



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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

MAR 6 2009

Ref: 8ENF-UFO

Certified Mail 7005-0390-0000-4847-2269

Return Receipt Requested

Chris Peterson, Store Manager
Home Depot
1740 Fleischli Parkway
Cheyenne, WY 82001

Re: Stop Sale, Use or Removal Order for
Uncle Ian's Mole and Gopher Repellant

Dear Mr. Peterson:

On February 5, 2009, an inspector from the United States Environmental Protection Agency (EPA) conducted an inspection of Home Depot located at 1740 Fleischli Parkway in Cheyenne, WY to determine compliance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). During the inspection, it was determined that Home Depot is selling a pesticide, 'Uncle Ian's Mole and Gopher Repellant', which is an unregistered pesticide and does not meet FIFRA Section 25(b) registration exemption in that the label contains false and misleading statements.

Uncle Ian's Mole and Gopher Repellent makes the following label claims:

- "Safe to use around kids, pets, plants, trees & wildlife"
- "Safe to use on lawns, gardens, and flower beds"
- "Works faster and better then the castor oil based repellents"
- 'Chili Powder' is not listed on the 4(a) list for minimum risk FIFRA Section 25(b) inert ingredients.

As a result of the above discrepancies, Home Depot is in violation of FIFRA § 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), which provides in relevant part that 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 136a of this title or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter.

Based on this violation EPA is issuing the enclosed Stop Sale, Use, Or Removal Order (Enclosure 1) pertaining to all Uncle Ian's Mole and Gopher Repellant under your control and

strongly recommend that your company take immediate steps to correct the problems with this product.

The Agency will monitor and supervise this action through the Office of Enforcement, Compliance & Environmental Justice, U.S. EPA Region VIII, 1595 Wynkoop Street, Denver, CO 80202. You are requested to contact Amy Hambrick at (303) 312-6883 to discuss your proposed follow-up. Regardless of your actions, the Agency is issuing a Stop Sale, Use or Removal Order (SSURO) pursuant to FIFRA Section 13, 7 U.S.C. § 136k, at this time and may also issue a civil administrative action pursuant to FIFRA § 14, 7 U.S.C. § 136l.

You have the opportunity to discuss this action with EPA. You are encouraged to present your views either orally or in writing. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A.R. Chalfant", is written over a light gray rectangular background.

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

Enclosures: Stop Sale, Use, or Removal Order

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2009 MAR -6 2:11

Home Depot)
1740 Fleischli Parkway)
Cheyenne, WY 82001)
_____)

**STOP SALE, USE, OR
REMOVAL ORDER**

DOCKET NO: FIFRA-08-2009-0002

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 pesticide that is not registered under section 136a of this title or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter.

4. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), the term "pesticide" includes "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest." Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), the term "pest" includes fungus, bacteria, and "other microorganisms." The regulations implementing FIFRA give further guidance on what constitutes a pesticidal purpose, stating that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if, among other things, the person who distributes or sells the substance "claims, states or implies (by labeling or otherwise)...that the substance...can or should be used as a pesticide," 40 C.F.R. § 152.15(a)(1). In addition, a substance is considered to be a pesticide requiring registration if the person who distributes or sells the substance "has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.

B. ORDER

5. EPA hereby orders Home Depot to stop the sale, use, or removal of Uncle Ian's Mole and Gopher Repellent, an unregistered pesticide, which is owned by, controlled by, or in the custody of Home Depot.

6. This Order pertains to all quantities and sizes of Uncle Ian's Mole and Gopher Repellent within the ownership, control, or custody of Home Depot. Uncle Ian's Mole and Gopher Repellent 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 to Home Depot in connection with Uncle Ian's Mole and Gopher Repellent.

7. 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. § 136f.

8. This order shall be EFFECTIVE IMMEDIATELY upon receipt by any representative of Home Depot.

C. BASIS FOR ORDER

9. On February 5, 2009, an inspector from the United States Environmental Protection Agency (EPA) conducted an inspection of Home Depot located at 1740 Fleischli Parkway in Cheyenne, WY to determine compliance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

10. During the inspection, the inspector determined that Home Depot is selling a pesticide, 'Uncle Ian's Mole and Gopher Repellent'.

11. Uncle Ian's Mole and Gopher Repellent is an unregistered pesticide and does not meet FIFRA Section 25(b) minimum risk pesticide registration exemption standards by having the label contain the following false and misleading statements:

- "Safe to use around kids, pets, plants, trees & wildlife"
- "Safe to use on lawns, gardens, and flower beds"
- "Works faster and better than the castor oil based repellents"
- 'Chili Powder' is not listed on the 4(b) list for minimum risk 25(b) inert ingredients.

14. As the seller and distributor of a pesticide, you are in violation of FIFRA § 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), which provides in relevant part that 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 136a of this title or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter.

FIFRA § 2(gg), 7 U.S.C. § 136(gg) states, “the term, ‘to 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.”

OTHER MATTERS

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

Amy Hambrick
US EPA Region 8 (ENF-UFO)
1595 Wynkoop Street
Denver, CO 80202
(303) 312-6883

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

3/5/2009
Date


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