

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:**

**The Scotts Company LLC  
14111 Scottslawn Road  
Marysville, Ohio 43041**

**Director's Final  
Findings and Orders**

**Respondent**

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders (Orders) are issued to The Scotts Company LLC (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) §§ 3734.13, 3745.01.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership shall in any way alter Respondent's obligations under these Orders.

**III. DEFINITIONS**

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3734. and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings. Respondent does not admit to any of Ohio EPA's factual or legal findings and nothing in these Orders shall be considered as an admission by Respondent of any matter of fact or law.

1. Respondent is a "person" as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(P).
2. Respondent owns and operates a manufacturing operation located at 14111 Scottslawn Road, Marysville, Ohio (Facility) and has been assigned U.S.

EPA Identification Number OHD990834483. Facility operations include fertilizer mixing and seed production for consumer use. The raw materials used in the manufacturing process are formulated, mixed, and bagged into finished goods for consumer application directly to residential land surfaces.

3. At the Facility, Respondent generates "hazardous waste" as that term is defined in ORC § 3734.01(J) and OAC rules 3745-50-10(H) and 3745-51-03. At the Facility, Respondent generates characteristic and listed hazardous wastes, including but not limited to, fertilizer plus herbicide (D016- 2,4-D) as defined in OAC rule 3745-51-24. Respondent typically generates hazardous waste in amounts classifying it as a "large quantity generator" of hazardous waste as defined in OAC rule 3745-50-10(L). As part of its operations, Respondent periodically transports fertilizer plus herbicide hazardous waste off-site for incineration.
4. On or about November 1, 2023, legal counsel for Respondent notified Ohio EPA that approximately 210 tons of certain excess production materials containing fertilizer plus herbicide (a characteristic hazardous waste), as described in Finding No. 3 of these Orders had been transported, without hazardous waste manifests, to two solid waste landfills, which are not authorized to manage hazardous waste.
5. The notification included a risk assessment performed on behalf of the Respondent by a third-party regarding leaving the fertilizer plus herbicide hazardous waste sequestered in the landfills. This risk assessment describes the risk and potential exposure of leaving the hazardous waste in the landfills. Ohio EPA did not require the landfills to remove the hazardous waste. Additionally, the notification provided detailed information on how/why this hazardous waste mismanagement occurred.
6. Based upon the information referenced in Finding No 4. of these Orders, the Director determined that Respondent, *inter alia*:
  - a. Caused hazardous waste to be unlawfully transported to two solid waste landfills, which are not authorized to receive hazardous waste, in violation of ORC § 3734.02(F) and OAC rule 3745-52-10(A)(3).
  - b. Failed to use a hazardous waste manifest system when transporting hazardous waste, in violation of OAC rules 3745-52-20 and 3745-52-27.
7. On March 16, 2024, Respondent submitted to Ohio EPA documentation describing actions/plans/trainings to prevent recurrence of the activities described in these Orders. The information provided by Respondent included an explanation that Respondent has re-reviewed all waste classifications, and updated processes designed to prevent recurrence, including to ensure Facility level EHS directs management of excess materials/wastes. Respondent further explained that additional systems updates are underway to further assist with proper materials/waste management.
8. Because Respondent self-disclosed to Ohio EPA the transportation of hazardous waste to facilities not authorized to receive hazardous waste, Respondent's actions

to prevent recurrence, and that Ohio EPA is not requiring the removal of hazardous waste from the landfills, the Director has determined that there is no further action required of Respondent at this time regarding the violations referenced in Finding No. 6. of these Orders.

#### **V. ORDERS**

Respondent shall achieve compliance with Chapter 3734 of the ORC and the regulations promulgated thereunder according to the following compliance schedule:

1. Within 60 days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$249,767.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. and which will be deposited into the environmental protection remediation fund established pursuant to ORC § 3734.281. The official payment shall be submitted to Ohio EPA according to the instructions on the invoice. Notification of penalty payment shall be sent to the Hazardous Waste Program Compliance Assurance Manager, Ohio EPA, Division of Environmental Response and Revitalization, P.O. Box 1049, Columbus, Ohio 43216-1049 or via electronic mail at [Mitchell.mathews@epa.ohio.gov](mailto:Mitchell.mathews@epa.ohio.gov)

#### **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official payment[s] required by Section V. of these Orders.

#### **VII. OTHER CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the operation of Respondent's Facility.

#### **VIII. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

#### **IX. MODIFICATIONS**

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

## **X. NOTICE**

All documents (except penalty payment checks) required to be submitted by Respondent pursuant to these Orders shall be addressed to:

For electronic mail delivery, submit documents to the following email address: [Mitchell.Mathews@epa.ohio.gov](mailto:Mitchell.Mathews@epa.ohio.gov)

## **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII. of these Orders.

## **XII. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

## **XIII. EFFECTIVE DATE**

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

## **XIV. SIGNATORY AUTHORITY**

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**IT IS SO ORDERED AND AGREED**

**Ohio Environmental Protection Agency**

E-SIGNED by Anne Vogel  
on 2024-03-28 13:28:22 EST

2024-03-28 13:28:22 UTC

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Anne M. Vogel, Director

**IT IS SO AGREED:**

**The Scotts Company LLC**

  
Signature

Dave Swihart  
Printed or Typed Name

SVP, Global Supply Chain  
Title