

New York State Department of Environmental Conservation
Division of Solid and Hazardous Materials
Bureau of Pesticides Management, Room 498
Pesticide Product Registration Section
70 Wolf Road, Albany, New York 12233-7257
Phone: (518) 457-7446 • FAX: (518) 485-8990
Website: www.dec.state.ny.us/website/dshm/pesticide/pesticide.htm



REGISTERED MAIL

March 14, 2000

RETURN RECEIPT REQUESTED

Ms. Paula Bodey
Director, Regulatory and Environmental Affairs
The Scotts Company
14111 Scottslawn Road
Marysville, OH 43041

Dear Ms. Bodey:

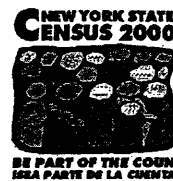
Re: Denial of Grubex (EPA Reg. No. 538-266)

After reviewing Scotts Company's (Scotts) response, dated February 21, 2000 and meeting with enforcement, legal, administrative and pesticide product registration staffs, the New York State Department of Environmental Conservation (the Department) will not approve Scotts' application to register the halofenizide-based Grubex (EPA Reg. No. 538-266) product in New York State.

In our letter, dated February 18, 2000, we stated the product name "Grubex" is unacceptable. The Department already has Grubex (EPA Reg. No. 3125-463-538) and Grubex with Fertilizer (EPA Reg. No. 3125-471-538) which contain the active ingredient, imidacloprid. Your current application requests the registration of Grubex (EPA Reg. No. 538-266), containing the active ingredient halofenizide, and your application includes a prohibition on its sale or use in Nassau and Suffolk Counties (Long Island) in New York State. The size and placement of the statement "Not for sale or use in Nassau and Suffolk Counties, N.Y." remains unacceptable.

The availability of three Grubex products, containing two different active ingredients, one of which would be prohibited from being sold or used on Long Island, would contribute to confusion both within the distribution channels as well as in enforcement for compliance with the Long Island prohibition. In addition, having two products registered and for sale with identical product names but with different active ingredients is potentially of serious concern to New York's Pesticide Poisoning Registry.

The Department's records indicate that ownership of another general use, halofenizide-based pesticide, Grub-B-Gone (EPA Reg. No. 239-2667), was transferred to Scotts. The approved label for that product includes a prohibition on its sale or use in Nassau or Suffolk Counties. In addition, a condition of Grub-B-Gone's registration was the development and implementation of a marketing plan that would ensure



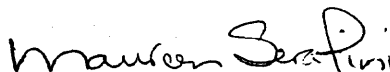
that the product would not enter the Nassau or Suffolk County markets. Subsequent to the transfer of ownership of Grub-B-Gone to Scotts, the Department's inspectors, while performing routine marketplace inspections, found the product for sale in Nassau and/or Suffolk counties, in clear violation of the label and the marketing plan. Scotts entered into an Order on Consent for this violation and the violation indicates a failure of the marketing plan that Scotts, as the product's owner, was responsible for implementing. This demonstrated inability of Scotts to prevent a product it owns and distributes from entering the Nassau and Suffolk County markets is relevant to the Department's decision to deny the application to register Grubex (EPA Reg. No. 538-266) despite the inclusion of a "Not for sale or use in Nassau or Suffolk counties" proscription on the product label.

Furthermore, the Department's pesticide enforcement staff, while performing routine marketplace inspections, have identified the unregistered, halofenizide-based Grubex product (EPA Reg. No. 538-266) already for sale on store shelves across the State, including in Long Island. The Department's Division of Environmental Enforcement will be prosecuting these violations.

The Department has reviewed Scotts' marketing plan to prevent distribution of the halofenizide-based Grubex from reaching the channels of trade in Nassau and Suffolk Counties, New York. However, Scotts has proven unable or unwilling to limit the distribution of an unregistered product in New York generally, as well as in Nassau and Suffolk Counties, even where the proposed label for this unregistered product prohibits its sale in Nassau and Suffolk Counties. Therefore, completely aside from the unacceptable label and confusing product name, the Department legitimately questions Scotts' ability to prevent Grubex (EPA Reg. No. 538-266) from entering the channels of trade in Nassau and Suffolk Counties, New York even if the product were to be registered.

The Department therefore denies the registration of Grubex (EPA Reg. No. 538-266) in New York State. Additionally, we wish to inform you of your rights under Article 33-0711 of the New York State Environmental Conservation Law in which you have a right to request a hearing. Should you have any questions regarding this letter please contact me at (518) 457-7446.

Sincerely,



Maureen Serafini
Chief
Pesticide Product Registration Section