



State of Ohio Environmental Protection Agency

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April 23, 2009

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OHIO EPA

APR 24 2009

DIV. OF HAZARDOUS
WASTE MGT.

Ms. Brenda Abke
Global Environmental Health, Safety & Security
The Scotts Company, LLC
14111 Scottslawn Road
Marysville, Ohio 43041

Re: **The Scotts Company, LLC**
Financial Assurance
OHD 990 834 483

encl 104 (KD)
enf 049

Dear Ms. Abke:

On April 20, 2009, Ohio EPA conducted a financial record review of the Scotts Company, LLC (Scotts) facility in Marysville, Ohio. I evaluated the facility for compliance with closure, post-closure care and corrective action financial assurance requirements as set forth in the Ohio Administrative Code (OAC) rules 3745-66-44, 3745-66-45 and 3745-54-101(B) and (C).

To meet compliance with financial assurance requirements, Scotts submitted financial assurance documentation to demonstrate compliance with the above post-closure care and corrective action requirements. Scotts submitted a financial test mechanism in March 2007. On April 17, 2007, Scotts submitted a request to decrease financial assurance cost estimates. In June, August and November 2007, alternate financial assurance mechanism in the form of a Letter of Credit was provided to replace the financial test. The Letter of Credit No. TPTS-576917 with JP Morgan Chase and an Amended Standby Trust Agreement were entered into with Ohio EPA and National City Bank.

CONCERNS:

Cost Estimate

The cost estimate submitted with the 2007 financial test included an amount of \$5,571,457.52. Scotts requested the cost estimate be decreased in 2007 to the amount of \$4,464,157.12; and in 2008 to the amount of \$3,810,532.52. However, adequate documentation has not been provided to substantiate the reduced cost estimate. Estimates can be recalculated to reflect a lower cost estimate but documentation from a

third-party must be provided to substantiate the decreased estimates. Scotts must submit third-party vendor quotes to document the decreased cost estimates. The quotes should be detailed and include each unit's labor and equipment cost. The estimate should include where applicable at least: waste removal, transportation, O&M, sampling & analysis, decontamination, security, contingency and engineering cost for each unit.

Letter of Credit Language

Ohio EPA received several versions of a Letter of Credit (LOC). Because of the wording problems with the LOC, Ohio EPA has not officially accepted the LOC. The LOC dated August 2, 2008, would satisfy the wording requirements with the exception of the last paragraph. The signature, date, and title must be included. All extraneous language must be removed from the LOC. Once adequate documentation is provided to Ohio EPA, the director will authorize the bank to decrease the LOC in writing.

Upon review of the above, **Scotts is in violation of OAC rule 3745-66-45** because the wording in the LOC is not adequate. To address the above violation submit an LOC with the exact wording, an appropriate signature, title and date, pursuant to the wording in the OAC rule 3745-55-51(D).

For Ohio EPA to consider decreasing the cost estimate, Scott's should submit vendor quotes to document the modified cost estimate. The cost estimates must be documented with quotes from the vendor.

Please submit the above requested documentation to me within thirty (30) days of the receipt of this letter. If you have any questions about this matter, do not hesitate to contact me at (614) 644-2951.

Sincerely,



Tina Jennings
Compliance Assurance Section
Division of Hazardous Waste Management

cc: Kristina Durnell, RISS, DHWM
Chris Bulinski, DHWM, CDO

Notice: Ohio EPA's failure to list specific deficiencies or violations in this letter does not relieve your company from having to comply with applicable regulations.