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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	PCB 99-102
-vs-)	(Enforcement)
)	
THE SCOTTS COMPANY, an Ohio)	
Corporation,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Christiane W. Schmenk
Director of Legal Affairs
The Scotts Company
14111 Scottslawn Road
Maryville, Ohio 430041

PLEASE TAKE NOTICE that I have today filed a Complaint, Stipulation and Proposal for Settlement, Motion to Request Relief from the Hearing Requirement and a Certificate of Service, on behalf of the Illinois Environmental Protection Agency, a copy of which is attached and herewith served upon you.

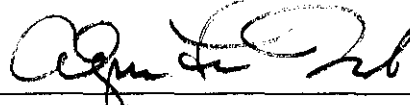
NOTIFICATION

YOU ARE HEREBY NOTIFIED that, financing may be available through the Illinois Environmental Facilities Financing Act [20 ILCS 3515/1, et seq.] to correct the alleged pollution.

PEOPLE OF THE STATE OF ILLINOIS

JAMES E. RYAN
Attorney General of the
State of Illinois

BY:



ALYSSA FRON NEWCOMB
Assistant Attorney General
Environmental Bureau
100 W. Randolph St. - 11th Fl.
Chicago, IL 60601
(312) 814-3774

DATE: January 15, 1999

c:\forms\agrmtn2 THIS FILING IS SUBMITTED ON RECYCLED PAPER

4. Scotts operates a landscape composting facility that consists of 58 acres in Section 8 of T37N, R7E of the 3rd PM in Kendall County, Illinois ("facility").

5. On October 23, 1993, The Illinois EPA issued a permit to Scotts to develop and operate a landscape composting facility at its Kendall County facility. This permit expired on September 25, 1996, and, in order to continue operations, Scotts was required to submit a reapplication at least ninety days prior to the expiration date.

6. On October 1, 1996, the Illinois EPA conducted an inspection of the facility. The facility was operating although its permit had expired and Scotts had failed to submit its reapplication.

7. On October 30, 1996, the Illinois EPA conducted a second inspection of the facility and discovered that Scotts was still accepting landscape waste.

8. On December 20, 1996, the Illinois EPA issued Permit No. 1996-338-REN to Scotts for composting operations at the facility.

9. On April 8, 1997, the Illinois EPA conducted a third inspection of the facility. At this time, Respondent was operating the facility with the following deficiencies: failure to post a sign with a contact person for complaints; failure to monitor on a weekly interval the oxygen level of each windrow of composting material; failure to monitor on a bi-weekly basis the moisture level of each

windrow of composting material; failure to provide proper documentation of personnel training; and failure to test compost derived from landscape waste for the parameters set forth in 35 ILL. Adm. Code 830.503(a)-(f).

10. Section 21(d)(1) (1996) of the Act, 415 ILCS 5/21(d)(1) (1996), provides as follows:

No person shall:

d. Conduct any waste-storage, waste-treatment, or waste-disposal operation:

1. without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; . . .

11. Section 3.20, 3.49, 3.53, and 3.70 of the Act, 415 ILCS 5/3.20, 3.49, 3.53 and 3.70 (1996), provides the following definitions:

"LANDSCAPE WASTE" means all accumulations of grass or shrubbery cuttings, leaves, tree limbs and other materials accumulated as the result of the care of lawns, shrubbery, vines and trees.

"TREATMENT" means any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any waste so as to neutralize it or render it nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

"WASTE" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.94, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921) or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto.

"Composting" means the biological treatment process by which microorganisms decompose the organic fraction of waste, producing compost.

12. The material Scotts accepts at its facility is "landscape waste" and "waste" as those terms are defined by the Act.

13. The processes at the Scotts facility is "composting" and therefore, a "treatment" as those terms are defined by the Act.

14. The Scotts facility is a waste-treatment facility that requires a permit pursuant to Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (1996).

15. Since at least September 25, 1996 until at least December 20, 1996, by causing or allowing the operation of a waste-treatment facility without the necessary permit, Scotts has violated

Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (1996).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order for Complainant and against Respondent, THE SCOTTS COMPANY, with respect to Count I:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

2. Finding that Respondent has caused or allowed violations of Section 21(d)(1) of the Act.

3. Ordering Respondent to cease and desist from further violations of Section 21(d)(1) of the Act.

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) per day for each violation of the Act and the regulations promulgated thereunder, and Ten Thousand Dollars (\$10,000.00) per day for each day of violation;

5. Ordering Respondent to pay all costs, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT II
TREATMENT OF LANDSCAPE WASTE WITHOUT A PERMIT

1-9. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 9 of Count I as paragraphs 1 through 9 of this Count II.

10. Section 21(e) of the Act, 415 ILCS 5/21(e) (1996), provides as follows:

No person shall:

- e. Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

11-14. Plaintiff realleges and incorporates by reference herein paragraphs 11 through 14 of Count I as paragraphs 11 through 14 of this Count II.

15. From at least September 25, 1996 until at least December 20, 1996, by causing or allowing the treatment or storage of landscape waste its facility without the necessary permit, Scotts has violated Section 21(e) of the Act, 415 ILCS 5/21(e) (1996).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order for Complainant and against Respondent, THE SCOTTS COMPANY, with respect to Count II:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

2. Finding that Respondent has caused or allowed violations of Section 21(e) of the Act.

3. Ordering Respondent to cease and desist from further violations of Section 21(e) of the Act.

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) per day for each violation of the Act and the regulations promulgated thereunder, and Ten Thousand Dollars (\$10,000.00) per day for each day of violation;

5. Ordering Respondent to pay all costs, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT III
VIOLATION OF SPECIAL PERMIT CONDITIONS

1-9. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 9 of Count I as paragraphs 1 through 9 of this Count III.

10. Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (1996), provides as follows:

No person shall:

d. Conduct any waste-storage, waste-treatment, or waste-disposal operation:

* * *

2. in violation of any regulations or standards adopted by the Board under this Act.

11-13. Plaintiff realleges and incorporates by reference herein paragraphs 11 through 13 of Count I as paragraphs 11 through 13 of this Count III.

14. Section 830.202(i)(4) of the Illinois Pollution Control Board ("Board") Waste Disposal Regulations, 35 Ill. Adm. Code 830.202(i)(4), titled, *Minimum Performance Standards and Reporting Requirements for Landscape Waste Compost Facilities*, provides as follows:

With the exception of on-site landscape waste compost facilities, all landscape waste compost facilities subject to this Part shall comply with the following requirements:

* * *

- i. Except for on-farm landscape waste compost facilities, the operator shall post permanent signs at each entrance, the text of which specifies in letters not less than three inches high:

* * *

4. The statement, "COMPLAINTS CONCERNING THIS FACILITY CAN BE MADE TO THE FOLLOWING PERSONS, followed by the name and telephone number of the operator, and the name and telephone number of the Bureau of Land, Illinois Environmental Protection Agency, Springfield, Illinois.

15. Section 830.205(m)(1)(B) and (C) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 830.205(m)(1)(B) and (C),

titled, *Additional Operating Standards for Permitted Landscape Waste Compost Facilities*, provides as follows:

All permitted landscape waste compost facilities must comply with the following operating standards, in addition to those set forth in Sections 830.202 and 830.204:

* * *

m. Monitoring

1. At a minimum, for batch, windrow and pile systems:
 - B. The moisture level in each batch, windrow or pile of composting material must be monitored once every two weeks; and
 - C. For aerobic composting, the oxygen level of each batch, windrow or pile of composting material must be monitored weekly.

16. Section 830.210(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 830.210(a), titled, *Personnel Training for Permitted Landscape Waste Compost Facilities*, provides as follows:

- a. The operator of a permitted landscape waste compost facility shall provide training to all personnel prior to initial operation of a composting facility. In addition, annual personnel training shall be provided, which must include, at a minimum, a thorough explanation of the operating procedures for both normal and emergency situations.

17. Section 830.504(a) and (d) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 830.504(a) and (d), titled, *Testing*

Requirements for End-Product Compost Derived from Landscape Waste,
provides as follows:

- a. Operators shall perform testing to demonstrate compliance with the standards set forth in subsections (b)-(e) of Section 830.503. Such testing must be done in accordance with the methods set forth in Section 830, Appendix B, except that an alternative method or methods may be used to demonstrate compliance with any of these standards, if approved in writing by the Agency.

* * *

- d. End-product compost derived from landscape waste must be tested for the parameters set forth in Section 830.503 at a frequency of:
 1. Once every 5,000 cubic yards of end-product compost transported off-site; or
 2. Once per year, if less than 5,000 cubic yards of end-product compost are transported off-site per year.

18. Special Condition 10(d) of Permit No. 1996-338-REN

provides as follows:

The operator shall post a permanent sign at each entrance, the text of which specifies in letters of not less than three inches high:

- d. The statement, "COMPLAINTS CONCERNING THIS FACILITY CAN BE MADE TO THE FOLLOWING PERSONS, followed by the name and telephone number of the operator, and the name and telephone number of the Bureau of Land, Illinois Environmental Protection Agency, Springfield, Illinois.

19. Special Condition 16 of Permit No. 1996-338-REN provides as follows:

The operator shall take measures to adjust the oxygen level within the windrow as necessary to promote aerobic composting. The oxygen level of each windrow of composting material shall be monitored at a minimum weekly.

20. Special Condition 17 of Permit No. 1996-338-REN provides as follows:

The operator shall take measures to maintain the moisture level of the composting material with a range of 40% to 60%. The moisture level in each windrow of composting material shall be monitored at a minimum of once every two weeks.

21. Special Condition 33 of Permit No. 1996-338-REN provides as follows:

Employees shall be provided training annually in facility operating procedures for both normal and emergency situations. New employees shall be trained prior to participating in operations at the facility relevant to their employment. Employees shall sign an acknowledgment stating that they have received training in facility operating procedures and such acknowledgment shall be made a part of the records for the facility.

22. Special Condition 37 of Permit No. 1996-338-REN provides as follows:

Except for end product compost used as daily cover or vegetative amendment in the final layer at a landfill, compost derived from landscape waste must be tested for the parameters set forth in 35 Ill. Adm. Code 830.503(a-e) at a frequency of once every 5000 cubic yards transported off-site or once per year if less than 5000 cubic yards of compost are transported off-site per year.

23. By failing to failure to post a sign with a contact person for complaints; failing to monitor on a weekly interval the

oxygen level of each windrow of composting material; failing to monitor on a bi-weekly basis the moisture level of each windrow of composting material; failing to provide proper documentation of personnel training; and failing to test compost derived from landscape waste for the parameters set forth in 35 ILL. Adm. Code 830.503(a)-(f), Scotts has violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (1996), Sections 830.202(i)(4), 830.205(m)(1)(B) and (C), 830.210(a) and 830.504(a) and (d) of the 35 Ill. Adm Code, and Special Conditions 10(d), 16, 17, 33 and 37 of Permit No. 1996-338-REN.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order for Complainant and against Respondent, THE SCOTTS COMPANY, with respect to Count III:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

2. Finding that Respondent has caused or allowed violations of Section 21(d)(2) of the Act, Sections 830.202(i)(4), 830.205(m)(1)(B) and (C), 830.210(a) and 830.504(a) and (d) of the 35 Ill. Adm Code, and Special Conditions 10(d), 16, 17, 33 and 37 of Permit No. 1996-338-REN.

3. Ordering Respondent to cease and desist from further violations of Section 21(d)(2) of the Act, Sections 830.202(i)(4),

830.205(m) (1) (B) and (C), 830.210(a) and 830.504(a) and (d) of the 35 Ill. Adm Code, and Special Conditions 10(d), 16, 17, 33 and 37 of Permit No. 1996-338-REN.

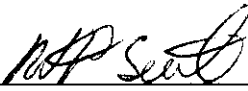
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) per day for each violation of the Act and the regulations promulgated thereunder, and Ten Thousand Dollars (\$10,000.00) per day for each day of violation;

5. Ordering Respondent to pay all costs, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS
JAMES E. RYAN
Attorney General
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

By: 
WILLIAM D. SEITH, Chief
Environmental Bureau
Assistant Attorney General

OF COUNSEL:

ALYSSA FRON NEWCOMB
Assistant Attorney General
Environmental Bureau
100 West Randolph Street, 11th Floor
Chicago, IL 60601
(312) 814-3774

C:\scotts\cmplt

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JAN 15 1999

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	PCB 99-102
-vs-)	(Enforcement)
)	
THE SCOTTS COMPANY, an Ohio)	
Corporation,)	
)	
Respondent.)	

**MOTION TO REQUEST
RELIEF FROM HEARING REQUIREMENT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, hereby requests relief from the hearing requirement in the above captioned matter.

In support thereof the Complainant states as follows:

1. Today, the parties in the above-captioned matter simultaneously filed a Complaint and Stipulation and Proposal for Settlement with the Board.

2. Section 31(a)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(a)(2)(1996), provides:

Notwithstanding the provisions of subdivision (1) of this subsection (a), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). . . .

3. The parties thereto have filed a Stipulation and Proposal for Settlement and agree that a formal hearing is not necessary to


conclude this matter and wish to avail themselves of Section 31(a)(2) of the Act.

WHEREFORE, Complainant requests relief from the hearing requirement pursuant to Section 31(a)(2) of the Act.

Respectfully submitted,

JAMES E. RYAN
Attorney General of the
State of Illinois

BY:



ALYSSA FRON NEWCOMB
Assistant Attorney General
Environmental Bureau
100 West Randolph, 11th Flr.
Chicago, Illinois 60601
(312) 814-3774

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 -vs-)
)
 THE SCOTTS COMPANY, an Ohio)
 Corporation,)
)
 Respondent.)

PCB 99-102
(Enforcement)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, on his own motion, and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, THE SCOTTS COMPANY (hereinafter referred to as "Respondent" or "Scotts"), do hereby submit this Stipulation and Proposal for Settlement. The parties agree that the Complainant's statement of facts contained herein is agreed to only for the purposes of settlement. The parties further state that neither the fact that a party has entered into this stipulation, nor any of the facts stipulated herein, shall be admissible into evidence, or used for any purpose in this, or any other proceeding, except to enforce the terms hereof, by the parties to this agreement. Notwithstanding the previous sentence, this Stipulation, and any Illinois Pollution Control Board ("Board") order accepting same, may be used as evidence of a past adjudication of a violation of the Illinois Environmental Protection Act ("Act") for purposes of Section 42(h) of the Act, 415 ILCS 5/42(h) (1996). This Stipulation and Proposal for Settlement shall be null and void unless the Board approves and disposes of this matter on each and every one of the terms and conditions of the settlement set forth herein.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 et seq. (1996).

II.

AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and Proposal for Settlement and to legally bind them to it.

III.

APPLICABILITY

This Stipulation and Proposal for Settlement shall apply to, and be binding upon, the Complainant and Respondent, and any officer, agent, employee or servant of Respondent, as well as the Respondent's successors and assigns. Respondent shall not raise as a defense to any enforcement action taken pursuant to this settlement the failure of its officers, directors, agents, servants or employees to take such action as shall be required to comply with the provisions of this settlement.

IV.

STATEMENT OF FACTS

On October 23, 1993, the Illinois EPA issued a permit to develop and operate a landscape waste composting facility known as the Scotts Composting Facility ("Facility") in Kendall County, Illinois. This permit expired on September 25, 1996 and, in order to continue operations, Respondent was required to submit a

reapplication at least ninety (90) days prior to the expiration date. On October 1, 1996, the Illinois EPA conducted an inspection of the Facility. The Facility was operating although its permit had expired and Respondent had failed to submit its reapplication. A representative of Respondent was told at this time to cease accepting waste until it obtained a new permit. On October 30, 1996, the Illinois EPA conducted a second inspection of the Facility and discovered that Respondent was still accepting landscape waste. On December 20, 1996, the Illinois EPA issued Permit No. 1996-338-REN to Respondent for composting operations at the Facility. On April 8, 1997, the Illinois EPA conducted a third inspection of the Facility. At this time, Respondent was operating the Facility in violation of conditions of its operating permit as follows: failure to post a sign with a contact person for complaints; failure to monitor on a weekly interval the oxygen level of each windrow of composting material; failure to monitor on a bi-weekly basis the moisture level of each windrow of composting material; failure to provide proper documentation of personnel training; and failure to test compost derived from landscape waste for the parameters set forth in 35 Ill. Adm. Code 830.503(a)-(f).

V.

VIOLATIONS

This Stipulation is intended to resolve the allegations in the People's Complaint filed in this matter. The Complaint alleges violations of the Act, 415 ILCS 5/1 *et seq.* (1996), and the Board Waste Disposal Regulations, 35 Ill. Adm. Code Subtitle G, as follows:

- COUNT I - OPERATING A COMPOSTING FACILITY WITHOUT A PERMIT: violation of 415 ILCS 5/21(d)(1) (1996);
- COUNT II - TREATMENT OF LANDSCAPE WASTE WITHOUT A PERMIT: violation of 415 ILCS 5/21(e) (1996);
- COUNT III - VIOLATION OF SPECIAL PERMIT CONDITIONS: violation of 415 ILCS 21(d)(2) (1996), 35 Ill. Adm. Code 830.202(i)(4), 830.205(m)(1)(B) and (C), 830.210(a) and 830.504(a) and (d), and Special Conditions 10(d), 16, 17, 33 and 37.

VI.

NATURE OF RESPONDENT'S OPERATION AND EQUIPMENT

Respondent is in the business of receiving and treating landscape waste.

VII.

EXPLANATION OF PAST FAILURES TO COMPLY

As to the alleged violations set forth in Counts I and II, Respondent states that due to change in management at the Facility, it did not become aware that the applicable permit was about to expire until mid-September, 1996. Respondent immediately contacted the permitting section of the Illinois EPA and advised them of the situation. Respondent also disclosed its need to continue receipt of leaves and woody materials so that Respondent would have a carbon source to prevent environmental problems associated with the composting of grass. Respondent forwarded an application for a new permit to the Illinois EPA on October 10, with receipt occurring on October 11, 1996. Respondent maintained contact with the Illinois EPA until November 22, 1996, when a violation notice letter was received, and thereafter. On that date, Respondent ceased active operations at the Facility but continued to receive deliveries of leaves and woody materials until December 1 so that it would have an

adequate source of carbon. In December, 1996, Respondent's new permit was issued.

Regarding the violations alleged in Count III, Respondent states that it did initially fail to comply with the conditions of its operating permit set forth in Section IV of this Stipulation. However, once advised of these issues in April, 1997, Respondent diligently responded and came into compliance.

VIII.

FUTURE PLANS OF COMPLIANCE

Respondent shall conform with all requirements of the Act and any and all of the Board Regulations, 35 Ill. Adm. Code Subtitles A through H.

IX.

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (1996), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors the parties state as follows:

1. The impact to the public regarding Respondent's noncompliance was that the Illinois EPA and the public were not privy to information that is important to the control of pollution in the State of Illinois.

2. The parties agree that Respondent's operation is of social and economic benefit.

3. The parties agree that Respondent's business is suitable to the area in which it is conducted.

4. Compliance with the requirements of the Act and the Board regulations is both technically practicable and economically reasonable.

5. With respect to the violations as alleged in the Complaint filed herein, Respondent has come into compliance with the Act and the Board regulations.

X.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (1996), provides as follows:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2) or (b)(3) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the violator in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the violator because of delay in compliance with requirements;

4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this act by the violator and other persons similarly subject to the Act; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors the parties state as follows:

1. The violations, as set forth in the People's Complaint, occurred from at least October 1, 1996 and continued until at least April 8, 1997.
2. Respondent exhibited due diligence in attempting to comply with the requirements of the Act and the Board Waste Disposal Regulations.
3. The Respondent accrued an economic benefit by failing to comply with the Act and the Board Waste Disposal Regulations.
4. A civil penalty of Five Thousand Dollars (\$5,000.00) will serve to deter any future violations of the Act and the Board regulations, and will enhance voluntary compliance with the law.
5. Complainant's records do not reflect previously adjudicated violations of the Act by Respondent.

XI.

TERMS OF SETTLEMENT

1. Respondent admits to the violations alleged by the Complainant herein.
2. Respondent shall pay a civil penalty of Five Thousand Dollars (\$5,000.00) into the Illinois Environmental Protection Trust Fund within thirty (30) days from the date the Board adopts a final opinion and order approving this Stipulation and Proposal for Settlement. Payment shall be made by certified check or money

order, payable to the Treasurer of the State of Illinois, designated to the Illinois Environmental Protection Trust Fund, and shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

A copy of the check shall be sent to:

Alyssa Fron Newcomb
Assistant Attorney General
Environmental Bureau
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601

Respondent's Federal Employee Identification Number ("FEIN") is 31-1414921 and shall appear on the face of the certified check or money order.

3. For the purposes of collection, Respondent may be reached at the following address:

The Scotts Company
ATTN: G. Robert Lucas, Gen'l Counsel
14111 Scottslawn Road
Marysville, Ohio 43041

4. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (1996), interest shall accrue on any amount not paid, within the time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (1996).

a. Interest on unpaid amounts shall begin to accrue from the date the penalty payment is due and continue to accrue to the date payment is received.

b. Where partial payment is made on any payment amount that is due, such partial payment shall be first applied to any interest on unpaid amounts then owing.

c. All interest on amounts owed the Complainant, shall be paid by certified check payable to the Treasurer of the State of Illinois for deposit in the Environmental Protection Trust Fund and delivered in the same manner as described in Section XI.2. herein.

5. Respondent shall at all times comply with the solid waste rules and regulations as set forth in Section 21 of the Act, 415 ILCS 5/21 *et seq.* (1996), and Subtitle G of 35 Ill. Adm. Code.

6. Respondent shall at all times comply with the terms and conditions of Permit No. 1996-338-REN.

7. Respondent shall cease and desist from further violations of the Act and the regulations promulgated thereunder.

XII.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects Respondent's responsibility to comply with any federal, state or local laws and regulations, including but not limited to, the Act, 415 ILCS 5/21 (1996), and the Board Regulations, 35 Ill. Adm. Code Subtitle A through H.

XIII.

RIGHT OF ENTRY

In addition to any authority at law, the Illinois EPA, its employees and representatives, and the Illinois Attorney General, his agents and representatives, shall have the right of entry to Respondent's place of business at all reasonable times, for the purpose of conducting inspections of Respondent's operation. The Illinois EPA, its employees and representatives, and the Attorney General, his agents and representatives, may take any photographs or samples they deem necessary in order to conduct their inspection.

XIV.

RELEASE FROM LIABILITY

In consideration of Respondent's payment of a Five Thousand Dollar (\$5,000.00) civil penalty, commitment to comply with the Act and the regulations promulgated thereunder, and commitment to refrain from further violations of the Act, and the regulations promulgated thereunder, the Complainant releases, waives and discharges Respondent and its officers, directors, employees, agents, successors and assigns from any further liability or penalties from the violations of the Act and Board regulations which were the subject matter of the Complaint herein, upon receipt by Complainant of all payments required by Section XI. However, nothing in this Stipulation and Proposal for Settlement shall be construed as a waiver by Complainant of the right to redress future violations or obtain penalties with respect thereto.

WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.


AGREED:

FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS

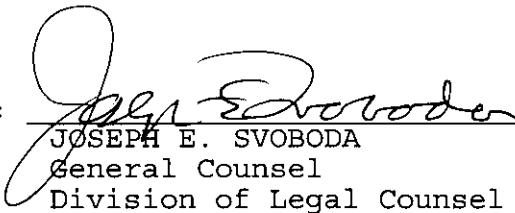
JAMES E. RYAN
Attorney General
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

By: 
WILLIAM D. SEITH, Chief
Environmental Bureau
Assistant Attorney General

Dated: 1/15/99

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

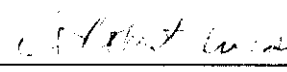
By: 
JOSEPH E. SVOBODA
General Counsel
Division of Legal Counsel

Dated: 11-24-98

FOR THE RESPONDENT:

THE SCOTTS COMPANY

CWS

By: 
G. ROBERT LUCAS
Senior Vice President,
General Counsel and Secretary

Dated: 12-17-98

CERTIFICATE OF SERVICE

I, Alyssa Fron Newcomb, an Assistant Attorney General in this case, do certify that on the 15th day of January, I caused to be served, by certified mail, the foregoing Complaint, Stipulation and Proposal for Settlement, Motion to Request Relief From the Hearing Requirement and Notice of Filing upon the person(s) listed on said Notice of Filing by depositing same in the U.S. Mail depository located at 100 W. Randolph Street, Chicago, Illinois in an envelope with sufficient postage prepaid return receipt requested.



ALYSSA FRON NEWCOMB