

## Portland jury awards nearly \$40 million to two farmers after fertilizer destroys their crops

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A Portland jury awarded nearly \$40 million verdict Thursday to two farmers after their plants died because of a knockoff fertilizer. Jag Aujla (left) said he lost goodwill with customers.

### Multnomah County jury awards two farmers \$39 million in bad fertilizer verdict

A Multnomah County jury awarded nearly \$40 million to the two Canadian farmers after a month long trial in a fifth-floor Portland courtroom. The farmers' attorneys argued that the Woodburn Fertilizer

A Multnomah County jury has awarded two farmers nearly \$40 million after millions of their blueberry, azalea, rhododendron and Japanese maple plants died from a cheaper "knock-off" fertilizer that was created by companies in Oregon, Washington and Canada.

Jurors awarded the money to the two Canadian farmers after a month-long trial in a fifth-floor Portland courtroom. The farmers' attorneys argued that the Woodburn Fertilizer Company and Sun Gro Horticulture -- with operations in Bellevue and Vancouver, British Columbia -- recklessly mixed ingredients into its fertilizer and created an untested blend in an attempt to undercut one of the industry's bestseller at the time, Scotts "Osmocote Plus."

Sun Gro called their product "Multicote 15-9-12+ Minors" and advertised it as a controlled-released fertilizer, even though it released its nutrients quickly, the farmers' attorneys contended.

The farmers' attorneys were able to prove to the 12-person jury that Multicote killed off 4.1 million blueberry plants and hundreds of thousands of other types of plants because the farmers used the Multicote side-by-side with other fertilizers in 2007 and 2008.

"It was kind of like a giant sixth-grade science experiment: Wherever the other fertilizers were used, the plants thrived. Wherever this fertilizer was used, the plants died," said attorney Larry Baron, who worked with attorney Bob Udziela and others to represent the farmers.

Company and Sun Gro Horticulture — with operations in Bellevue and Vancouver, B.C. — recklessly mixed ingredients into its fertilizer and created an untested blend in an attempt to undercut one of the industry's bestsellers, Scotts Osmocote Plus.

Defense attorneys argued that the farmers should have tested Multicote first before using it on large numbers of plants. Defense attorneys also argued that the farmers were at fault for using the fertilizer in bark, peat or other media that already had a lot of similar

micronutrients in it.

Portland attorney Everett Jack, who represented Woodburn Fertilizer and Wilbur-Ellis, the corporation that owns it -- said his client was disappointed in the outcome and doesn't think the product was defective. Bill Earle, an attorney for Sun Gro, couldn't be reached for comment Thursday.

The nursery operations struggled to stay afloat in the years after devastating crop die-offs. Jag Aujla -- who owns JRT Nurseries in Aldergrove, B.C., and Lynden, Wash. -- said he lost a lot of goodwill among long-time customers in Oregon, Washington and across North America. Those customers turned to other farmers to provide the shrubs for their blueberry farms, Aujla said.

"They got the impression that we didn't grow good plants," Aujla said.

Aujla also suffered two years of losses, leading defense attorneys to argue he could have averted millions of dollars in losses if he'd stopped applying Multicote after the first year. But in 2007, the first season Aujla used Multicote, his 18-year-old son died in a car crash. It was the day before his son's high-school graduation in June.

Aujla's assistant told Aujla that the crops appeared to be dying possibly because of Multicote, but Aujla thought it was a bad year because he hadn't been attentive to the operations. Aujla used Multicote in 2008, before realizing that it was the problem.

"We were very badly struggling," Aujla said. "We got deeper and deeper into debt."

After 22 days of trial, the jury late Wednesday awarded Aujla nearly \$12 million in direct economic losses for the death of his plants, \$22.5 million for the loss of customers and nearly \$5 million in interest.

Farmer Eelco De Zwaan -- owner of DeZwaan Nurseries, near Aldergrove, B.C. -- said he lost about 3,500 Japanese maple trees in 2008. The problem became apparent when the leaves of his maples appeared brown, almost burnt. The roots also failed to develop.

The jury awarded De Zwaan \$241,060 in direct economic losses. De Zwaan sells his maples to other nurseries, to landscape suppliers and to garden centers that sell to consumers.

Sun Gro designed Multicote, and Woodburn Fertilizer manufactured it. Woodburn Fertilizer was owned by the Burlingham family until 2005, when it was bought by Wilbur-Ellis, an international marketer and distributor of agricultural and industrial products, with sales approaching \$3 billion, according to its website.

"In the early 2000s, (Sun Gro) wanted to get into the controlled-release market, but they wanted to do it on the cheap," Baron said. "They didn't want to invest the money into research and development and the factories to make it."

On top of advertising Multicote as a controlled-release fertilizer, Sun Gro promoted the product as suitable for use in containers, in which the farmers' used to grow their plants. Baron said the product was not suitable for pots.

According to Baron: The farmers' fertilizer distributors recommended they switch to Sun Gro's Multicote. The distributors recommended the change because it was recommended to them by a Portland man, Jake Socherman, who had worked for Scotts but had changed jobs to work for Sun Gro.

Socherman designed Multicote, using cheaper ingredients than its competitors, and as a result, creating a larger profit margin.

-- **Aimee Green**

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