

IN THE COURT OF COMMON PLEAS
UNION COUNTY, OHIO

STATE OF OHIO,
ex rel. LEE FISHER
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

THE O.M. SCOTT & SONS COMPANY,

Defendant.

Case No. 87-CV-154

JUDGE GRIGSBY

CONSENT ORDER

COURT OF COMMON
PLEAS
UNION COUNTY
92 APR 13 AM 10:49
Clerk

The Plaintiff, State of Ohio, ex rel. Lee Fisher, Attorney General of Ohio ("Plaintiff"), having filed the Complaint in this action against The O.M. Scott & Sons Company ("O.M. Scott" or "Defendant") to enforce the State of Ohio's hazardous waste and water pollution control laws and the rules promulgated thereunder concerning the Defendant's alleged violations of such laws at and around the O.M. Scott facility located on Scottslawn Road, Marysville, Union County, Ohio, and Plaintiff and Defendant O.M. Scott having consented to the entry of this Consent Order;

THEREFORE, without trial or admission of any issue of law or of fact, and upon the consent of the Plaintiff and Defendant O.M. Scott hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. PERSONS BOUND

The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendant O.M. Scott, its officers, employees, assigns, successors in interest, and any person acting in concert or privity with any of them.

II. SATISFACTION OF LAWSUIT

Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant O.M. Scott for all claims against said Defendant alleged in the Complaint. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint, including violations or conditions which may occur after the filing of this Consent Order.

III. JURISDICTION AND VENUE

The Court has both personal and subject matter jurisdiction over Plaintiff and Defendant O.M. Scott. The Complaint states a claim upon which relief may be granted against Defendant O.M. Scott under Chapters 3734. and 6111. of the Ohio Revised Code ("ORC") and the rules promulgated thereunder. Venue is proper in this Court.

IV. PERMANENT INJUNCTION

Defendant O.M. Scott is hereby permanently enjoined and ordered to comply with ORC Sections 6111.04, 3750.06, and Ohio Administrative Code ("OAC") Rules 3745-65-90 through 3745-65-94, except to the extent that the terms of this Consent Order specifically exempt Defendant from certain requirements of OAC Rules 3745-65-90 through 3745-65-94.

V. POST-CLOSURE PLAN

Within sixty (60) days of the entry of this Consent Order, Defendant O.M. Scott is enjoined and ordered to submit to the Ohio EPA, Attn: Manager, Data Management Section, Division of Hazardous Waste Management, 1800 WaterMark Drive, Columbus,

Ohio 43266-0149, pursuant to OAC Rule 3745-66-18, an amended post-closure plan which addresses the following items:

- a. The installation of two (2) properly located ground water monitoring (detection) wells northwest of Pond 1, one (1) to be screened in the shallow till zone and one (1) to be screened in the deep till zone;
- b. The installation of two (2) properly located ground water monitoring (detection) wells west of Pond 1, one (1) to be screened in the shallow till zone and one (1) to be screened in the deep till zone;
- c. The installation of two (2) new upgradient (background) wells, one (1) screened in the shallow till zone and one (1) screened in the deep till zone, or a demonstration that the current wells or two (2) of the wells installed pursuant to paragraphs a and b above are adequate background wells;
- d. The collection of background concentration data for the indicator parameters 2, 4-D, arsenic, mercury, and any decomposition products for 2, 4-D, from upgradient (background) monitoring wells in the shallow till and deep till zones quarterly for one year or a demonstration that previously collected data from any existing background wells will comprise an adequate background data set;
- e. The establishment of background concentrations of 2, 4-D, arsenic, mercury, and any decomposition products for 2, 4-D, for upgradient (background) monitoring wells in the shallow till and deep till zones;
- f. The semi-annual monitoring of all wells in O.M. Scott's ground water monitoring system for the indicator parameters 2, 4-D, arsenic, mercury, and any decomposition products for 2, 4-D, once background concentrations have been established in all upgradient (background) wells;
- g. The statistical comparison, with an appropriate statistical method, of semi-annual indicator parameter data from the upgradient (background) and all downgradient wells in the shallow till and deep till zones to the respective upgradient (background) data sets to determine which wells, if any, should be included in an assessment monitoring program;

- h. The installation of a minimum of three (3) ground water monitoring (detection) wells in the limestone aquifer, and the collection of geotechnical information which will allow the determination of ground water flow directions in the limestone aquifer and the hydraulic relationship of the limestone aquifer with the overlying till, if ground water contamination is determined to be present in the deep till zone based on the statistical comparisons completed pursuant to paragraph g above;
- i. The establishment of an upgradient (background) well for the limestone aquifer and, for all wells in the limestone aquifer, the completion of the tasks outlined in paragraphs d, e, f and g, if ground water contamination is determined to be present in the deep till zone based on the statistical comparisons completed pursuant to paragraph g above;
- j. The submission of a revised sampling and analysis plan which meets the requirements of OAC Rule 3745-65-92(A) and includes a discussion of the applicability of measurement of immiscible layers in monitoring wells, method detection limits for applicable constituents, sample holding times, the collection of duplicate samples, and the potential interferences associated with the applicable constituents;
- k. The submission of an outline of a ground water quality assessment plan which addresses O.M. Scott's ground water monitoring system and meets the requirements of OAC Rule 3745-65-93(A), including a discussion of the tasks set forth in paragraphs h and i above;
- l. Compliance with OAC Rules 3745-65-90 through 3745-65-94, except to the extent that the terms of this Consent Order specifically exempt Defendant from certain requirements contained therein; and
- m. A schedule of implementation.

The Director of the Ohio EPA will act upon the amended post-closure plan in accordance with the provisions of OAC Rule 3745-66-18. If the Director does not approve the amended post-closure plan submitted by Defendant and provides Defendant with a written statement of the reasons for his refusal to do so, Defendant shall modify the plan or submit a new plan for approval, thereby addressing the deficiencies noted by the Director in the aforementioned written statement, within thirty (30) days of Defendant's receipt of such written statement. If the Director modifies the amended post-closure plan, however, the modified plan becomes the approved post-closure plan.

Upon approval of the amended post-closure plan by the Director, Defendant is enjoined and ordered to implement the plan in the manner and pursuant to the time frames set forth in said plan or any conditions contained in the plan approval. However, nothing in this Consent Order shall be construed so as to limit Defendant O.M. Scott's rights, pursuant to ORC Chapter 3745., to appeal the Director's approval of the amended post-closure plan to the Environmental Board of Review.

The parties to this Consent Order understand and agree that the submittal and/or subsequent approval of the aforementioned amended post-closure plan will in no way affect the computation of the thirty (30) year post-closure care period for the hazardous waste unit at issue herein, which post-closure care period commenced on October 1, 1988. In addition, the

parties understand and agree that Defendant is not required to monitor for the parameters identified in OAC Rule 3745-65-92 (B)(1) and (2) and that Defendant's monitoring for the indicator parameters 2, 4-D, arsenic, mercury, and any decomposition products for 2, 4-D, shall replace the monitoring required by OAC Rule 3745-65-92 (B)(3). Furthermore, Defendant may cease assessment monitoring upon the Court's entry of this Consent Order, which assessment monitoring will resume only if, after the Director's approval and Defendant's implementation of the amended post-closure plan, the assessment monitoring requirement is again triggered.

VI. EMPLOYEE TRAINING PROGRAM

Within ninety (90) days of the entry of this Consent Order, Defendant O.M. Scott is enjoined and ordered to provide documentation that all operations employees at its Scottslawn Road facility have been trained in the verbal and written reporting requirements of ORC Section 3750.06. The documentation shall contain a brief description of the training program's content and the means by which and to whom training was administered and shall be sent to Ken Schultz, or his successor, Ohio EPA, Division of Emergency and Remedial Response, 1800 WaterMark Drive, Columbus, Ohio 43266-0149. Defendant is further enjoined and ordered to provide such documentation, in the manner set forth above, on or before January 15th of each year, for the next five (5) years or until the injunctive provisions of this Section are terminated by the Court, in accordance with Section XI of this Consent Order,

after Defendant's filing of a motion requesting such termination pursuant to Rule 60 (B) of the Ohio Rules of Civil Procedure. If such documentation is not received by the 15th of January, the Ohio EPA will notify Defendant O.M. Scott, in writing, of its failure to submit said documentation and the necessity that it submit the same promptly, which written notification shall be directed to Gary L. Daugherty, Manager, Environmental Engineering, or his successor, The O.M. Scott & Sons Company, 14310 Scottslawn Road, Marysville, Ohio 43041. Defendant O.M. Scott shall thereafter submit said documentation within thirty (30) days of receipt of the aforementioned written notification or Defendant will thereafter automatically be liable for the payment of stipulated penalties pursuant to Section VIII of this Consent Order.

VII. CIVIL PENALTY

It is hereby ordered that Defendant O.M. Scott shall pay a civil penalty of thirty-five thousand dollars (\$35,000.00). This civil penalty shall be paid by certified check made payable to "Treasurer, State of Ohio," which check shall be delivered by mail, or otherwise, to Shane A. Farolino, or his successor, at his office at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, within thirty (30) days of the entry of this Consent Order.

VIII. STIPULATED PENALTIES

In the event that Defendant violates any of the terms of this Consent Order, including the requirements contained in

Section V to submit an amended post-closure plan within sixty (60) days of the entry of this Consent Order and to modify the plan or submit a new plan for approval within thirty (30) days of the receipt of a written notification of deficiencies from the Director, the requirements contained in Section VI to submit training documentation within ninety (90) days of the entry of this Consent Order and within thirty (30) days of receipt of subsequent annual written requests for such documentation, and the requirement contained in Section VII to pay the civil penalty in this matter within thirty (30) days of the entry of this Consent Order, Defendant shall immediately and automatically be liable for and shall pay stipulated penalties according to the following schedule. For each day of violation or failure to meet a requirement, up to thirty (30) days - one thousand dollars (\$1,000.00) per day per violation or failure. For each day of violation or failure to meet a requirement, from thirty-one (31) to sixty (60) days - two thousand five hundred dollars (\$2,500.00) per day per violation or failure. For each day of violation or failure to meet a requirement, over sixty (60) days - five thousand dollars (\$5,000.00) per day per violation or failure.

Any payment required to be made pursuant to Section VIII of this Consent Order shall be paid by certified check made payable to "Treasurer, State of Ohio," which check shall be delivered by mail, or otherwise, to Shane A. Farolino, or his successor, at his office at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th

Floor, Columbus, Ohio 43266-0410, within fourteen (14) days of the Defendant's violation or failure to meet a requirement.

IX. POTENTIAL FORCE MAJEURE

In any action to enforce any of the provisions of this Consent Order, Defendant O.M. Scott may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, act of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or orders of any regulatory agency. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by the parties that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

X. TERMINATION OF STIPULATED PENALTIES

The provisions of this Consent Order set forth in Section VIII, requiring payment of stipulated penalties, shall terminate if Defendant O.M. Scott has paid all penalties required pursuant to this Consent Order and has achieved and maintained compliance with the terms of this Consent Order for a period of two (2) years, commencing upon the Director's approval of Defendant's amended post-closure plan, or for any two (2) year period thereafter. Termination of the

aforementioned stipulated penalties shall only be effected by Order of the Court upon motion by any party and upon a showing that the two (2) conditions set forth in this paragraph have been met. Plaintiff reserves any rights it may have to oppose such a motion by Defendant.

XI. TERMINATION OF PERMANENT INJUNCTION

No earlier than two (2) years from the date of the Court's entry of this Consent Order, Defendant may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate the injunctive provisions of Sections IV and VI of this Consent Order. Termination of the aforementioned injunctive provisions shall only be effected by Order of the Court upon a showing by Defendant that it has been in total compliance with the obligations of this Consent Order for the previous two (2) year period. Plaintiff takes no position as to such motion and reserves any rights it may have to oppose the motion including the basis that two (2) years is, in actuality, not an appropriate time period.

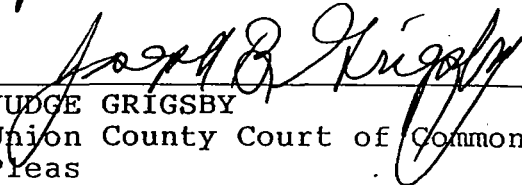
XII. RETENTION OF JURISDICTION

The Court will retain jurisdiction of this action for the purpose of overseeing that Defendant O.M. Scott carries out the terms and conditions of this Consent Order.

XIII. COURT COSTS

Defendant O.M. Scott shall pay the court costs of this action.

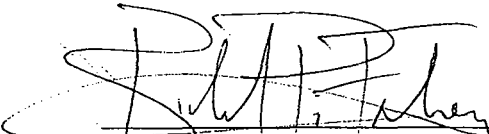
ENTERED THIS 13th DAY OF April, 1992.



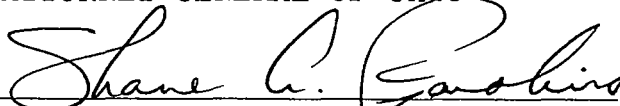
JUDGE GRIGSBY
Union County Court of Common Pleas

APPROVED:

STATE OF OHIO,
ex rel. LEE FISHER
ATTORNEY GENERAL OF OHIO



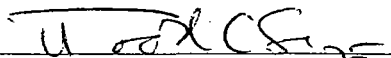
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Authorized Representative
of The O.M. Scott & Sons Company

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