

MEMORANDUM OF AGREEMENT**BETWEEN****THE UNITED STATES DEPARTMENT OF AGRICULTURE, ANIMAL AND PLANT
HEALTH INSPECTION SERVICE AND THE SCOTTS COMPANY LLC**

This Memorandum of Agreement ("MOA") is hereby entered into between the United States Department of Agriculture, Animal and Plant Health Inspection Service ("APHIS"), Biotechnology Regulatory Services and The Scotts Company LLC ("Scotts") to establish and memorialize agreed to commitments pertaining to Scotts' management of genetically engineered glyphosate tolerant creeping bentgrass ("GTCB").

WHEREAS, APHIS's Biotechnology Regulatory Services ("BRS") administers a program to regulate the importation, interstate movement and release of certain genetically engineered organisms under the provisions of 7 C.F.R. Part 340;

WHEREAS, Scotts was authorized to conduct confined field trials of regulated GTCB during a period from 1999 to 2005 and BRS authorized those confined field trials;

WHEREAS, although the field sites have been devitalized, an extreme weather event during September, 2003 resulted in regulated GTCB being wind-dispersed into areas outside of the authorized field trial locations in Jefferson County, Oregon and in addition, volunteers of the regulated GTCB have been found in Malheur County, Oregon, and Canyon County, Idaho, all of which constitute unauthorized releases into the environment;

WHEREAS, Scotts has effectively managed the regulated GTCB's unauthorized presence in the environment for the past 10 years, including using an array of effective herbicides that farmers, irrigation managers, and other land managers can integrate into their routine weed management programs to control the regulated GTCB;

WHEREAS, as of the effective date of this MOA, neither Scotts nor BRS is aware of any documented and verified evidence of any specific unreasonable adverse effects in un-managed areas from the unauthorized release of the regulated GTCB into the environment since it was first planted for field testing in 1999;

WHEREAS, the number of land owners, farmers and irrigation managers affected by the unauthorized release of the regulated GTCB is small and the presence of the regulated GTCB on their land, if any, has been manageable;

WHEREAS, Scotts has agreed to continue to develop additional herbicides and herbicide-combinations to facilitate the effective management of the regulated GTCB by growers and irrigation managers, and will otherwise follow and comply with all of the requirements of the Management Plan attached as Appendix 1 hereto;

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WHEREAS, Scotts and BRS agree that the provisions of the Management Plan should provide an effective and adequate means of addressing any unauthorized releases into the environment of the regulated GTCB that may occur in the future, and

WHEREAS, BRS has determined that the Management Plan set forth in Appendix 1 hereto is a viable and adequate approach for the continued effective management of regulated GTCB releases into the environment if they were to occur.

NOW THEREFORE, the parties agree as follows:

1. Purpose of the Agreement

The purpose of this MOA is to set forth the parties' mutual agreement with respect to Scotts' effective management of regulated GTCB.

2. Responsibilities

- 2.1 Scotts will implement the Management Plan described in Appendix 1 hereto and incorporated herein. Year 1 of the Plan begins from the date of signature of this MOA by both Scotts and BRS and includes one spring period when Scotts will treat areas where regulated GTCB is found with approved herbicides.
- 2.2 Scotts will periodically (annually or more frequently as mutually agreed to among the parties) update BRS, the Oregon Department of Agriculture and the Idaho State Department of Agriculture on the implementation of the Plan.
- 2.3 In consideration of Scotts' agreement to correctly and appropriately implement and comply with all of the terms and requirements of the Management Plan, BRS agrees, as long as this MOA is valid and in effect, not to institute any administrative or civil enforcement action against Scotts in connection with the unauthorized releases into the environment of regulated GTCB, including from the previous field trials. Scotts agrees that if BRS determines that Scotts, after receiving written notice from BRS and a reasonable time to cure any noticed noncompliance, has failed to implement and/or comply with the requirements and terms of the Management Plan, this MOA is null and void and BRS, from the date of BRS' determination of non-compliance of this MOA by Scotts, will not be bound in any manner by the requirements and terms of this MOA.

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- 2.4 The parties agree that this MOA and the attached Plan is intended to memorialize their entire agreement with respect to regulated GTCB in the environment and the obligations, duties, requirements, and actions that this MOA imposes on Scotts.
- 2.5 Scotts designates Mr. David Swihart as its authorized representative who shall be responsible for collaboratively administering the activities conducted under this MOA.
- 2.6 APHIS designates Mr. Michael C. Gregoire as its Authorized Departmental Officer's Designated Representative who shall be responsible for collaboratively administering the activities conducted under this MOA.
- 2.7 By entering into this MOA, the undersigned attests that Scotts has not been convicted of a felony criminal violation under Federal or State law in the 24 months preceding the date of signature, nor has any officer or, to the best of Scotts' knowledge, any current agent of Scotts been convicted of a felony criminal violation under Federal or State law in the 24 months preceding the date of signature.
- 2.8 By entering into this MOA, the undersigned attests that Scotts does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

3. Statement of No Financial Obligation

Signature of this MOA does not constitute a financial obligation on the part of APHIS. Each signatory party is to use and manage its own funds in carrying out the purpose of this MOA. Transfers of funds or items of value are not authorized under this MOA.

4. Limitations of Commitment

This MOA and any continuation thereof shall be contingent upon the availability of funds appropriated by the Congress of the United States. It is understood and agreed that any monies allocated for purposes covered by this MOA shall be expended in accordance with its terms and the manner prescribed by the fiscal regulations and/or administrative policies of the party making the funds available. If fiscal resources are to transfer, a separate agreement must be developed by the parties.

5. Congressional Restriction

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Under 41 U.S.C. 22, no member of, or delegate to, Congress shall be admitted to any share or part of the MOU or to any benefit to arise there from.

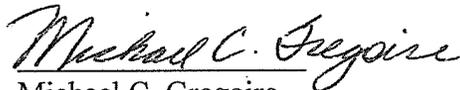
6. Duration of the Agreement

This MOA shall be in effect for ten (10) years from the date of the signatures by the authorized representative officials of Scotts and BRS, as set forth below.

7. Modifications

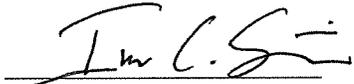
Any modifications to this MOA or the Management Plan attached hereto shall be agreed upon in writing by Scotts and BRS.

AGREED TO:



Michael C. Gregoire
Associate Administrator
Animal and Plant Health Inspection Service
U.S. Department of Agriculture

Dated: Sep 2, 2015



Ivan C. Smith
Executive Vice President, General Counsel
The Scotts Company LLC

Dated: Sept. 2, 2015

APPENDIX 1

MANAGEMENT PLAN

I. PURPOSE

This Management Plan for the long-term management of GTCB builds upon the ten year history of GTCB management related to the unauthorized releases into the environment of regulated GTCB utilizing herbicide treatments, education and awareness, and communication.

Maintaining these same approaches, the objective of the Plan is to integrate the management of the unauthorized releases into the environment of regulated GTCB into routine weed management programs employed by growers and irrigation managers with Scotts providing education and technical support for the management, not the eradication of the regulated GTCB. The Plan objectives are to: (1) educate and inform growers and irrigation managers on the management of regulated GTCB to prevent its spread, (2) allow growers and irrigation managers to manage regulated GTCB using methods compatible with their existing agricultural practices, (3) minimize the potential for regulated GTCB to be present in commercial seed lots and agricultural products, and (4) provide a response plan in the event of potential regulated GTCB occurrence in new or previously unknown areas.

While a standard approach is used, implementing strategies of this Plan are regionally tailored to recognize differences in geography and cropping systems and is structured to make it easy for growers and irrigation managers to carry out their management activity. As discussed below, the Plan will be phased in over three years. Implementation of the Plan centers on continued outreach, communication, and community involvement to educate, inform, and enable growers and irrigation managers to manage GTCB in keeping with ordinary weed control practices. After the phased implementation of this plan, Scotts will continue to act as a technical resource for weed management related to GTCB. Details of this technical assistance are provided below.

II. MANAGEMENT PLAN

The Management Plan includes the following components, which are described in more detail below in Section III:

1. A three year implementation plan for regulated GTCB in Canyon County, Idaho, Jefferson County, Oregon, and Malheur County, Oregon where regulated GTCB has been determined to be present. At the end of year three, growers and irrigation managers will be capable of managing regulated GTCB as part of their routine weed-management programs with Scotts providing technical support as necessary.

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2. Efforts by Scotts to supplement the existing “toolbox” of herbicides that can be used effectively to manage regulated GTCB.
3. An outreach and communications program for growers, irrigation managers, distributors (seed men), associations, and land owners/managers on the management of regulated GTCB.
4. Ongoing support in the form of information, education, and technical input on regulated GTCB management to the extent necessary.
5. Ongoing response to potential regulated GTCB occurrence in new or previously unknown areas and seed lots/final products.

III. COMPONENTS OF THE MANAGEMENT PLAN

A. Three year implementation plan for the management of regulated GTCB.

The Management Plan addresses three specific geographic areas where regulated GTCB is currently known to exist: (1) Canyon County, Idaho, (2) Malheur County, Oregon, and (3) Jefferson County, Oregon. The distinct characteristics of each of these areas, the historical presence of regulated GTCB within them, and the weed management programs currently in use, inform the long-term management strategy.

The Plan will be implemented over a three-year period, tailored appropriately depending on regional variations and characteristics. At the end of year three, growers and irrigation managers will be capable of managing regulated GTCB as part of their routine weed-management programs with Scotts providing technical support as necessary. During the three-year transition, Scotts will continue to assist growers and irrigation managers, to the extent necessary, with the management of regulated GTCB.

An overview of each geographic area is provided in Appendix 2.

B. Efforts to supplement the existing “toolbox” of herbicides that can be used effectively to manage regulated GTCB.

Regulated GTCB has been effectively managed by a number of herbicides in terrestrial settings and in and around irrigation ditches. For example, sethoxydim and glufosinate have proven to substantially reduce regulated GTCB plant populations. Other herbicides labeled for terrestrial use are also effective on regulated GTCB and are currently used by farmers as part of their routine operations. These include imazapyr, pendimethalin, fluazifop-p-butyl, and soybean oil.

While the existing “toolbox” of herbicides is expected to provide effective management and control of regulated GTCB, Scotts will evaluate the efficacy of, and the regulatory allowances

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for, additional herbicides and combinations of herbicides to facilitate the management of GTCB. Efforts will focus on additional herbicides that can be used in and around irrigation ditches while they are in aquatic and semi-aquatic use. Of particular interest are herbicides such as fluridone, endothall and imazapyr that are labeled for aquatic use or for which aquatic uses could be obtained that could be tank mixed with aquatically-labeled glyphosate products, *e.g.*, Aquamaster, Accord, Rodeo. Studies are being conducted within Scotts and with Oregon State University extension agents based in Jefferson and Malheur Counties, OR on these uses.

C. An outreach and communications program for growers, irrigation managers, distributors (seed men), associations, and land owners/managers on the management of regulated GTCB provided by Scotts.

Prior to any outreach to growers or irrigation managers, Scotts will meet with the Oregon Department of Agriculture (ODA) and Idaho State Department of Agriculture (IDA) to present the details of this Management Plan. The discussion will focus on the specifics of the Plan and the importance of working with these state agencies during Plan implementation.

The outreach and communication program will build on the strong relationships Scotts has built in the local communities where regulated GTCB has been identified and will include:

- Educational materials that contain information on the biology of GTCB, information on past management efforts, and discussion on the current, best methods available for regulated GTCB management;
- Various means of communication with growers and irrigation managers, *e.g.*, presentations at regular meetings, written communications, direct one-on-one contact;
- A Scotts-operated website with relevant information and resources;
- A Scotts-operated hotline for inquiries;
- Coordination with appropriate local trade groups, *e.g.*, Oregon Farm Bureau, Oregonians for Food and Shelter as well as grower groups such as the Onion Growers Association; and
- Field plot regulated GTCB management demonstration programs in cooperation with applicable extension agents.

D. Post-implementation support in the form of information, education, and technical input on GTCB management.

Following year three, Scotts' post-implementation support will include:

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- Educational materials that contain information on the biology of GTCB, information on past management efforts, and discussion on the current, best methods available for regulated GTCB management;
- A Scotts-operated website with relevant information and resources;
- A Scotts-operated hotline for inquiries; and
- Since farmers rely heavily on extension agents for technical expertise in land management, Scotts will continue its ongoing relationship with Oregon State University (OSU) extension agents to evaluate new GTCB management options and to educate local citizens on GTCB Management and answer any questions about implementation.

E. Ongoing response to the potential occurrence of regulated GTCB in unknown areas and seed lots/final products following implementation.

1. New or previously unknown areas: In the event that Scotts discovers or is notified that regulated GTCB is suspected to be present in new or previously unknown areas, Scotts' trained personnel will analyze the suspected plant for the presence of the glyphosate tolerance protein. Scotts will apply for the appropriate authorization should samples require interstate movement. If the protein is confirmed, consistent with the outreach, communications, and technical support approaches employed in Canyon, Malheur, and Jefferson counties (as described in sections IV. C and D above), Scotts will notify APHIS immediately by contacting the compliance hotline (301-851-3935) and assist the affected landowner with implementing a plan to manage GTCB.
2. Seed lots/Final Products: In the event that Scotts is notified that regulated GTCB is suspected to be present in fields producing cool-season grasses or other crops in which regulated GTCB could potentially be present in the final product, Scotts' trained personnel will analyze the suspected plant for the presence of the glyphosate tolerance protein. If the protein is confirmed, Scotts will notify APHIS immediately by contacting the compliance hotline (301-851-3935) and, working with the affected landowner, will develop an approach for regulated GTCB management, harvesting, and seed cleaning to minimize the potential for regulated GTCB to be present in the final seed product.

F. Evaluation of Plan implementation

The Plan is aimed at ensuring that affected growers and irrigation managers are able to identify and, if they choose to, effectively treat regulated GTCB should they encounter it on their property. Scotts' main focus in evaluating Plan implementation will be on the degree to which growers and irrigation managers receive the information they need. More specifically,

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Scotts will evaluate and, if necessary, adjust implementation of the Plan by using the following metrics:

- Number and nature of hotline calls or personal contact for assistance.
- Rate of follow-up responses by Scotts to grower/irrigation manager requests for information or assistance.
- Feedback from extension agents on calls they receive regarding landowner's management of regulated GTCB.
- Personal communication with impacted growers and irrigation managers and on-line surveys to ascertain awareness of and obtain feedback on GTCB management.

Scotts will continue to share the results of their Plan's evaluation with APHIS in its annual reporting.

IV. KEY COMPONENTS OF THE THREE YEAR MANAGEMENT PLAN FOR IDAHO AND OREGON

The following summarizes, at a general level, the activities during the three-year implementation period, subject to modification for regional and other variations.

Year 1

- Following approval of the Management Plan by Scotts and APHIS, Scotts and APHIS to meet with ODA/IDA senior officials to discuss the details of the Plan, answer questions about the Plan, and solicit support for this effort.
- Scotts to actively survey the areas of the escape and treat areas where regulated GTCB is discovered in the spring with approved herbicides.
- Outreach program for growers and irrigation district managers to provide:
 - Review herbicide and agronomic practices to manage regulated GTCB.
 - Provide incentives and support to encourage awareness and adoption, which may include on-farm identification of bentgrass, reduced herbicide cost, assistance and/or training from application specialists.
- Via outreach contact information (e.g., 800 number, website, newspaper articles, etc.), provide technical support for growers and irrigation district managers by providing guidance on herbicides and practices for controlling regulated GTCB.

Year 2

- Reinforce training and commitment of assistance through continued communication on regulated GTCB and treatment option.

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- To the extent necessary, continue to work with growers and irrigation district managers to educate them about herbicides and agronomic practices that are effective for managing regulated GTCB.
- Continue personal engagement with growers and irrigation district managers to assist in adoption of the Management Plan. Provide onsite assistance as Scotts determines is necessary.
- Provide technical support as necessary (e.g., 800 number, website, etc.).
- Continue incentive program to encourage awareness and adoption by reducing the cost of tank mix herbicides.

Year 3

- Provide technical support as necessary (e.g., 800 number, website, etc.).
- Final year of incentive program to encourage awareness and adoption by reducing the cost of tank mix herbicides.
- Continue personal engagement with growers and irrigation district managers to ensure continued adoption of the management program.

Beyond Year 3

Scotts will continue to be a resource for questions and guidance, and in the event regulated GTCB is suspected in new and unknown areas, Scotts' trained personnel will analyze the suspected plant for the presence of the glyphosate tolerance protein. If the protein is confirmed, Scotts will notify APHIS immediately by contacting the compliance hotline (301-851-3935) and, consistent with the outreach, communications, and technical support approaches employed in Canyon, Malheur, and Jefferson counties (as described in sections IV. C and D above), Scotts will assist the affected landowner with implementing measures to manage regulated GTCB.

OVERVIEW OF CANYON COUNTY, IDAHO

Regulated GTCB was grown in only two locations in Canyon County: Canyon County South under APHIS notification #04-070-02n and Canyon County North under APHIS notification #05-080-01r. Canyon County South never produced seed. Since the fields were terminated in 2005 only a small number of regulated GTCB volunteers have been observed each year, and these volunteers have been in the vicinity of the prior GTCB fields.

The management strategy in Canyon County is facilitated by cropping systems that do not foster regulated GTCB propagation, *e.g.*, corn. The area is also small, with only five growers affected. Because many of the identified regulated GTCB plants have been located in terrestrial environments, growers can easily manage regulated GTCB as part of the current routine agricultural practices. The principal focus of the Canyon County plan is to refresh and reinforce growers' ability to identify and control regulated GTCB as necessary. To the extent necessary, training on the use of alternative herbicides to glyphosate will be provided that will facilitate management of their current weeds and any volunteer regulated GTCB that may be present.

OVERVIEW OF MALHEUR COUNTY, OREGON

Malheur County is located in the southeastern part of Oregon and is 94% rangeland. After cattle and dairy, the primary agricultural commodities produced are onion, corn, sugar beets, alfalfa, wheat, and potatoes (Agricultural Commodity Sales Malheur County, Extension, 2010). The agricultural practices in Malheur County effectively control regulated GTCB and therefore its potential presence in seed lots or final products is not a significant concern as has been demonstrated over the last decade. Growers in this area generally apply sethoxydim, an herbicide used for control of regulated GTCB, over the top of their crops. In addition, bentgrass doesn't compete well with the crops grown in this area, such as corn, wheat, and alfalfa.

While regulated GTCB is established in irrigation ditches in eastern Malheur County, it has remained contained and management efforts have successfully reduced its presence. Malheur County not only has highly competent farmers, but also a dedicated staff of irrigation district managers. Scotts has a strong working relationship with both the farming community and the irrigation district managers.

The management plan for Malheur County is focused on controlling regulated GTCB in areas in and around irrigation ditches and developing new herbicide tools that do not impact area crops that can be used within the ditches. Because a number of these ditches are managed by professional irrigation managers with whom Scotts is already working, Scotts will first work with these managers to integrate the current toolbox into their management protocols and to partner with them to evaluate and potentially adopt additional aquatic use herbicides that can be tank mixed with aquatically-labeled glyphosate products. The irrigation managers will then be

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able to assist further adoption of the plan by growers, acting as local experts during the second and third implementation years.

OVERVIEW OF JEFFERSON COUNTY, OREGON

Jefferson County is located in central Oregon. Jefferson County specializes in vegetable and grass seed production. The primary vegetable crops include peppermint, carrots (85% of the carrot seed used in the US), garlic and alfalfa. Kentucky bluegrass and some rough stalk bluegrass seed are produced. The natural rotation of a monocot crop into the dicot vegetable and alfalfa crops fosters the use of grass specific herbicides such as sethoxydim and clethodim which helps control regulated GTCB.

Pursuant to APHIS field trial permits, regulated GTCB was grown at several locations in Jefferson County within the established Oregon Bentgrass Control Areas (OCA). A wind event in 2003 led to the establishment of regulated GTCB in irrigation ditches beyond the OCA. Nevertheless, regulated GTCB has been successfully contained and its potential spread is limited by the geographic features of the area. Jefferson County farmers have 10 years of experience managing regulated GTCB, and Scotts has a strong working relationship with the farming community.

The management plan for Jefferson County is focused on areas in and around irrigation ditches with a combination of herbicides currently available for use, *e.g.*, imazapyr is labeled for irrigation ditches and is compatible with glyphosate. This combination will facilitate growers' ability to manage regulated GTCB and potentially enhance their overall weed management programs. The combination will first be assessed for efficacy and ease of use. Then, Scotts will communicate and work with growers and irrigation district managers to inform and encourage adoption of the program.