



March 7, 2001

Mr. David Martin, Director
Division of Corporation Finance
Securities and Exchange Commission
450 5th Street N.W.
Washington, D.C. 20549-0401

Mr. Richard Walker, Director
Division of Enforcement
Securities and Exchange Commission
450 5th Street N.W.
Washington, D.C. 20549-0801

Re: Scotts Company

Dear Messrs. Martin and Walker,

We are writing to urge you to investigate the disclosure practices of the Scotts Company (Scotts) and to take appropriate enforcement action against the company. We believe that Scotts may have failed to report material information to its shareholders in recent 10-K and 10-Q reports.

Specifically we urge you to investigate Scotts' clear failure to disclose risks associated with new and significant regulation of its peat extraction activities in the UK. Under SEC Regulation S-K, Item 303, registrants have the obligation to disclose any known trends, such as impending regulation, that might affect operations. In addition, the SEC's Staff Accounting Bulletin 99 reiterates that certain qualitative information can indeed be material and should therefore be disclosed.

New Regulations Would Impact Scotts' UK Peatlands

Scotts extracts peat from four peatlands in the UK. The three largest of these Scotts sites (Thorne Moor, Hatfield Moor and Wedholme Flow) combined with one other (smaller) peatland called Bolton Fell, owned by William Sinclair Holdings Ltd (Sinclairs), supply 60% of the UK growing media market. The Thorne, Hatfield, Wedholme and Bolton Fell sites are shortly to receive formal designation as protected areas (Special Areas of Conservation) under the *European Habitats Directive*, which is almost certain to force Scotts' peat extraction activities to stop. The

prohibition of peat extraction in these sites would follow a careful and well-established legal procedure initiated by the UK Government and local authority, and advised by the Government's formal wildlife advisor, English Nature.

Scotts' wholly-owned subsidiary the Scotts Company (UK) Ltd [Scotts (UK)] has actively resisted this new regulation, illustrating the significance and concern with which the company regards this trend, but has not disclosed this material risk to its stockholders. Sinclairs, in contrast, issued a warning to shareholders about this risk, with its Chief Executive Peter Barton stating that the regulation would cause "some volatility in our annual profitability." Sinclairs disclosed the risk in great detail to the public and shareholders in its 2000 annual report.

Scotts' Disclosure

In comparison, Scotts' SEC filings since August 2000 make no specific reference to UK regulations, nor to the Habitats Directive. However, they do refer to UK legislation: Scotts' August 2000 and February 2001 10-Qs, and its December 2000 S-4 state: *"In the United Kingdom, our peat extraction efforts are also the subject of legislation."* Similarly, Scotts' 2000 10-K states: *"Regulations and environmental concerns exist surrounding peat extraction in the United Kingdom. The Scotts Company (UK) Ltd. played a leading role in the development and implementation of legislation concerning peat extraction, and believes it complies with this legislation, regarding it as the minimum standard."*

We believe that Scotts' comments are either wrong or misleading as we are not aware of any specific legislation in the UK concerning peat extraction. The company may be referring to its lobbying efforts around Mineral Planning Guidance notes that are formal documents in the UK, but as the name implies are guidance not legislation. There is limited legislation relating to minerals and aggregate extraction, but this was introduced in the 1995 Environment Act two years before Scotts acquired Levingtons and gained an interest in peat extraction in the UK. The company can also not be referring to the present issue of the Habitats Directive as that Directive was introduced in 1992 and the implementing regulations in the UK in 1994.

Materiality

The precise materiality of the Habitats regulation to Scotts' business is unknown. Scotts (UK) has failed to submit its formal 1999 accounts to Companies House and is presently being fined for this failure. Its 2000 accounts are not due until July 2001. Therefore it is impossible to know what proportion of its business is based on peat extraction. However, as an indication of the scale of Scotts' concern, the UK peat industry stated in *The Grower* magazine (November 2000) that it wanted UK£40m to compensate for lost earnings for these four sites - most of this compensation would be provided to Scotts. UK£40m represents about 20% of Scotts total claimed operating earnings in 2000. Friends of the Earth estimates, based on personal communication with Scotts (UK) in 1997, that growing media represented about 40% of its UK business and about 30% of its Global business at that time. Annexed to this letter are sources of further information and background on all the points made above.

Regardless of whether this omission can be deemed material from a quantitative perspective, the SEC in Staff Accounting Bulletin 99 (SAB 99) warned registrants to not rely solely on "bright line" quantitative definitions of materiality. SAB 99 reiterated the materiality of certain

qualitative information, such as data that relates to a company's regulatory compliance or that are "good actor" indicators. In addition, SAB 99 notes that the Supreme Court has upheld a relatively expansive definition of materiality, that a fact is material if there is "a substantial likelihood that the . . . fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available."

We believe that Scotts omitted material information that shareholders have a right and a need to know. Scotts' undisclosed environmental risk represents a material omission that violates SEC Rule S-K, Item 303. In addition, because of the company's clear knowledge and resistance to this regulation, we believe that the company may also be violating SEC Rule 10b-5, which prohibits companies from intentionally providing false and misleading information to shareholders.

The omission of this information deprives shareholders of information needed to appraise the quality of management. We urge the SEC to investigate this disclosure failure and to enforce its rules. Given the international nature of this issue, the public in the UK and US will be watching carefully to see how robustly the SEC acts in this case, as the activities of corporations active across national boundaries require an extra level of public confidence in regulators.

Yours sincerely,

A handwritten signature in black ink that reads "M Phillips". The signature is written in a cursive, slightly slanted style.

Matt Phillips
Friends of the Earth - England, Wales & Northern Ireland

Michelle Chan-Fishel
Friends of the Earth - United States

enclosure

Background Note and Details of Sources of Further Information

Who is the Scotts Company?

The Scotts Company is a publicly traded transnational corporation domiciled in Ohio US. It is famous for brands such as Miracle Gro. Scotts has extensive business interests around the world, including the United Kingdom. Full SEC info on Scotts is at: [http://www.secinfo.com/\\$/SEC/Registrant.asp?CIK=825542](http://www.secinfo.com/$/SEC/Registrant.asp?CIK=825542). Further details on the company can be found at: <http://www.scottscompany.com/homepage.cfm>

What new regulation is Scotts facing?

In the UK Scotts' peatland operations have become subject to significant new regulation. In August 2000 the UK Government announced that it intended to designate a number of areas important for nature conservation under the European Habitats Directive. These sites are to be known as Special Areas of Conservation or SACs. The UK Government press release announcing the proposed designations is at <http://www.press.detr.gov.uk/0008/0562.htm>

Among the sites set for designation under the directive are at least three large peatlands operated by the Scotts Company. These are Thorne Moor and Hatfield Moor, both in South Yorkshire and Wedholme Flow in Cumbria (to be designated as part of the Solway Mosses SAC). The full list of proposed 'candidate SACs' can be found at: <http://www.english-nature.org.uk/news/story.asp?ID=13> which includes a link to a map of the proposed sites.

The Government body that takes forward this process in England is known as English Nature. Its Chief Scientific Officer is Keith Duff and the officer in charge of this is Tom Tew. EN's contact details are at: <http://www.english-nature.org.uk/contact/office.asp>

What does the new designation mean?

Information and relevant links on the Habitats Directive can be found at: <http://www.jncc.gov.uk/idt/default.htm>

The Government is required to designate SACs under European law, otherwise it faces legal action from the European Commission. The Government must also designate sites according to the scientific interest alone -- it is not allowed to take economic factors in to account in designation. However, such economic factors must not be able to threaten the favourable conservation status of the wildlife interest in question.

Under Article 6 of the Directive, transposed into UK law by a set of regulations, the Government must review Scotts' permissions to extract peat from these sites. There is a very high likelihood that Scotts' operations will be entirely halted.

See the document 'Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC' at <http://europa.eu.int/comm/environment/nature/legis.htm>, that explains what the review process must consider.

Note that these sites are already designated (since the 1970s) under national legislation (the 1981 Wildlife and Countryside Act) as Sites of Special Scientific Interest (SSSI). This designation is important, but it does not require the Government to review existing permissions and the sites can be damaged through peat extraction quite legally. European law is superior and supercedes the SSSI designation.

The peatlands in question contribute the bulk of Scotts' peat utilised in its growing media business in the UK. Scotts says more than 60% of all peat sales in the UK are based on peat from these three SSSIs and one other (smaller) site owned by another company.

See Scotts' CD Rom 'Peat Achieving a Balance' published in January 2000 by The Scotts Company (UK) Limited, Salisbury House, Weyside Park, Catteshall Lane, Godalming Surrey GU7 1XE, UK. Tel +44 (0) 1483 410 210, fax +44 (0) 1483 410 220.

Does Scotts consider this a significant risk to its business?

Scotts is so concerned about the issue that it has written a letter to nearly all the UK's Members of Parliament (MPs) in January 2000 attacking the designation of its sites as SACs. Scotts sent MPs the above mentioned, and expensively produced CD Rom, explaining its views. It has also challenged English Nature in great detail over every aspect of the process. It apparently fears the loss of these peatlands to peat production will have a serious impact on its business.

The peat industry as a whole has demanded UK£40m in compensation for halting peat extraction on these sites. This is for four key sites, only one of which is not owned by Scotts. UK£40m represents about 20% of Scotts declared 'operating earnings' for the year 2000.

Scotts (UK) Ltd has failed to publish its accounts in the UK, so the proportion of its business affected by this regulation is unknown. However, Scotts acquired Levingtons in 1997 for £40m and at that time growing media was 40% of Levingtons' business according to Scotts. Levingtons is Scotts' main foothold in the UK market.

Disclosure

None of Scotts' SEC filings since August 2000 have mentioned anything of this regulatory process. This is despite Scotts apparent view that it is a risk to its business evidenced by its submission to MPs of a letter from its Managing Director and a CD Rom and by its extensive challenges to English Nature's designation of the sites.

William Sinclair Holdings Limited is in a similar situation with its site, Bolton Fell. It has disclosed the risks to its business in great detail. This disclosure can be found at: <http://www.william-sinclair.co.uk/home.nsf/CorporateFrameset?OpenPage> (look under 'press releases' then select the document: '03/10/2000 RNS : 09:13:00 Sinclair (William) - Final Results').

Contact information

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