

Scotts Poisons the Wrong Family

A family that sought to avoid lawn chemicals had its yard mistakenly treated by Scotts Lawn Service

By Robert H. Ryan

Editors Note: *The prevalent and poorly regulated use of pesticides in our society means that everyone is at risk. Beyond Pesticides urges those who are involuntarily exposed and/or poisoned by pesticides to report these incidents to state authorities, EPA, elected officials, and the local media (see below for more information). Beyond Pesticides works with people and organizations at the community level to stop the poisoning and promote safe solutions.*

On May 17, 2005, Scotts Lawn Service mistakenly treated the home of the Ryan Family with 2,4-D, Dicamba, and MCCP. The actual house that Scotts was hired to treat was on a different street with a similar name. The Ryans, who live in Massachusetts, have two small children and, at the time, one more on the way. They made a point of not using chemical treatments on their lawn. The Ryans were particularly concerned given that one of their sons had numerous allergies as well as asthma. Scotts Lawn Service treated the Ryan's lawn with a variety of pesticides by mistake. When the Ryans figured out what had happened and requested mitigation from Scotts, the obstacles and problems they encountered were endless.

Family's children exposed to pesticides

When the Ryans discovered on the evening of May 17, that their lawn had been treated with chemicals, they immediately called the Scotts Miracle-Gro Company to complain and demand that the company remove the chemical contamination. Mrs. Ryan informed Scotts that given that they also failed to properly mark the property and provide sufficient notice that pesticides were applied, she and her two sons were exposed to the pesticides within eight hours of the application. The Ryans were not only worried about exposure to pesticides from the lawn itself, but they also worried that the pesticides would contaminate the private well they used for their drinking water.

The Ryans had high hopes that Scotts would be responsive when they received a call early the next morning from the Scotts' applicator who mistakenly treated their lawn. The applicator apologized for the mistake and said he would stop by their house later to talk about resolving the problem. Later that morning the Ryans received a message from Dan McGuire from Scotts Lawn Service who said that he wanted to follow up on the mistake that was made. When Mrs. Ryan spoke with Mr. McGuire and learned that Scotts had no plan to resolve the situation, she told him that they would like Scotts to remove the contaminated soil, in order to guarantee that the toxic pesticides were removed and no longer a threat.

Mr. McGuire said that the issue of soil removal would have to be addressed by corporate headquarters and he would pass on the information.

Shortly after Mrs. Ryan's conversation with Mr. McGuire, the Ryans received a message from Andy Benute, the Regional Director for Scotts Lawn Service on the East Coast whose office is in the Marysville, OH Corporate Office for the Scotts Miracle-Gro Company. Mr. Benute expressed his regrets regarding the situation and said that, although he was traveling, he would try to be in touch with them as soon as possible.

Family puts Scotts on notice

On May 19, Mr. Ryan, an attorney, faxed a letter to Mr. Benute and Mr. David M. Aronowitz, General Counsel for the Scotts Miracle-Gro Company, to establish the record that the Scotts Miracle-Gro Company was on notice regarding the incident and to request that they immediately mitigate the potential harm. In the fax, Mr. Ryan demanded that the soil replacement process being the following day, May 20.

The next day, Mr. Ryan received a call from Matt Tegmeyer of Vericlaim, which is the third party administrator for Scotts Miracle-Gro Company. Mr. Tegmeyer stated that he just received Mr. Ryan's letter of May 19 and stated that he was to investigate the incident and make a recommendation to Scotts Miracle-Gro Company regarding the requested mitigation. Mr. Tegmeyer seemed understanding of the seriousness of the issue, and said that although he could not make any guarantees, he believed that the Scotts Miracle-Gro Company would likely honor the request for mitigation. He even informed Mr. Ryan that the Scotts Miracle-Gro Company had made similar mistakes in the past, including the improper application of pesticides to the yard of an EPA administrator who lived in Maryland and had an organic yard. He stated that in order to do the mitigation, Scotts Miracle-Gro would want to have the Ryans execute a release of all claims. Mr. Ryan informed him that until he was certain no permanent harm was inflicted on him or any member of his family, particularly his unborn child, he would not execute a release. Mr. Ryan then explained to Mr. Tegmeyer that he and his family were not looking for a cash settlement, but given the serious health issues involved with his pregnant wife and extremely allergic two year old, he wanted immediate mitigation. Mr. Tegmeyer requested that Mr. Ryan fax him a copy of the EPA Guide regarding Soil Excavation that he had referenced in their discussion. Mr. Ryan went one step further and also provided Mr. Tegmeyer with the name and contact information of a nursery that could handle the soil replacement in a timely fashion.

Later that same day, Mr. Ryan received a call from Mr. Tegmeyer informing him that he had been in touch with Mr. McGuire who had said he would contact a few landscapers and have them go to the Ryans' house. None of the landscapers ever came to the Ryans' house and in the meantime, on May 22, the Ryans' asthmatic son accidentally got onto the lawn and had a severe allergic reaction which resulted in skin inflammations, a swollen face and impacted breathing, requiring medical intervention. After this incident, Mr. Ryan immediately called Mr. Tegmeyer to report it and stress the urgency of having the soil replaced immediately.

On May 26, after nothing materialized from the alleged landscapers that Scotts was going to send over, Mr. Ryan obtained a quote from the nursery he had suggested to Mr. Tegmeyer and faxed it to him, making it clear that if the nursery were to receive a deposit they could start removing the contaminated soil immediately and the entire process could be completed by June 1.

Soon after this conversation, Mr. Ryan was contacted and told that Mr. McGuire had received an estimate from another landscaping company that was cheaper. This landscaping company, however, could not start work for one to two weeks and there was some question as to how much of the contaminated soil they would actually remove. Debate about the few thousand dollars in question continued between the Ryan family and Scotts which resulted in Mrs. Ryan contacting Mr. David M. Aronowitz to request that he consider the health concerns of the Ryan family and the potential negative impact to Scotts Miracle-Gro.

The family rejects settlement offer

On May 27, the Friday of Memorial Day weekend, it became painfully clear to the Ryans that Scotts Miracle-Gro had engaged in conduct to delay the filing of a formal complaint with the Massachusetts Pesticide Bureau and the EPA Pesticide Enforcement Coordinator in Boston. On that day, Mr. Ryan received a fax from Mr. Tegmeyer that stated Scotts Miracle-Gro Company did "not agree that [the Ryans'] requested course of action is reasonable or necessary and [Scotts] cannot and will not comply with this demand." Scotts also proposed that the Ryans just "apply an activated charcoal product to the entire lawn" and offered to compensate them with \$1,000 for the "unnecessary inconvenience this incident has caused." In order to obtain the benefits of the proposal, the Ryans were told they would need to execute a full and final release to the Scotts Miracle-Gro Company. The Ryans rejected the proposal and instead filed a complaint with the Massachusetts Pesticide Bureau and notified the EPA.

Mrs. Ryan suffers miscarriage

A little over two weeks after the wrongful application of the lawn pesticides, the Ryans discovered that Mrs. Ryan had

miscarried and it was estimated that the miscarriage occurred within a day of the improper application of the pesticides. Mr. Ryan engaged in extensive research and discovered that a number of studies have linked the pesticides applied by Scotts Miracle-Gro to miscarriage.

Although the Massachusetts Pesticide Bureau initially appeared to take the incident seriously after Mrs. Ryan suffered a miscarriage, informing Mr. Ryan that the numerous violations committed by Scotts Miracle-Gro would result in a thorough investigation and serious sanctions, it appears Scotts Miracle-Gro will not be held accountable. Mr. Ryan questions whether this is in part due to the fact that a former legal counsel for the Pesticide Bureau now works for the law firm defending Scotts Miracle-Gro.

At present, the Ryans are working with Massachusetts legislators to try to get Massachusetts to update pesticide regulations and enforcement. Mr. Ryan is also in the midst of filing an official complaint with the Attorney General. He

is currently trying to bring to light the problems Scotts has caused and their refusal to be the "environmental stewards" they claim to be by taking the proper precautionary steps and resolving problems like theirs.

P.S. Just this season, Scotts Miracle-Gro Lawn Service left a note at the Ryans' door that they could not make an application until the leaves were removed from the lawn. Further contamination was averted this time as mistakes appear to continue.



Editors note. *Pesticide poisoning and contamination stories, like the one described above, must be told and documented. We urge poisoning victims to complete a Pesticide Incident Report that can be printed off the Beyond Pesticides' website at www.beyondpesticides.org/emergencies/pir_form.pdf, or mailed to you upon request. The incident should also be reported to the state pesticide law enforcement agency (see our website, www.beyondpesticides.org, to identify the appropriate contact in your state.) If you call to report the incident, request an investigation and follow up with a written request and letter that documents the conversation and any agreements. Copy your letter to the EPA Administrator (Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Phone: 202-564-4700) and to your elected officials, U.S. Representatives (www.house.gov/writerep) and U.S. Senators (www.senate.gov). Reporting the incident to local media will help to identify others who have been poisoned and inform the community of this public health and environmental threat. Ultimately, documentation and raised awareness will help curtail practices that are causing poisonings and contamination. For more assistance, contact Beyond Pesticides, 701 E Street, SE, Washington, DC 20003, 202-543-5450, info@beyondpesticides.org.*