



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION IX**

75 Hawthorne Street  
San Francisco, CA 94105

Sent by email

Michael Briansky  
Chief Executive Officer  
EcoMIGHT  
6538 Collins Ave Suite 403  
Miami Beach, FL 33141  
info@EcoMIGHT.com

Re: Advisory Letter

Dear Michael Briansky:

The U.S. Environmental Protection Agency (“EPA”) is issuing this advisory letter after becoming aware of concerning sample analysis results taken from two EcoMIGHT products: (1) ***W.O.W. (Whack Out Weeds!) Non-Selective Weed & Grass Killer*** and (2) ***ECOMIGHT-PRO Weed & Grass Killer***. The Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. §§ 136 to 136y, governs the production, sale, distribution, and use of pesticides in the United States. FIFRA Section 2(u), 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.” The term “pest” includes any weed, or any other form of terrestrial or aquatic plant as defined in FIFRA Section 2(t), 7 U.S.C. § 136(t).

The sample of ***W.O.W. (Whack Out Weeds!) Non-Selective Weed & Grass Killer*** was collected by the San Diego County Agriculture, Weights and Measures, while the sample of ***ECOMIGHT-PRO Weed & Grass Killer*** was collected by the Ventura County Agricultural Commissioner. Both samples were analyzed by the California Department of Food and Agriculture Center for Analytical Chemistry. The two EcoMIGHT products claim to be exempt from FIFRA under Section 25(b), 7 U.S.C. § 136w(b), specifically the Minimum Risk Pesticides criteria at 40 CFR Part 152.25(f).

The samples were found to contain the following pesticide ingredients and amounts:

***W.O.W. (Whack Out Weeds!) Non-Selective Weed & Grass Killer***

- Glyphosate – 192.0 mg/mL
- Cypermethrin – 0.1 ppm
- Bifenthrin – 2.1 ppm
- Permethrin – 20.0 ppm
- Carbaryl – 30.0 ppm

### ***ECOMIGHT-PRO Weed & Grass Killer***

- Glyphosate – 160 mg/mL
- Bifenthrin – 0.037 ppm
- Permethrin – 0.12 ppm

Please be advised that 40 CFR Part 152.25(f) specifies six criteria which must be met to claim exemption under FIFRA Section 25(b), 7 U.S.C. § 136w(b), as a Minimum Risk Pesticide<sup>1</sup>. These criteria list specific “active” [see 40 CFR Part 152.25(f)(1)] and “inert” [see 40 CFR Part 152.25(f)(2)] pesticide ingredients that are eligible for exemption, all of which must be listed on the product label [see 40 CFR Part 152.25(f)(3)(i)]. None of the ingredients found in the samples of ***W.O.W. (Whack Out Weeds!) Non-Selective Weed & Grass Killer*** and ***ECOMIGHT-PRO Weed & Grass Killer*** are included on the active or inert ingredient lists at 40 CFR Part 152.25(f)(1) or 40 CFR Part 152.25(f)(2), respectively, and none of these ingredients are listed on the product labels.

The presence of non-exempt ingredients that are not listed on the product labels is very concerning and causes ***W.O.W. (Whack Out Weeds!) Non-Selective Weed & Grass Killer*** and ***ECOMIGHT-PRO Weed & Grass Killer*** to be considered unregistered pesticides. FIFRA Section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A) makes it unlawful to distribute or sell any pesticide not registered with EPA.

In addition, products qualifying as Minimum Risk Pesticides must not include any false and misleading labeling statements, including those listed in 40 CFR Parts 156.10(a)(5)(i) through (viii) [see 40 CFR Part 152.25(f)(3)(iii)]. An example of a false or misleading statement concerning the composition of the products is the omission of glyphosate and other pesticide ingredients, identified in the sample analysis results, on the product labels of ***W.O.W. (Whack Out Weeds!) Non-Selective Weed & Grass Killer*** and ***ECOMIGHT-PRO Weed & Grass Killer***. An example of a false or misleading statement concerning the safety of ***W.O.W. (Whack Out Weeds!) Non-Selective Weed & Grass Killer*** is the label claim “These ingredients make ECOMIGHT the safest pest and weed control products not only for the recipients of the sprays but the applicator as well!” Examples of false or misleading statements found on the EcoMIGHT website (<https://ecomight.com/>) concerning the safety of the products include: “safe for kids and pets”, “made without toxic chemicals”, “no toxic chemicals”, “best natural weedkiller”, “non-toxic”, “non-toxic and safe”, “EcoMIGHT products are formulated with 100% naturally organic ingredients so they are safe to be around (when used as directed)”, and the many variations of safety and efficacy claims comparing EcoMIGHT products to glyphosate products (including those in news articles and customer reviews). The presence of false or misleading statements causes ***W.O.W. (Whack Out Weeds!) Non-Selective Weed & Grass Killer*** and ***ECOMIGHT-PRO Weed & Grass Killer*** to be considered “misbranded” pesticides as defined at FIFRA Section 2(q)(1)(A), 7 U.S.C. § 136(q)(1)(A), if the “labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular”. FIFRA Section 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E) makes it unlawful to distribute or sell any pesticide which is misbranded.

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<sup>1</sup> For more information about Minimum Risk Pesticides criteria, please visit: <https://www.epa.gov/minimum-risk-pesticides/conditions-minimum-risk-pesticides>.

Furthermore, the presence of any active ingredients that are not listed on the product labels in itself causes *W.O.W. (Whack Out Weeds!) Non-Selective Weed & Grass Killer* and *ECOMIGHT-PRO Weed & Grass Killer* to be considered misbranded pesticides as defined at FIFRA Section 2(q)(1)(E), 7 U.S.C. § 136(q)(1)(E), if “any word, statement, or other information required . . . to appear on the label or labeling is not prominently placed thereon with such conspicuousness . . . and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.” FIFRA Section 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E) makes it unlawful to distribute or sell any pesticide which is misbranded.

Violations of FIFRA may be subject to penalties of not more than \$7,500 for each independently assessable violation (FIFRA Section 14(a)(1), 7 U.S.C. § 136l). You are hereby requested to take all necessary actions to ensure that ALL of your products which make pesticidal claims are in compliance with FIFRA and its implementing regulations. This applies to all of your company’s activities, both online and at retail stores.

If you have any questions concerning this Advisory Letter, please contact me at (415) 972-3982 or at [salazar.matt@epa.gov](mailto:salazar.matt@epa.gov).

Sincerely,

CLAIRE  
TROMBADORE

Digitally signed by  
CLAIRE TROMBADORE  
Date: 2021.07.30  
11:35:48 -07'00'

for

Matt Salazar, P.E.

Manager, Toxics Section

Enforcement & Compliance Assurance Division

ecc:

Donna Marciano, California Department of Pesticide Regulation

Alan Annicella, US EPA Region 4