UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF

The Scotts Manufacturing Company	)	Docket No. RCRA-07-2010-0035
Respondent	)	

ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), electronic filing of page 16 of the Complaint and Consent Agreement/Final Order is authorized in this proceeding.

Dated: Sept 30, 2010

Robert L. Patrick
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

IN THE MATTER OF:	)	
	)	
The Scotts Manufacturing Company	)	
1910 S. 48th Street	)	**CONSENT AGREEMENT**
Fort Madison, IA 52627	)	**AND FINAL ORDER**
	)	
RCRA I.D. No. IAD984621920	)	
	)	Docket No. RCRA-07-2010-0035
Respondent.	)	
	)	
Proceeding under Sections 3008(a) and (g) of	)	
the Resource Conservation and Recovery Act,	)	
as amended, 42 U.S.C. §§ 6928(a) and (g)	)	
	)	

COMPLAINT AND CONSENT AGREEMENT/FINAL ORDER

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and The Scotts Manufacturing Company (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations found at 40 C.F.R. § 262.

Section II

Parties

3. The Complainant is the Chief of the Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of EPA, Region 7, who has been duly delegated the authority to bring this action by the Administrator of EPA.

4. The Respondent is The Scotts Manufacturing Company, a company incorporated under the laws of Delaware and licensed to do business in the state of Iowa.

Statutory and Regulatory Framework

5. When EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

6. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than $25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to $32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, through January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to $37,500 per day are now authorized.

General Factual Allegations

7. Respondent is a Delaware corporation authorized to conduct business in the State of Iowa and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent is located at 1910 S. 48th Street in Fort Madison, IA (Facility). Respondent employs approximately 200 full-time employees and 200 temporary employees.

9. Respondent blends and packages lawn and garden consumer pesticide products. As a result of its operations, Respondent generates waste including: wastewater with 2,4-D (D016); lab waste (D001, D002, D007, D016, D021, D035, F002, F003); rags, solids contaminated with 2,4-D (D016); wastewater with 2,4-D and potassium hydroxide (D002, D016); waste paints and inks (D001); universal waste lamps and batteries; obsolete material (D001); and is a used oil generator.

10. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at 40 C.F.R. Part 261. Each of the wastes listed in paragraph 9 is a "solid waste" and all of the wastes except the used oil and universal waste are also "hazardous wastes" within the meaning of these regulations.

11. Respondent is a Large Quantity Generator (LQG) of hazardous waste by both monthly generation (over 1000 kg) and accumulation.

12. Respondent has been assigned a RCRA facility identification number of IAD984621920.

13. Respondent operates three designated waste storage areas. Wastes are stored or accumulated onsite within the Drum Storage Building. They are: 1) the Main 90-Day Storage Area; 2) the Maintenance Oven Storage Area; and, 3) the Staging Area with two 2,500 gallon tanks that are currently out of service.

14. On or about October 28 and 29, 2008, EPA representatives conducted a Compliance Evaluation Inspection at Respondent's Facility (hereinafter the October 2008 Inspection or Inspection).

15. Based on a review of the Inspection report and the information provided during the Inspection by Facility personnel, it was determined that Respondent was operating, at the time of Inspection, as a LQG of hazardous wastes.

Alleged Violations

16. Complainant hereby states and alleges that Respondent has violated RCRA and federal and state regulations promulgated thereunder, as follows:

Count 1

Failure to Conduct Hazardous Waste Determinations

17. The allegations stated in paragraphs 7 through 16 are realleged and incorporated as if fully set forth herein.

18. The regulation at 40 C.F.R. § 262.11 requires that hazardous waste generators make a hazardous waste determination on their waste streams.

19. During the October 2008 Inspection, the inspector observed over 100 containers of chemicals of various sizes in the Lab Sample Storage Room (D001, D002, D003, D007, D009, D011, D017, D037, P012, P020, U069, U185, U240) and 11 containers located in the

Maintenance Storage Area (D001). It was also determined the Facility generated solvent contaminated rags in the Electrical Shop (F001, D001) and solvent waste from the Electrical, Maintenance Oven Storage Area and the Maintenance Shop (D001, F005). A hazardous waste determination had not been done on the containers of chemicals, solvent containers or the solvent contaminated rags.

20. Failure to perform a hazardous waste determination is a violation of 40 C.F.R. § 262.11.

Count 2

Operating as a TSDF without a Permit for Storage over 90-days and for Failing to Comply with Generator Requirements

Illegal Storage

21. The allegations stated in paragraphs 7 through 16 are realleged and incorporated as if fully set forth herein.

22. Section 3005 of RCRA, 42 U.S.C. § 6925, requires each person owning or operating a facility for the treatment, storage, or disposal of a hazardous waste identified or listed under Subchapter III of RCRA to have a permit for such activities.

23. Respondent's Facility is not a permitted storage facility.

24. Inspection logs showed containers of hazardous waste were stored onsite for over 90 days during 2006 and 2008 in the Main 90-Day Storage Area.

25. It was determined that eleven containers of video jet waste and a solvent waste drum in the Maintenance Oven Storage Area were stored for over 90 days based on the 2005 dates on the containers.

26. Since Respondent's Facility is not a permitted storage facility, it is a violation of Section 3005 of RCRA to store hazardous waste for longer than 90 days.

Failure to Conduct Daily Tank Inspections for Corrosion and Releases on Weekends

27. The regulation at 40 C.F.R. § 262.34(a)(1)(ii) incorporating 40 C.F.R. § 265.195(a) requires that owners and operators inspect the data gathered from their monitoring and leak detection systems at least once daily.

28. During the October 2008 Inspection, the inspector was informed that the Facility

inspected for leaks by looking around the bottom of the tank.

29. The inspector was also informed that daily inspections were not conducted on the weekends.

30. Failing to inspect the data gathered from the monitoring and leak detection system daily is a violation of 40 C.F.R. § 262.34(a)(1)(ii) incorporating 40 C.F.R. § 265.195(a).

Failure to Provide Spill Prevention and Overfill Controls

31. The regulation at 40 C.F.R. § 262.34(a)(1)(ii) incorporating 40 C.F.R. § 265.194(b) requires owners and operators to use appropriate controls and practices to prevent spills and overflows from tanks and secondary containment.

32. During the October 2008 Inspection, the inspector determined that the tank system did not have any overfill/spill prevention controls, automatic shutoffs or level alarms. The inspector was informed that all monitoring was done visually.

33. Failure of owners and operators to use appropriate controls and practices to prevent spills and overflows from tanks and secondary containment is a violation of 40 C.F.R. § 262.34(a)(1)(ii) incorporating 40 C.F.R. § 265.194(b).

Failure to Close the Hazardous Waste Storage Containers

34. The regulation at 40 C.F.R. § 262.34(a)(1)(i) incorporating 40 C.F.R. § 265.173(a) requires that a container holding hazardous waste must always be closed during storage, except when adding or extracting waste.

35. During the October 2008 Inspection, the inspector observed three open totes of rinsate located in the Truck Unloading building and the Lower Formulation Area, three additional open totes of rinsate were observed in the Staging Area, an open solvent drum was observed in the Maintenance Oven Storage Area, and an approximately 5-gallon lab waste drum on which the small bung was loose.

36. Failure to close hazardous waste containers during storage is a violation of 40 C.F.R. § 262.34(a)(1)(i) incorporating 40 C.F.R. § 265.173(a).

Failure to Date Hazardous Waste Containers

37. The regulation at 40 C.F.R. § 262.34(a)(2) requires hazardous waste generators to clearly mark each hazardous waste container with the date upon which accumulation begins.

38. During the October 2008 Inspection, the inspector observed three totes of rinsate located in the Truck Unloading building and the Lower Formulation Area, three totes in the Staging Area, an unmarked solvent waste drum in the Maintenance Oven Storage Area, and an unmarked lab waste accumulation container in the Upper Formulation Area which were undated.

39. Failure to date the hazardous waste containers with the date upon which accumulation began is a violation of 40 C.F.R. § 262.34(a)(2).

Incomplete Written Training Plan

40. The regulation at 40 C.F.R. § 262.34(a)(4) incorporating 40 C.F.R. § 265.16(d) requires that owners and operators maintain a written description of the type and amount of introductory training for each person who will be filling a position listed under 40 C.F.R. § 265.16(d)(1).

41. During the October 2008 Inspection, the inspector determined that the training plan did not include a description of the formulator job title and the initial and annual training associated with the position.

42. Failure to have a complete training plan is a violation of 40 C.F.R. § 262.34(a)(4) incorporating 40 C.F.R. § 265.16(d).

Failure to Correctly Label Storage Containers

43. The regulation at 40 C.F.R. § 262.34(a)(3) requires that generators clearly label their hazardous waste containers as "Hazardous Waste."

44. During the October 2008 Inspection, the inspector observed six totes of rinsate, an unlabeled solvent waste drum in the Maintenance Oven Storage Area and two 2,500 gallon staging tanks containing hazardous waste that were not labeled with the words, "Hazardous Waste."

45. Failure to label hazardous waste containers with the words "Hazardous Waste" is a violation of 40 C.F.R. § 262.34(a)(3).

Count 3

Failure to Comply with Land Disposal Restriction Requirements

46. The allegations stated in paragraphs 7 through 16 are realleged and incorporated as if fully set forth herein.

Failure to Complete a LDR Waste Analysis Plan and an Adequate LDR Notice

47. The regulation at 40 C.F.R. § 268.7(a)(5) requires generators managing and treating prohibited waste or contaminated soil in containers, tanks or containment buildings to meet applicable LDR treatment standards.

48. During the October 2008 Inspection, the inspector was informed that Respondent was combining their lab waste in with their commingled wastewater.

49. When the above wastes were shipped for offsite disposal, Respondent had not completed a LDR Waste Analysis Plan or a LDR notice.

50. Failure to complete a LDR waste analysis plan and an adequate LDR notice is a violation of 40 C.F.R. § 268.7(a)(5).

CONSENT AGREEMENT

1. Respondent and Complainant agree to the terms of this CAFO subject to Paragraph 3 of this Consent Agreement section, and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

2. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the CAFO.

5. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

6. This CAFO resolves the Complainant's civil administrative claims for the allegations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

7. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

9. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of $148,338.25 as set forth in Paragraph 1 of the Final Order.

10. Respondent understands that failure to pay any portion of the civil penalty on or before the date the same is due may result in the commencement of a civil action in United States District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

11. Respondent shall complete the following Supplemental Environmental Projects (SEPs), which the parties agree are intended to secure significant environmental or public health protection and improvements. The SEPs consist of: (1) Wastewater Treatment with Water Reuse Pilot Project (Wastewater SEP) and (2) School Chemical Use and Disposal Audit (School SEP) as described in the project proposals dated September 21, 2010. Copies of the project proposals are attached as Exhibit A and Exhibit B and are incorporated herein by reference. The Complainant and Respondent agree that the design and execution of each SEP may be modified as circumstances warrant, provided that the primary objective for that SEP is achieved. Respondent will inform EPA's representative identified in Paragraph 12, below, of the modification and receive approval of any significant modification prior to the modification being implemented.

12. Respondent will commence the Wastewater SEP within 30 days of the effective date of the CAFO. Respondent will submit an interim status report regarding the project 60 days after onsite construction commences which details the equipment installed, the operation of the project and whether a permit was necessary and/or obtained from the city. Respondent will complete the project 6 months after the onsite construction commences. A SEP completion report will be submitted within 90 days after the completion of the project. The SEP completion report will be sent to:

Deborah Bredehoft
AWMD/WEMM
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

13. Respondent will commence the School SEP within 30 days of the effective date of the CAFO. Respondent will submit an interim status report regarding the project 60 days after the Respondent removes obsolete chemicals or hazardous waste from the first school subject to the School SEP. The interim status report will contain the names of the schools included in the project to date and for which the Respondent has completed the chemical and waste removal

portion of the SEP, the amount of chemicals removed, and copies of documentation associated with the project. Respondent will complete the project 24 months after the project start date. A SEP completion report will be submitted within 90 days after the completion of the project. The SEP completion report will be sent to:

Deborah Bredehoft
AWMD/WEMM
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

14. The total expenditure for the Wastewater SEP shall not be less than $122,000.00. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP completion report.

15. The total expenditure for the School SEP shall not be less than $30,000.00. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP completion report.

16. (a) In the event that Respondent fails to comply with any of the material terms or provisions of this CAFO relating to the performance of the SEPs described in Paragraph 11 above and/or to the extent that the actual expenditures for the SEPs do not equal or exceed the cost of the SEPs described in paragraph 14 and 15 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States. For the Wastewater SEP, the stipulated penalty shall be the difference between $122,000 and the amount that Respondent invests in the SEP before Complainant notifies Respondent of its determination that the SEP was not completed satisfactorily. For the School SEP, the stipulated penalty shall be the difference between $30,000 and the amount that Respondent invests in the SEP before Complainant notifies Respondent of its determination that the SEP was not completed satisfactorily. The determination of whether the SEP has been completed satisfactorily shall include whether there has been a failure to order, install and/or bring into operation the equipment described in the SEP proposal.

(ii) If either SEP is not completed in accordance with paragraphs 11 through 15 above, but the EPA determines that the Respondent: a) made good faith and timely efforts to complete that project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on that project, Respondent shall not be liable for any stipulated penalty associated with that project.

(iii) If either SEP is completed in accordance with paragraphs 11 through 15 above, and the Respondent spent at least 90 percent of the amount of money required to be spent for that project, Respondent shall not be liable for any stipulated penalty associated with that project.

(b) The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of the EPA. In exercising this discretion, the factors to be considered by EPA include whether the Respondent undertook reasonable, good faith efforts to order, install and bring into operation the equipment described in the SEP proposal within the estimated time frames set forth herein.

(c) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Interest and late charges shall be paid as stated in paragraph 17 herein.

(d) Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law.

17. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e).

18. (a) If any event occurs which causes or may cause delays in the completion of either SEP as required under this CAFO, Respondent shall notify EPA in writing not more than 10 business days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of its obligation under this CAFO based on such incident.

(b) If the parties agree that the delay or anticipated delay in completion of either SEP has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

(c) In the event that the EPA does not agree that a delay in completion of either SEP has been or will be caused by circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of its decision.

(d) The burden of proving that any delay is caused by circumstances entirely beyond the control of the Respondent shall rest with the Respondent. Increased costs or expenses associated with completion of either SEP shall not, in any event, be a basis for changes in this CAFO or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

19. Notices or demands from EPA to Respondent under the provisions in this CAFO will be sent to:

Karl Heisler, Esq.
Katten Muchin Rosenman LLP
2900 K Street, NW, North Tower
Suite 200
Washington, DC 20007

A copy of the above shall also be mailed to:

General Counsel
The Scotts Manufacturing Company
14111 Scottslawn Road
Marysville, OH 43041

20. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

21. By signing this CAFO, Respondent certifies that, to best of its knowledge, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

22. The effect of settlement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in this CAFO.

23. This CAFO shall remain in full force and effect until Complainant provides Respondent with written notice that all requirements hereunder have been satisfied.

Reservation of Rights

24. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed $32,500 per day per violation pursuant to Section 3008(c) and/or Section 3008(g) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law. Pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, penalties of up to $32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, through January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to $37,500 per day are now authorized.

25. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CAFO.

26. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

27. Notwithstanding any other provisions of the CAFO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's Facility may present an imminent and substantial endangerment to human health and the environment.

28. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

29. The provisions of this CAFO shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this CAFO, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this CAFO, Respondent will pay a civil penalty of $148,338.25. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000.

2. Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045

Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

3. A copy of the payment documentation shall also be mailed to:

Regional Hearing Clerk
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101

and to:

Kent Johnson, CNSL/CMBR
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or

local income tax purposes.

B. Compliance Actions

5. Respondent will provide the MSDS for the replacement parts washer solvent within 90 days of the effective date of this CAFO.

6. Within 90 days of the effective date of this CAFO, Respondent will provide documentation on the procedures for the management of the solvent drum and lab waste containers in accordance with regulations.

7. Within 90 days of the effective date of this CAFO, Respondent will provide documentation on compliance with RCRA training requirements by outlining initial and continual training requirements. The documentation will include job titles for employees with responsibility for managing hazardous waste.

8. Within 90 days of the effective date of this CAFO, Respondent will provide a list of emergency equipment associated with hazardous waste management, its capabilities, and specific locations.

9. Within 210 days of the effective date of this CAFO, Respondent will provide the Dumpback Recovery List/Forms and the "Nonconforming Product Disposition List" for the six months following the effective date of this order.

10. All documentation shall be sent to:

Deborah Bredehoft
AWMD/WEMM
U.S. EPA, Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

B. Parties Bound

11. This Final Order portion of this CAFO shall apply to and be binding upon Complainant and Respondent, and Respondent's agents, successors and/or assigns. Respondent shall take steps to ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

FOR COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

9-30-10
Date

Donald Toensing
Chief, Waste Enforcement and Materials Management Branch
Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7

9/30/10
Date

Kent Johnson
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

FOR RESPONDENT
THE SCOTTS MANUFACTURING COMPANY

9-30-10
Date

Signature

VINCE BROCKMAN
Printed Name

DIRECTOR, EUP
Title

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

Sept. 30, 2010
Date

Robert Patrick
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

EXHIBIT A

THE SCOTTS MIRACLE-GRO COMPANY

Wastewater Treatment with Water Reuse Pilot Project Supplemental Environmental Project

PROJECT PROPOSAL

Wastewater Treatment Facility
1910 South 48th Street
Fort Madison, IA 52627

September 21, 2010

EXHIBIT A

Table of Contents

EXHIBIT A

1. Primary Objective

The goal of this project is to design, install, and operate a pilot wastewater treatment system at the Scotts Miracle Gro Company ("Scotts" or the "Company") batch liquid pesticide filling facility in Fort Madison, IA ("Fort Madison" or the "Facility"). If the pilot is successful, the Company may elect to proceed with the construction and operation of a permanent wastewater treatment system that could reduce Facility's future hazardous wastewater stream by as much as 80% through biological treatment, filtration, and reuse. The design would be innovative and, pending the results of the pilot, may be transferrable to other Scotts facilities and/or other industries. The project would be environmentally beneficial because it is designed to identify and provide information about opportunities to reduce the generation, transportation, and disposal of hazardous materials. Further, if a permanent system proves feasible, the pilot may be used as a basis to pursue a permanent wastewater treatment system, which would reduce hazardous waste and energy consumption, as well as air emissions associated with how the streams at Fort Madison are currently transported and incinerated. The system would also enhance worker and public safety by reducing hazardous waste handling and the potential for spills on public thoroughfares.

2. Project Description

2.1. Wastewater Characterization Plan

Representative wastewater characterization is the key to the evaluation of applicable treatment technologies and design of a selected system. In advance of construction and operation of the pilot wastewater treatment system, the Company would pursue a wastewater characterization plan that would:

- Track and record the number and size of the totes of wastewater that are accumulated each week, with an associated description of the activity or activities generating the wastewater;
- Pursue weekly, equal volume, composite sampling of the totes generated, to be conducted in accordance with U.S. Environmental Protection Agency ("EPA")-approved sampling methodologies; and
- Pursue analytical testing of the weekly composite sample at a state-certified laboratory utilizing EPA-approved methods.

EXHIBIT A

Analytical Schedule[1]

Constituent	*USEPA Method**
pH	150.1
Conductivity	--
Alkalinity	300.1
Total Solids (TS)	160.3
Total Suspended Solids (TSS)	160.1
Volatile Suspended Solids (VSS)	160.4
Total Organic Carbon (TOC)	415.1
Calcium	200.7
Chemical Oxygen Demand (COD)	410.4
Hardness	130.2
5-day Biochemical Oxygen Demand (BOD_5)	405.1
Iron	200.7
Total Kjeldahl Nitrogen (TKN)	351.2
Ammonia (NH_3-N)	350.2
Ortho-phosphate	365.1
2,4 D**	6640B (SM)
Sulfate (SO_4^-)	375.1
Chloride (Cl^-)	375.3
Nitrate (NO_3^-)	352.1

*or approved Standard Method ("SM")

**or any other listed pesticide active ingredients that are suspected present

2.2. Development of Pilot Study Protocol

Based on review and consultation with wastewater engineers and consultants, Scotts will develop a pilot study protocol designed to ensure that the pilot is suitably tailored to treatment of the Scotts wastewater stream. This protocol will account for, among other things, the analytical testing results from the wastewater characterization plan; industry literature; sound engineering; and on consultant experiences in wastewater treatment facility design and installation.

[1] Based upon a review of the raw materials inventory and related information, constituents may be added or deleted.

2.3. Project Design and Operation

The pilot wastewater treatment system would collect water-based liquid waste (rinsate) from production lines, formulations, and product rework into a centralized bulk management system that would utilize two existing, but decommissioned, 2500-gallon tanks. The pilot would biologically treat the wastewater such that it would meet anticipated parameters either for indirect discharge to the Fort Madison, IA Publicly Owned Treatment Works ("POTW") under a modified Industrial User Permit or, alternatively, for direct discharge into the Mississippi River pursuant to a modified National Pollution Discharge Elimination System permit. The system would include an initial pH adjustment to all wastewater entering the system, aerated equalization with biological treatment, and Ultra-Filtration to retain biosolids and help stabilize biological growth. The wastewater would ultimately be treated via two stages of Nano-Filtration/Reverse Osmosis ("RO"), with the permeate being recycled and pumped into the feed water for the production water treatment stream. The reject stream from the second, "Production," RO unit would make up the discharge, which would either be routed to the POTW pursuant to a temporary Industrial User Permit or would be trucked for disposal. *See* **Figures 1 and 2.**

Based on preliminary review, this operating concept would work well in batch processing operations for a packaging facility like Fort Madison given that the filtration process retains microorganisms that have become acclimatized and lengthens the retention period, serving to equalize treatment over peak loading periods and downtime. EPA has studied and confirmed the technical feasibility of reverse osmosis and ultrafiltration processes in treating pesticide-containing wastewaters. ENVIRONMENTAL PROTECTION AGENCY, EPA-821-B-98-017, POLLUTION PREVENTION (P2) GUIDANCE MANUAL FOR THE PESTICIDE FORMULATING, PACKAGING, AND REPACKAGING INDUSTRY: IMPLEMENTING THE P2 ALTERNATIVE 45 (1998).

2.4. Duration

The pilot project would take approximately four to six months, including time needed to secure any necessary permits or authorizations and a 60-90 day lead time for the equipment vendor to secure the necessary equipment.

2.5. Project Assessment and Reporting

During the course of the project, the Company would assess, among other things, the viability and cost effectiveness of the technologies employed; potential stresses in the system that could undermine the longer-term effectiveness of a permanent wastewater treatment facility; and the fate of the influent constituents, i.e., whether they are biologically degraded, incorporated into the biosolids, or extracted by the RO process.

3. Regulatory Applicability

The pilot wastewater treatment system must comply with both the Resource Conservation and Recovery Act ("RCRA") and the Clean Water Act ("CWA") and their implementing regulations. RCRA compliance will be contingent upon how the system is designed and constructed. CWA compliance will be contingent upon how the system is designed and constructed and whether the facility discharges to a POTW or to waters of the United States.

4. Cost Estimate

Preliminary cost estimates and capital expenditures for the Fort Madison pilot wastewater treatment system include:

Equipment Rental, Installation, Operations, Analyticals, etc.	$ 49,000
Wastewater Consulting Services	$ 32,000
Scotts Labor, Electricity, and Laboratory Expenses	$ 31,000
Legal Review	$ 10,000
Total	$ 122,000

Key variables would include, but may not be limited to, the results of the wastewater characterization plan; records review and pilot study protocol review; and the amount of operations and maintenance required during the pilot period.

EXHIBIT A

Figure 1: Proposed Process Schematic

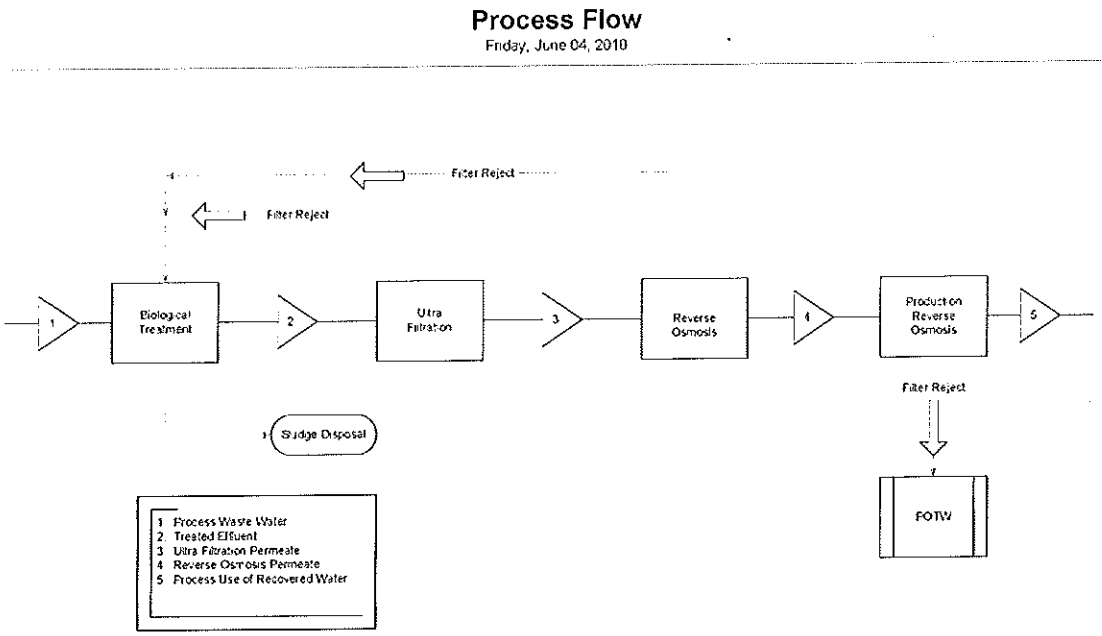

EXHIBIT A

Figure 2: Proposed Location of Wastewater Treatment Unit System

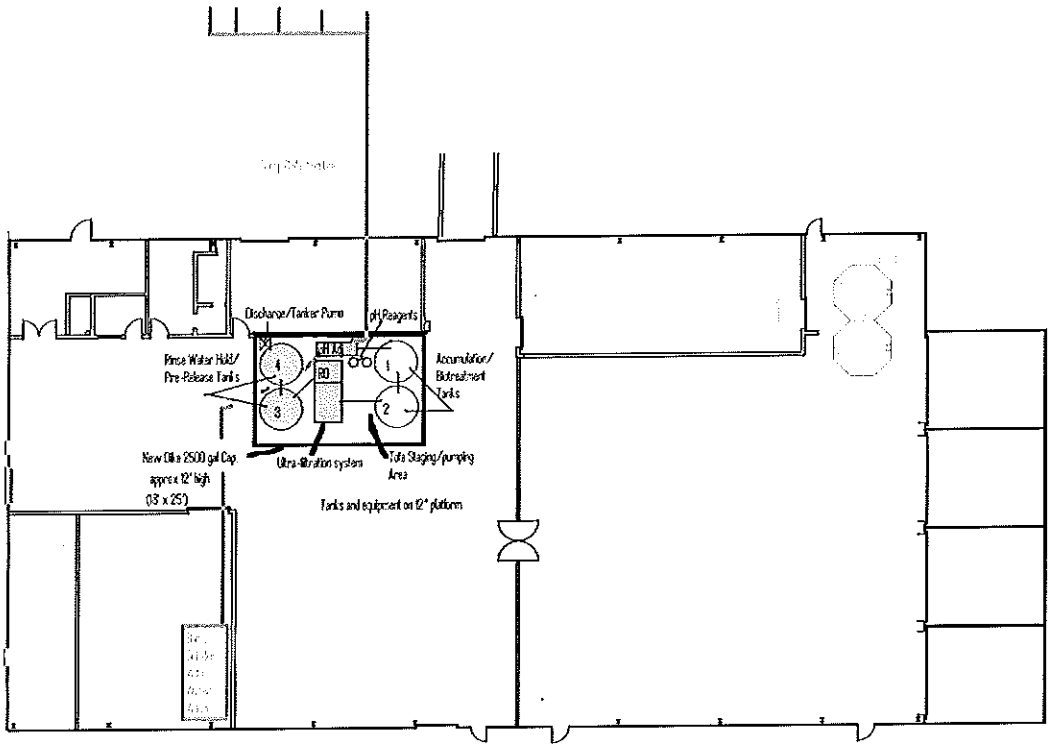

EXHIBIT B

THE SCOTTS MIRACLE-GRO COMPANY

1910 South 48th Street
Fort Madison, IA 52627

School Chemical Use and Disposal Audit Supplemental Environmental Project

PROJECT PROPOSAL

September 21, 2010

EXHIBIT B

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EXHIBIT B

1. Primary Objectives

The Project has three primary objectives:

1. Identify and remove obsolete chemicals and hazardous waste from selected schools in the greater Fort Madison community and arrange for their proper disposal in accordance with federal, state, and local hazardous waste laws and regulations;

2. Facilitate the creation or enhancement of policies and practices that prevent unnecessary accumulations of chemicals, encourage their responsible management, and minimize human exposure; and

3. Educate faculty, administrators, and staff regarding best practices, policies, and procedures to be incorporated into their chemical management program.

2. Project Description

2.1. Project Scope

The Project would proceed in two phases and would take place over approximately 1-2 years, with the vast majority of the work to be completed within the first 6 months.

Phase I would target four schools in the Fort Madison, IA area that had been previously identified by the Iowa Rehab the Lab program, but that declined to participate due to funding constraints, participated in a limited fashion, or otherwise require additional cleanout work. Unlike under the Rehab the Lab program, this service would be offered at no cost. Phase I would be limited to the identification and removal of obsolete chemicals and hazardous waste and would not involve an assessment of chemical management programs, the creation or enhancement of policies and procedures, or training or education.

Phase II would target up to seven additional schools in the Fort Madison, IA area. Phase II would proceed on a school-by-school basis, subject to an overall Project cost cap of $30,000 (which would include Phase I work). If the Project does not address all seven schools while remaining under the $30,000 cap, then the Project would terminate after the work for the school that triggered the cap is completed (with an allotment for forward-looking expenses associated with follow-up work for each of the schools visited). As discussed further below, Phase II not only would involve the identification, removal, and disposal of obsolete chemicals and hazardous waste, but also the creation or enhancement of policies and best practices regarding chemical management and the associated training and education of faculty, administrators, and staff.

If Phase II addresses all seven schools and the $30,000 cost cap has still not been reached, then the Project would continue with additional schools until this cap is reached. Scotts would identify which additional schools to target, taking into account proximity to the Fort Madison area and need.

EXHIBIT B

Each school targeted by the Project during either Phase I or Phase II would be informed that the Project is being conducted pursuant to a settlement of an enforcement action with EPA and at no cost to the schools that choose to participate. Scotts would contract with a certified hazardous waste disposal vendor to assist in the execution of the Project. The vendor would assist with the disposal of any obsolete chemicals and hazardous waste.

2.2. Phase II Breakdown

Phase II would be conducted in the same manner at each school and would involve six components:

1. The development of a template to be modeled after EPA's Schools Chemical Cleanout Campaign guide, the "Rehab the Lab" program developed by various entities, and any guidance documents or checklists provided by EPA Region 7;

2. Desktop review of current chemical storage and disposal practices, policies, and procedures;

3. Inventory and disposal of obsolete chemicals and hazardous waste in coordination with a certified hazardous waste vendor;

4. Development of best practices for chemical storage, tracking, and disposal and/or refinements to existing chemical management programs, based on the template and the desktop review;

5. Education of faculty, administration, and staff on those best practices and refinements; and,

6. Periodic assessment of the success and sustainability of the Project during the first year after its initial implementation.

2.2.1. Template Development

Phase II would be based on a template to be modeled after EPA's Schools Chemical Cleanout Campaign guide, "Building Successful Programs to Address Chemical Risks in Schools," EPA530-K-08-003 (November 2008) and other resources available on EPA's web site, http://www.epa.gov/sc3, which include the "Florida School Chemical Cleanout Manual" (published by the Florida Department of Environmental Protection) and the "Guidance Manual for K-12 Schools" (prepared for EPA Region 2). The template would also be modeled after the "Rehab the Lab" program developed by various entities and any guidance documents or checklists provided by EPA Region 7.

2.2.2. Desktop Review of Current Chemical Management Practices

Work for each Phase II school would begin with an evaluation of the school's current chemical storage and disposal practices, policies, and procedures. The evaluation would take place in

cooperation with school employees who are potential stakeholders in the school's chemical management program, including faculty, administrators, and staff.

2.2.3. Inventory and Removal of Obsolete Chemicals and Hazardous Waste

Scotts would inventory chemicals used or stored on the premises. This inventory would employ industry standard protocols, as well as checklist templates adapted from federal or state governmental programs. The Company would work with potential stakeholders to identify which of the inventoried chemicals are obsolete and would arrange for their disposal in accordance with applicable federal, state, and local hazardous waste laws and regulations.

2.2.4. Development of Best Practices

Based on the evaluation of the school's current chemical storage and disposal practices, policies, and procedures, Scotts would work with the school in an effort to develop or refine an effective and sustainable chemicals management program. Although the scope and details of each program would vary for each school, it is anticipated that each program would contain some or all of the following elements:

- Regular assessment of chemical purchases, including consideration of less toxic or non-chemical "green cleaning" alternatives;
- A system for ensuring that obsolete chemicals and hazardous waste are disposed of efficiently and in accordance with federal, state, and local hazardous waste laws and regulations;
- A system for inventorying and tracking chemical purchases;
- Simple protocols for handling chemicals both inside and outside of the classroom; and
- A curriculum to educate students on the safe handling of chemicals and ways to minimize exposure.

2.2.5. Training of School Employees

Once the program has been designed, Scotts would assist in training school faculty, administrators, and staff to execute it. This training could include, among other measures, potential stakeholder seminars and distribution of printed materials.

2.2.6. Evaluation and Measurement of Progress

Once the program had been implemented, Scotts would return to the school approximately one year following the initial work to evaluate its success. Metrics for evaluation may include: volume of obsolete chemicals and hazardous waste accumulated on the premises; changes in chemical purchasing and disposal policies; and surveys of faculty, administrator, and staff.

3. Cost Estimate

The cost estimate for the project would be approximately $30,000. The Project would proceed with all of the Phase I schools and with some or all of the Phase II schools in keeping with the scoping provided in Section 4.1 until $30,000 in costs have been expended. As noted above, if

the Project addresses all seven Phase II schools and the $30,000 cost cap has not been reached, then the Project would continue with additional schools until this cap is reached. If the Project does not address all seven schools under the $30,000 cap, then the Project would terminate after the work for the school that triggered the cap is completed (with an allotment for the forward-looking expenses associated with Section 4.2.6). The Company estimates that over 95% of the Project cost would be incurred in the first six months of the Project, with the remaining cost allocated to the one year follow-up.

The basis for the $30,000 cost cap is as follows:

3.1. Phase I

Based on its communications with Iowa Rehab the Lab representatives, Phase I would cost approximately $10,500.

3.2. Phase 2

Scotts projects that Phase II would cost approximately $1000 for the template development, plus $5000 per school, based on the following breakdown:

Desktop Review	$400 per school
Inventory and Disposal	$3000 per school
Best Practice Development	$800 per school
Education	$600 per school
Periodic Assessment	$200 per school

Key variables that may affect project cost include, but are not limited to, the number of schools that agree to participate, the amount of hazardous waste found at each participating school, the extent to which chemical management plans are already in place, the extent to which a school has already been audited, and the level of in-house participation in the Project at each school.

IN THE MATTER OF The Scotts Manufacturing Company, Respondent
Docket No. RCRA-07-2010-0035

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order and Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kent Johnson
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Karl Heisler, Esq.
Katten Muchin Rosenman LLP
2900 K Street, NW, North Tower
Suite 200
Washington, DC 20007

Dated: 9/30/10

Kathy Robinson
Hearing Clerk, Region 7