

Scotts Miracle-Gro – the bird-killing company?

The Scotts Miracle-Gro company pleads guilty to knowingly selling poisoned birdseed, and lawn and garden care products containing undocumented pesticides, to an unsuspecting public

<http://www.guardian.co.uk/science/grrlscientist/2012/mar/21/2>

GrrlScientist

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I recently heard about the most astonishing corporate crime: the American company, Scotts Miracle-Gro, violated US federal environmental laws by manufacturing and selling poisoned birdseed for more than two years. The Scotts Miracle-Gro company entered guilty pleas to all charges in U.S. District Court and these guilty pleas were accepted by Judge James Graham on Tuesday, 13 March 2012. Penalties have not yet been determined.

The Scotts Miracle-Gro company, based in Marysville, Ohio, USA, is the world's largest marketer of lawn and garden care products which are sold under a number of consumer brand names, including Scotts®, Miracle-Gro®, and Ortho®. In Europe, the company's brands include Weedol®, Pathclear®, Celaflor®, Evergreen®, Levington®, Miracle-Gro®, KB®, Fertiligene® and Substral®. Additionally, Scotts is Monsanto's exclusive agent for the marketing and distribution of consumer Roundup®.

In addition to lawn and garden care products, the Scotts Miracle-Gro company manufactures and distributes several widely-used and popular brands of food for wild birds, marketed under the names, "Country Pride" and "Morning Song", as well as "Scott's Songbird Selections" and "Scott's Wild Bird Food", which are collectively known as "Morning Song". These brand lines include bags of seed and seed mixes, suet blocks and other foods intended for wild birds.

Scotts Miracle-Gro added toxic chemicals to their bird seeds

According to court documents, the Scotts Miracle-Gro company added the pesticides, Storcide II and Actellic® 5E, to their wild bird feeds to prevent insects from consuming the products during storage. Neither pesticide is licensed by the Environmental Protection Agency (EPA) for use in bird foods. This is in direct violation of FIFRA -- the Federal Insecticide, Fungicide, and Rodenticide Act.

Storcide II contains the active ingredient, chlorpyrifos-methyl, and Actellic® 5E contains the active ingredient, pirimiphos-methyl. According to the product label attached to Storcide II containers and Material Safety Data Sheet (MSDS) information accompanying this pesticide, it is toxic to fish, birds and wildlife. Additionally, because the EPA requires precautionary language on labels for all products containing chlorpyrifos, those who worked directly with manufacturing the birdseeds should have known that use in birdseed was illegal, unless they were either illiterate or blind.

The EPA's fact sheet on pirimiphos-methyl states that "[a]lthough pirimiphos-methyl is highly toxic to birds and fish, these risks are not of concern based on the use pattern", indicating that

this chemical is not intended to be applied to anything intentionally fed to birds.

Both chemical toxins act as cholinesterase inhibitors that result in overstimulation of the nervous system. Small doses of either poison cause symptoms that include nausea, dizziness, and confusion, and higher doses lead to respiratory paralysis and death.

Scotts Miracle-Gro knowingly sold poisoned birdseed

According to court documents, Scotts Miracle-Gro was warned about the toxicity of these chemicals by two employees. One employee, a pesticide chemist, approached management about these dangers in the summer of 2007, whilst the other employee, an ornithologist, notified management in the autumn of that same year. The Scotts Miracle-Gro company ignored these warnings and continued to produce and distribute their poisoned birdseed products for at least another six months, until March of 2008.

At the same time, a federal registrations manager employed by the Scotts Miracle-Gro company intentionally falsified pesticide registration documents for two other products sold by the company, "Scotts Garden Weed Preventer & Plant Food" and "Scotts Lawn Service Fertilizer With Halts". Neither of these products were registered with the EPA and thus, both were illegally sold to the public. When the EPA contacted the Scotts Miracle-Gro company asking for the required documents and certificates, the manager then "fabricated correspondence and agency documents ... in an effort to deceive EPA into believing it had registered these products but lost its files", according to court documents. The EPA then launched an investigation.

According to court documents, the Scotts Miracle-Gro company voluntarily disclosed to the EPA and the USDA that they had manufactured and sold poisoned birdseed, but discontinued doing so in March 2008.

After reading the court documents, it is my opinion that either the company or its employees volunteered this illegal use of chemical poisons in their birdseed because they expected that their wrongdoing would be discovered during the ensuing investigation. If adding these pesticides to the birdseed was an accident, warnings from their employees should have caused the company to immediately stop manufacturing their poisoned birdseed and issue a voluntary national recall of all contaminated items. However, neither of these actions occurred. Based on that information, one wonders whether the company would ever have voluntarily stopped adding poisons to their birdseed if the EPA had not stepped in to investigate the forged documents and illegal use of pesticides in their lawn care products?

According to court documents, Scotts Miracle-Gro sold more than 73 million packages of these poisoned bird foods nationwide to an unsuspecting public for a period of more than two years. Only 2 million of those 73 million units could be recalled.

But it would appear that not all sellers were aware of this product recall. I found one story about a San Diego county couple who lost nearly all of their domestic aviary birds at the end of January 2010 after feeding Scotts Miracle-Gro Morning Song Wild Bird Seed that they had recently purchased from a local Wal-Mart [story]. Out of a flock numbering nearly 100 birds, only eight

survived. I mention this to illustrate how poisonous this seed is to birds, how many birds can die after eating just one meal of this poisoned seed, and to show that the damages caused by these products may still be occurring.

Scotts Miracle-Gro pleads guilty and proposes a plea deal

As part of the plea deal, the company would pay a fine of \$4 million and give an additional \$500,000 to help support wildlife study and preservation. Judge Graham has so far deferred making a decision on this proposed penalty, and the sentencing hearing has yet to be scheduled. Under the law, civil violations are assessed fines of not more than \$5,000 per offense whilst criminal violations of FIFRA are assessed fines of "not more than \$50,000 per offense or imprisonment of not more than 1 year or both". If Scotts Miracle-Gro's plea proposal is accepted by the judge, I think it would be the maximum allowed under the law. Further, if these penalties are accepted by the judge, this decision may possibly be the highest ever levied under FIFRA. According to my sources, just the proposed \$500,000 "donation" to environmental groups is "substantial" under this law.

But it is my opinion that neither of these penalties are substantial or severe enough. According to my calculations, even after paying the proposed fines, the company will have earned a profit from their sales of poisoned birdseed and lawn care products to an unsuspecting and trusting public. In fact, even if a penalty of \$73 million -- merely \$1 for each poisoned bird food item sold -- was levied against the company, Scotts Miracle-Gro will probably still earn a profit from sales of all their illegal products. For this reason, I view this penalty as a small slap on the wrist for the Scotts Miracle-Gro Company, a publicly-traded company (NYSE: SMG) with an excess of \$3 billion in annual worldwide sales.

Unfortunately, when an entire company engages in criminal activity, imprisonment is not normally an option. But in my opinion, the outrageously inflated salaries paid to corporate chairman and chief executive officer (Jim Hagedorn) and president (Barry Sanders), who were in those positions in 2008, should be justified by holding them personally and criminally liable when the company knowingly commits criminal acts under their leadership, since presumably, this is partially what these outsized salaries are intended to compensate them for.

It is my hope that the judge will ensure that the maximum fines and penalties will be levied against the Scotts Miracle-Gro Company. This is the least that can be done in view of this egregious betrayal of the public trust, the damage to the environment and the terrible loss of wild birds and other wildlife -- all due to the criminal activities of this corporate giant.

At this point, it is likely that the government's lawyers are feeling pretty good about this outcome: they got an admission of criminal liability and a record-setting monetary fine without the years of litigation and thousands of man-hours that a prosecution would require. Yet I can't help but wonder what millions of dead finches, sparrows, doves, cardinals and other songbirds might say about this, if only we could understand them.