respondent must pay any stipulated penalties within fifteen (15) days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 126, above, and will pay interest, handling charges and penalties on any overdue amounts.

146. Any public statement that Respondent makes referring to the SEP must include the following language, "The Scotts Miracle-Gro Company undertook this project as part of a settlement of the United States Environmental Protection Agency's enforcement action against it for alleged violations of Sections 12(a)(1)(A), (B), (C) and (E) of FIFRA, 7 U.S.C. § 136j(a)(1)(A),(B), (C) and (E).

147. If any event occurs or has occurred that may delay the performance of any obligation under this CAFO's SEP provisions, whether or not caused by a force majeure event, the Respondent shall provide notice orally and by electronic or facsimile transmission

to EPA Region 5 within ten (10) calendar days of when the Respondent first knew that the event might cause a delay, where this time period would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until 11:59 pm the next working day. Within fifteen (15) calendar days thereafter, the Respondent shall provide in writing to EPA Region 5 an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the rationale for attributing such delay to a force majeure event if it intends to assert such a claim. The Respondent shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the Respondent from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The Respondent shall be deemed to know of any circumstance of which the Respondent, any entity controlled by the Respondent, or the Respondent's contractors knew or should have known.

148. Respondent has the burden of proving that circumstances beyond its control or, a force majeure event, caused or may cause a delay in completing the SEP. For the purposes of completing the SEP, a "force majeure event" is defined as any event arising from causes beyond the control of the Respondent, its contractors or any entity controlled by the Respondent that prevents or delays the performance of any obligation in completing this SEP despite all reasonable efforts by the Respondent to fulfill the obligation. The requirement that Respondent exercise best efforts to fulfill the SEP obligation includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any

such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. Force Majeure does not include increased costs for completing the SEP or the Respondent's financial inability to perform any obligation under this CAFO.

149. Increased costs for completing the SEP will not be a basis for an extension of time. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

150. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the SEP obligations under this CAFO that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify the Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

151. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Respondent in writing of its decision.

152. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

X. General Provisions

153. This CAFO resolves only Respondent's liability for federal civil penalties for the alleged violations and facts alleged in this CAFO.

154. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

155. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

156. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

157. The terms of this CAFO bind Respondent, its successors and assigns.

158. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

159. Each party agrees to bear its own costs and attorneys fees, in this action.

160. This CAFO constitutes the entire agreement between the parties.

In the Matter of:
The Scotts Miracle-Gro Company

August 31, 2012
Date

Vincent C. Brockman
Executive Vice President and General Counsel
Scotts Miracle-Gro Company

United States Environmental Protection Agency, Complainant

September 5, 2012
Date

Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
The Scotts Miracle-Gro Company
Docket No.
FIFRA-05-2012-0024

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

September 5, 2012
Date

Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

RECEIVED
SEP 07 2012
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing was served on the Regional Hearing Clerk, U.S. EPA Region 5, and that true and correct copy was sent by and first class mail on September 7, 2012 to:

Steven P. Solow
Katten Muchin Rosenman
LLP 2900 K Street NW,
North Tower Suite 200
Washington, DC 20007-5118

Dated this 7th day of September 2012

Peter Felitti
Assistant Regional Counsel

FIFRA-05-2012-0024

RECEIVED
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U.S. ENVIRONMENTAL
PROTECTION AGENCY

ATTACHMENT

Attachment: Milestones, accomplishments, schedule for SEP completion

In association with the Black Swamp Conservancy and in accordance with the following schedules, Respondent shall provide funds to acquire, restore, and conserve:

1. A 75 acre addition to the existing 113 acre Meadowbrook Marsh Preserve, located north of Bayshore Road between Engelbeck Road and Hartshorn Road in Danbury Township, Ottawa County, Ohio. This 75 acre property includes 40 acres of wetlands, and 35 adjacent non-wetland acres of associated upland buffer, which are primarily grassland. Once acquired, the neighboring Danbury Township will take ownership and become responsible for all restoration efforts. The Black Swamp Conservancy will hold a conservation easement of the property and become responsible for the property's stewardship.

Activity	**Completion Date**	**Cost**
Acquisition of property	1/31/13	$ 475,500
Transfer of title to Danbury Township	1/31/13	
Recording of conservation easement to Black Swamp Conservancy	1/31/13	
Establish endowment for future maintenance and improvements	12/31/12	$ 23,000
Administrative Costs of Project (*e.g.*, attorney costs related to filing easements or staff time for reporting requirements)		$ 8,900
	Total:	$ 507,400

2. A 167 acre addition to the existing 292 acre Forrest Woods Nature Preserve, currently owned by Black Swamp Conservancy, located west of County Road 73 and north and south of County Road 192, Crane Township, Paulding County, Ohio. Of the 167 acre addition, 110 acres are in row crop agriculture and 6 acres are grazed by cattle. Restoration of these 116 agricultural acres will be: 44 acres to forest and 72 acres to grassland. Protection of the entire 167 acres will be as part of Black Swamp Conservancy's Forrest Woods Nature Preserve.

Activity	**Completion Date**	**Cost**
Acquisition of 167 acre addition with title held by Black Swamp Conservancy	1/31/13	$ 710,000
Commence restoration of 116 acres from agricultural to forest and grassland including: restoration of natural hydrology and topography, by cutting, smashing and/		

or plugging all functional drainage tiles; restoration of micro-topography, which entails creating disturbances to the soil that will result in shallow ruts that will evolve into vernal pools that will create breeding habitats for amphibians and macro-invertebrates integral to the ecology of northwest Ohio.		
Completion of restoration activities :	12/31/13	$ 90,000
Fund endowment for future maintenance and improvements	12/31/12	$ 200,000
Administrative Costs of Project (*e.g.*, attorney costs related to filing easements or staff time for reporting requirements)		$ 8,800
	Total:	$ 1,008,800

3. A 60 acre nature preserve ("Water's Edge Preserve") to be owned and operated by the Black Swamp Conservancy and located along the Sandusky "State Scenic" River on County Road 201A in Ballville Township, Ohio. This preserve will include 2,250 ft. along the Sandusky River, a small Sandusky River island (.8 acre), and 52 acres of land restored from agricultural row crop use to forest.

Acquisition of 60 acre addition with title held by Black Swamp Conservancy	1/31/13	$ 315,000
Commence restoration of 52 acres from agricultural to forest including: 44 acres of the 52 acres will be restored from floodplain to forest, which will entail the planting of 400 twelve inch trees and 10 five foot trees per acre (March 2013-May 2013); invasive species control will entail removal of woody invasive species (*e.g.*, multiflora rose, autumn olive, amur honeysuckle), as other species will eventually be shaded out by the forest.		
Completion of restoration activities:	12/31/13	$ 40,000
Fund endowment for future maintenance and improvements	12/31/12	$ 120,000
Administrative Costs of Project (*e.g.*, attorney costs related to filing easements or staff time for reporting requirements)		$ 8,800
	Total	$ 483,800

Submittal of SEP Progress Letter Report (status of the endowments, land acquisition, conservation easement and any completed or planned restoration activities).	4/01/13
Submittal of SEP Completion Report	2/28/14

For each project above, the stewardship endowment will be classified as a "Stewardship Fund-Restricted," which will contain funds designated exclusively for the Meadowbrook Marsh Preserve, Forrest Woods Nature Preserve Expansion, and Water's Edge Preserve respectively. These funds will be used for easement monitoring and enforcement expenses associated with each property. However, it is Black Swamp Conservancy's policy that its Board of Trustees may pass a resolution by majority vote allowing an exception to the restriction of funding to one property when an undue circumstance arises.

Currently, the Conservancy's endowments are held in a money market savings account at Huntington National Bank and a brokerage account with Key Investment Services. Key Investment Services recommends investments that are in line with the Conservancy's investment policy, which restricts "investments to cash, cash equivalents and high-quality U.S. government bonds." However, the Conservancy has recently solicited proposals from investment managers to establish a more aggressive investment strategy. The Treasurer of the Conservancy's Board of Trustees is the person primarily responsible for financial decision-making related to stewardship endowments. The Treasurer provides a financial report regarding endowments to the Conservancy's Executive Committee on a monthly basis and for approval of the Board of Trustees on a bi-monthly basis.

For each of the projects described above, Respondent shall require Black Swamp Conservancy to submit to Respondent records documenting costs incurred for acquisition of the property and restoration activities, recording deeds and easements, and a certification that the endowments have been established and the amount of the endowments. Respondent shall also require Black Swamp Conservancy to submit to Respondent copies of the filed title deeds and easements. Respondent shall retain such records provided from Black Swamp Conservancy for three years after the SEP completion report date. Upon request by U.S. EPA, Respondent shall make such records available for review, if such records were not included in or part of the SEP completion report.