



Oregon

Kate Brown, Governor

Department of Agriculture

Administrative Services

635 Capitol St NE

Salem, OR 97301-2532

PESTICIDES PROGRAM

TEL: 503-986-4698



CERTIFIED MAIL

June 24, 2019

ATTN: Karen Warkentien, Director of Regulatory Affairs
Certis U.S.A. L.L.C.
9145 Guilford Road, Suite 175
Columbia, Maryland 21046

Elizabeth E. Howard, Attorney at Law
Schwabe Williamson & Wyatt
1211 SW 5th Avenue, Suite 1900
Portland, Oregon 97204

Re: (Amended SSURO) Issuance of Statewide Stop Sale, Use, or Removal Order (SSURO), Oregon Department of Agriculture (ODA), Pesticides Program, ODA Pesticides Case 190702

The Oregon Department of Agriculture, Pesticides Program, by this issuance, hereby orders **Certis U.S.A. L.L.C.** (Certis) and/or its agents to immediately cease all sales, offers of sale, or other distribution of the pesticide product Trilogy Fungicide/Miticide/Insecticide (EPA Reg. No. 70051-2), with or from lot # 71133547, into or within Oregon, by any type of business transaction or other method. This product may be referred to as "Trilogy." The Department issues this order under the provisions of Oregon Revised Statutes (ORS), Chapter 634.322(3), and ORS 561.605 to 561.620. This order is the result of laboratory analysis conducted by the ODA's Laboratory Services (the ODA lab) on Trilogy product found in the Oregon marketplace, for the pesticidal active ingredient chlorpyrifos.

According to laboratory analyses conducted by the ODA lab, the pesticide product Trilogy was found to contain the following pesticidal active ingredient, and thus to be adulterated and non-compliant with ORS Chapter 634 as follows:

Trilogy	Detected
<u>Sample #</u>	<u>Chlorpyrifos</u>
MPI 190506-6	0.040 ppm

Results are given in parts per million (ppm). The reporting level for chlorpyrifos was 0.010 ppm.

This active ingredient is not identified in the Trilogy pesticide product labeling. For a pesticide product that is labeled as having only the active ingredient Neem Oil, the presence of any other pesticidal active ingredients is not allowed.

Pesticide Product Adulteration

ORS 634.036 - A pesticide is considered adulterated if: "... (2) The strength or purity of the pesticide is below the purported or professed standard of quality as expressed in its labeling, or any substance has been substituted wholly or in part for any ingredient of the pesticide, or any valuable constituent thereof has been omitted wholly or in part. (3) The contents of the package or container of pesticide do not meet their purported standard of quality in any other manner. (4) The contents of the package or container represented to be a pesticide are not definitely effective for the purpose for which recommended." The Trilogy pesticide product contains a pesticide active ingredient that is not identified in the product formulation and is not allowed in pesticide products not labeled with it. ORS



634.372(16) prohibits formulating, delivering, distributing, selling or offering for sale any pesticide that is adulterated.

Pesticide Product Misbranded

ORS 634.372(15) prohibits delivering, distributing, selling or offering for sale any pesticide that is misbranded. The Trilogy pesticide product is considered misbranded if the package, label or container does not contain the required information or statements in accordance with ORS 634.026 or bears any false or misleading statements. The pesticidal active ingredient content was not disclosed as part of the information provided for product registration of the Trilogy pesticide product, nor was it provided on the package labeling.

Make False, Misleading or Fraudulent Records

ORS 634.372(6) prohibits making False, Misleading or Fraudulent Records, reports or application forms required by the provisions of ORS Chapter 634. The application and information for Oregon Pesticide Product Registration submitted by Certis did not contain the required information.

Make False or Misleading Claims Through any Media

ORS 634.372(1) prohibits making false or misleading claims through any media, relating to the effect of a pesticide or application methods to be utilized. The Trilogy pesticide product label makes false and misleading claims because it does not list all of the active ingredients present. The undisclosed ingredient is not approved for organic production; hence the label claim of suitability for organic production is false or misleading.

As the Trilogy pesticide product is considered both adulterated and or misbranded, distribution of this product is prohibited in Oregon under ORS 634.372 (15) & (16). The Department will be proceeding to address the violations of ORS Chapter 634 identified above in addition to the of sales and distribution of this product in violation of ORS 634.372.

It is the responsibility of Certis to declare to the Oregon Department of Agriculture, in writing within 14 calendar days of this order, the proposed disposition of any Trilogy pesticide product within Oregon. This includes pesticide product in commerce as well as end users' possession. All disposition of pesticide product in Oregon must be first approved in writing by the Oregon Department of Agriculture. Please read the instructions on the SSURO carefully.

Furthermore, it is a violation of ORS 634.372(22) to sell, use, or remove any product subjected to a SSURO until the product has been released in accordance with ORS 561.630. A violation of ORS Chapter 634.372(22) may result in further enforcement action including civil penalties up to \$10,000 per incident.

Please review the attached Stop Sale Use, or Removal Order (SSURO). I will serve as your primary point of contact to assist with this matter. I would appreciate the opportunity to discuss this matter with you. Please contact me at your earliest convenience to schedule a conference call to discuss this matter.

Regards,



Dale L. Mitchell
Pesticide Program Manager
Natural Resource Policy Area
Oregon Department of Agriculture
635 Capitol Street NE, Salem, Oregon 97301
(503) 986-4646 Tel (503) 986-4735 Fax

dmitchell@oda.state.or.us

AMENDED Stop Sale, Use, or Removal Order

Oregon Department of Agriculture
Pesticides Program



Oregon
Department
of Agriculture

Name: Certis U.S.A. L.L.C. Case No.: 190702

Address: 9145 Guilford Road, Suite 175
Columbia, Maryland 21046

Phone: 301-483-3810 Date: June 24, 2019

This is an official Stop Sale, Use, or Removal Order for the products itemized below. These products have been found in violation of Oregon Revised Statutes (ORS), Chapter 634, Oregon Pesticide Control Law.

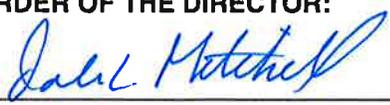
MANUFACTURER & PRODUCT NAME – REASON	EPA REG. NO.	QUANTITY
1 Trilogy Fungicide/Miticide/Insecticide REASON 1 <input checked="" type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input checked="" type="checkbox"/>	70051-2	All product in Oregon from lot # 71133547
2 REASON 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/>		
3 REASON 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/>		
4 REASON 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/>		
5 REASON 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/>		

Refer to reverse side of this order for instructions and dispositions which may be available to release product from the Stop Sale, Use, or Removal Order.

REASONS:
 1: Found misbranded products, violation of ORS 634.372(15)
 2: Found adulterated products, violation of ORS 634.372(16)
 3: Found unregistered products, violation of ORS 634.372(17)
 4: Found improperly packaged, violation of ORS 634.372(19)
 5: Other: Violations of ORS 634.372 (1) and (6); see cover letter

Served (attached to product/s):

 Representative initials

BY ORDER OF THE DIRECTOR:


 Pesticide program representative
 Dale L. Mitchell, Manager

 Print name

ACKNOWLEDGEMENT (if served personally):

 Owner / person in custody of product/s

 Print name / title

Stop Sale, Use, or Removal Order

INSTRUCTIONS TO THE PERSON IN CUSTODY OF ITEMS SUBJECT TO THIS STOP SALE, USE OR REMOVAL ORDER

It is the responsibility of the person in custody of the item(s) listed on the front of this order to declare to the Department the method of disposition of each item. You must report this disposition to the issuing investigator in writing within 14 calendar days of this order. The report must be made **PRIOR** to product sale, use, or removal, including for instance disposal as hazardous waste, or personal use, or return to a manufacturer or distributor. The following are options that may be available to you.

- Contact the manufacturer or distributor to get the product registered in Oregon.
- Dispose of the product in accordance with Oregon Department of Environmental Quality requirements.
- Use the material yourself without delivering, distributing, selling or offering it for sale if the use is appropriate, and is permitted and approved.
- Have the product correctly relabeled.
- Repackage the product.
- Return the product to the manufacturer or distributor.

YOU MUST PROVIDE WRITTEN DOCUMENTATION OF THE DISPOSITION OF ALL PRODUCTS.

ALL PRODUCT DISPOSITION MUST BE FIRST APPROVED IN WRITING BY THE OREGON DEPARTMENT OF AGRICULTURE.

Non-approved Sale, Use, or Removal of any pesticide product listed on this order is a violation of ORS 634.372(22), and may result in further enforcement action including civil penalties up to \$10,000 per incident.

Correspondence or questions concerning this order should be sent to the issuing representative at:

Oregon Department of Agriculture
Pesticide Program
635 Capitol St. NE
Salem OR 97301-2532

This Stop Sale, Use, or Removal Order is an effective order upon issuance. However, you are entitled to a hearing to contest this order as provided by the Administrative Procedures Act, ORS Chapter 183, including ORS 183.413 to 183.470, and OAR 137-003-0501 to 137-003-0700. Your request for a hearing must be made in writing and filed with the Department so that it is received by the Department within 10 days from the date of Actual Notice, ORS 634.322(3), 183.415, and 561.610. The request should be made to the attention of:

Pesticide Program
Oregon Department of Agriculture
635 Capitol St. NE
Salem OR 97301-2532

If you make a timely request for a hearing you will be notified of the time, date, and place of the hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing. An Administrative Law Judge from the Office of Administrative Hearings will preside at any hearing. ORS 183.635

If you do not make a timely request for a hearing, or if you request a hearing but fail to appear at the hearing, withdraw the request for hearing, or notify the agency or administrative law judge that you will not appear at the hearing, then the Department may issue a Final Order by Default. If the Department issues a final order by default the Department designates the agency file in this matter, including any materials submitted by you that relate to this matter, as the record for purposes of proving a prima facie case.