



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

OCT 26 2007

Ref: 8 ENF-UFO

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert McCreless,
ACM-Texas, LLC
1419 West 29th Street
Loveland, Colorado 80538

RE: Order to Stop the Sale, Use or Removal of
NIC Pro Organic and CM Powdergard

Dear Mr. McCreless:

Please find enclosed an Order from the United States Environmental Protection Agency (EPA) concerning NIC Pro Organic and CM Powdergard. The enclosed Order requires that you stop the sale, distribution or use of the pesticides NIC Pro Organic and CM Powdergard. This Order shall extend to all quantities of these products wherever located within the ownership, control or custody of ACM-Texas, LLC. This Order is effective immediately.

Under Section 13 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 (k) (a), EPA has the authority to stop the sale, distribution or removal of any pesticide believed to be in violation of the statute. The term "pesticide" means "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests . . ." As explained in the enclosed Order, NIC Pro Organic and CM Powdergard are not registered pesticides and, therefore, cannot be sold or distributed for that purpose.

If you have questions concerning this Order, you are encouraged to contact Dennis Jaramillo from my staff at 303-312-6203

Sincerely,

Mark A. R. Chalfant, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosure



Printed on Recycled Paper

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

DOCKET NO. FIFRA-08-2008-0003

2007 OCT 26 AM 9:28

EPA REGION VIII
HEARING CLERK

TO:

ACM-Texas, LLC
1419 W. 29th Street
Loveland, Colorado 80538

STOP SALE, USE

OR REMOVAL ORDER

A. INTRODUCTION

1. The United States Environmental Protection Agency (EPA) is authorized under Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U. S.C. § 136(k)(a), to issue orders prohibiting the sale, use, or removal of any pesticide whenever there is reason to believe the pesticide is in violation of any provision of FIFRA.
2. The Director of the Technical Enforcement Program has been duly delegated the authority to issue such orders.
3. FIFRA § 12(a)(1)(A), 7 U.S.C. § 136(j)(a)(1)(A), provides that it shall be unlawful for any person in any state to distribute or sell to any person any unregistered pesticide under FIFRA Section 3, 7 U.S.C. § 136(a).
4. ACM- Texas, LLC sells and distributes the products, NIC Pro Organic and CM Powdergard, which make pesticidal claims including, but not limited to, claiming that the product is a "natural insect control".
5. NIC Pro Organic and CM Powdergard are not registered by EPA as pesticides.
6. NIC Pro Organic and CM Powdergard are not exempt from registration.
7. EPA hereby orders, ACM-Texas, LLC to stop the sale, use, or removal of NIC Pro Organic and CM Powdergard, EFFECTIVE IMMEDIATELY.

B. ORDER

8. This Order pertains to all quantities and sizes of NIC Pro Organic and CM Powdergard within the ownership, control, or custody of ACM-Texas, LLC that are associated with pesticidal claims. These products shall not be sold, used, or removed other than in accordance with the provisions of this Order or any further Stop Sale, Use, or Removal Order that may be issued in connection with NIC Pro Organic and CM Powdergard.

9. Any person violating the terms or provisions of this Order shall be subject to CIVIL or CRIMINAL PENALTIES or both as set forth in FIFRA § 14, 7 U.S.C. § 136(l).

10. This order shall be EFFECTIVE IMMEDIATELY upon receipt by any representative of ACM-Texas, LLC.

C. BASIS FOR ORDER

11. On December 7, 2006, EPA received a referral from the Texas State Attorney's office regarding NIC Pro Organic and CM Powdergard. Subsequently, an Enforcement Case Review (ECR) was performed by the Office of Pesticide Programs to determine compliance with FIFRA. According to the ECR, NIC Pro Organic and CM Powdergard are unregistered pesticides and, therefore, in violation of FIFRA. Although the label references an exemption under 40 CFR §152.25(f), this provision does not apply to NIC Pro Organic and CM Powdergard and does not exempt NIC Pro Organic and CM Powdergard from registration under FIFRA.

12. As the seller and distributor of pesticides, you are in violation of FIFRA § 12(a)(1)(A), 7 U.S.C. § 136(j)(a)(1)(A). This section provides in relevant part 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 FIFRA Section 3, 7 U.S.C. § 136(a).

13. NIC Pro Organic and CM Powdergard are in violation of 40 CFR 152.25(f)(3)(iii) for misleading statements on the label.

D. OTHER MATTERS

14. This Order specifically exempts the delivery of NIC Pro Organic and CM Powdergard to any authorized agent of the United States Government.

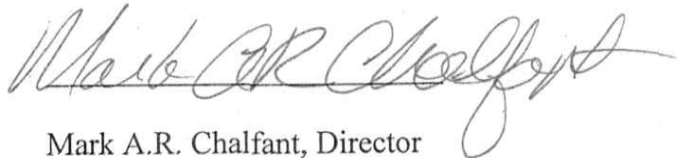
15. For resolution of this Order, you are encouraged to contact:

Dennis Jaramillo
US EPA Region 8 (ENF-UFO)
999 18th Street Suite 200
Denver, CO 80202

16. This Stop, Sale, Use or Removal Order must be supervised by the US EPA Region 8 Technical Enforcement Program unless you are otherwise notified.

10-25-2007

Date



Mark A.R. Chalfant, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

