



State of Ohio Environmental Protection Agency

Northeast District Office

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Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Laura H. Powell, Acting Director

January 23, 2007

**RE: Notice of Violation
Manny Rock and Mercomp, Inc.
Cuyahoga County**

Mr. Manny Rock, Mercomp, Inc.
c/o Michael Blumenthal, Attorney
Waxman Blumenthal LLC
29225 Chagrin Blvd., Suite 350
Cleveland, OH 44122

Dear Mr. Rock:

On October 18, 2006, Ohio Environmental Protection Agency (Ohio EPA) and the Cuyahoga County Board of Health (CCBH) conducted an inspection of the Cleveland Land Development Landfill on Schaaf Road, in Brooklyn Heights, Ohio. Present for the inspection was Matt Johnson, representing the Cuyahoga County Board of Health, and I, representing Ohio EPA Division of Solid and Infectious Waste Management. The purpose of the inspection was to determine compliance with the April 26, 2004 Judicial Order issued by the Court of Common Pleas of Cuyahoga County and the solid waste laws and rules.

Upon completion of the inspection, Ohio EPA and CCBH observed the following:

1. Several areas of standing water were noted on the top portion of the landfill. A large pond is still located on the top of the site. There are several erosion channels on the landfill. Some of the channels appeared to have eroded where we would expect that waste will soon be exposed. The erosion rills are located on the west slope of the landfill and are most noticeable when one is standing on the uppermost bench on this slope. Along much of the site's south slope is still without vegetative cover. Vegetation needs to be established in the areas that are bare. Therefore, Mr. Rock and Mercomp, Inc. are in violation of Order number 2 of the April 26, 2004 Judicial Order issued by the Court of Common Pleas of Cuyahoga County and OAC Rule 3745-27-14(A)(2).

Order number 2 of the April 26, 2004 Judicial Order issued by the Court of Common Pleas of Cuyahoga County states, "Pursuant to R.C. 3734.10 Defendants are preliminarily and permanently ordered to comply with the requirements of R.C. Chapter 3734 and the rules promulgated thereunder;"

OAC Rule 3745-27-14(A)(2) which states, in part, the owner or operator of a landfill shall maintain ". . .the integrity and effectiveness of the cap system, including making repairs to the cap system as necessary to correct the effects

of settling, dead vegetation, subsidence, erosion, leachate outbreaks, or other events, and preventing run on and run off from eroding or otherwise damaging the cap system."

To attain compliance, Mr. Rock and Mercomp, Inc. must take appropriate measures to maintain the effectiveness of the cap system by correcting the effects of the ponding and erosion, as well as correcting the conditions causing the ponding and erosion. In addition, actions must be taken to establish a dense vegetation cover along the cap.

2. Ohio EPA and CCBH identified many leachate outbreaks. It appeared that the leachate was migrating into the sedimentation pond and drainage swales as evidenced by staining. To date, Mercomp, Inc. and Mr. Rock have failed to repair leachate outbreaks at the landfill. Therefore, Mercomp, Inc. and Mr. Rock are in violation of Order number 2 of the April 26, 2004 Judicial Order issued by the Court of Common Pleas of Cuyahoga County and OAC 3745-27-14(A)(3).

OAC 3745-27-14(A)(3) which states, in part, the owner or operator of a landfill shall repair ". . .any leachate outbreaks detected at the sanitary landfill facility by doing the following:

- (a) Contain and properly manage the leachate at the sanitary landfill facility.*
- (b) If necessary, collect, treat, and dispose of the leachate, including, if necessary, following the contingency plan for leachate storage and disposal prepared pursuant to rule 3745-27-19 of the Administrative Code.*
- (c) Take action to minimize, control, or eliminate the conditions which contribute to the production of leachate."*

To attain compliance, actions must be taken to contain and properly manage the leachate, and to eliminate the conditions causing leachate outbreaks.

Upon review of our records, Ohio EPA and CCBH identified the following:

3. To date, Ohio EPA has not received any ground water monitoring data and statistical reports for 2004, 2005 or 2006, nor any other indication that compliance with Order number 4 of the April 26, 2004 Judicial Order issued by the Court of Common Pleas of Cuyahoga County has been attained. Therefore, Mercomp, Inc. and Mr. Rock are in violation of Orders number 2 and 4 of the April 26, 2004 Judicial Order issued by the Court of Common Pleas of Cuyahoga County.

Order Number 4 of the April 26, 2004 Judicial Order issued by the Court of Common Pleas of Cuyahoga County states *"Pursuant to R.C. 3734.10, Defendants are preliminarily and permanently ordered to comply with Ohio Administrative Code 3745-27-10, 3745-27-14(A), and 3745-27-16 by properly re-implementing their Ground Water Monitoring Program. Defendants shall make any applicable revisions to their Ground Water Program, and implement any measures required by Ohio Adm. Code 3745-27-10, 3745-27-14(A), and 3745-27-16 by December 31, 2004."*

The Ground Water Monitoring Program must be reimplemented to abate the violation of this court order.

4. To date, Ohio EPA has not received any ground water assessment monitoring data and statistical reports for 2004, 2005, or 2006 nor any other indication that compliance with Order Number 5 of the April 26, 2004 Judicial Order issued by the Court of Common Pleas of Cuyahoga County has been attained. Therefore, Mercomp, Inc. and Mr. Rock are in violation of the April 26, 2004 Judicial Order issued by the Court of Common Pleas of Cuyahoga County.

Order Number 5 of the April 26, 2004 Judicial Order issued by the Court of Common Pleas of Cuyahoga County states *"Pursuant to R.C. 3734.10, Defendants are preliminarily and permanently ordered to comply with Ohio Administrative Code 3745-27-10, 3745-27-14(A), and 3745-27-16 by entering into and implementing a ground water assessment monitoring program. Defendants shall implement a ground water assessment monitoring program as required by Ohio Administrative Code 3745-27-10, 3745-27-14(A), and 3745-27-16 by December 31, 2004."*

The ground water assessment monitoring program must be implemented to abate the violation of this court order.

5. To date, Mercomp, Inc. and Mr. Rock have failed to execute and fully fund a post-closure care financial assurance instrument for the amount of \$1,921,650.00. Mercomp, Inc. and Mr. Rock are in violation of Order number 3 and Finding of Fact number 11. According to Order number 3 and Finding of Fact number 11 of the April 26, 2004 Judicial Order issued by the Court of Common Pleas of Cuyahoga County. Mercomp, Inc. and Mr. Rock were required to fully fund a post-closure care financial assurance for \$1,921,650.00 and that is the amount that must be funded by a financial assurance mechanism meeting the requirements of Ohio Administrative Code Rule 3745-27-16(E).

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Order Number 3 of the April 26, 2004 Judicial Order issued by the Court of Common Pleas of Cuyahoga County states "Pursuant to R.C. 3734.10, Defendants are preliminarily and permanently ordered to comply with Ohio Administrative Code 3745-27-16 by choosing and fully funding an approved, financial assurance instrument sufficient to provide for the financial assurance instrument sufficient to provide for the post-closure costs of Defendants Landfill for the next thirty years. Defendants shall execute and fund the post-closure care financial assurance instrument by **September 1, 2004;**"

Mercomp, Inc. and Mr. Rock will remain in violation of the April 26, 2004 Judicial Order issued by the Court of Common Pleas of Cuyahoga County and Ohio's financial assurance rules until an appropriate financial assurance mechanism is funded in the stated amount of \$1,921,650.00.

6. To date, Mercomp, Inc. and Mr. Rock failed to pay the State of Ohio a civil penalty of \$1,932,000.00. Mercomp, Inc. and Mr. Rock are in violation of Order number 6 of the April 26, 2004 Judicial Order issued by the Court of Common Pleas of Cuyahoga County. According to Order number 6, Mercomp, Inc. and Mr. Rock were required to pay the State a civil penalty of \$1,932,000.00 for failure to fully fund a post-closure care financial assurance mechanism meeting the requirements of Ohio Administrative Code Rule 3745-27-16(E) by September 1, 2004.

Order Number 6 of the April 26, 2004 Judicial Order issued by the Court of Common Pleas of Cuyahoga County states, in part, "*Pursuant to R.C. 3734.13(C), Defendants are preliminarily and permanently ordered to pay the State a civil penalty in the amount of One Million Nine Hundred and Thirty-two Thousand Dollars (\$1,932,000.00)...*"

Mercomp, Inc. and Mr. Rock will remain in violation of the April 26, 2004 Judicial Order issued by the Court of Common Pleas of Cuyahoga County until the Penalty of \$1,932,000.00 is paid in full.

7. Ohio EPA and CCBH were unable to review the records that are required to be maintained as required by OAC 3745-27-14(A)(7). Therefore, Mercomp, Inc. and Mr. Rock are in violation of OAC 3745-27-14(A)(7).

OAC 3745-27-14(A)(7) states "*Records and reports generated by paragraphs (A)(4) to (A)(6) of this rule are to be kept for the duration of the post-closure care period at a location where the records and reports are available for inspection by Ohio EPA or the approved health department*

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during normal working hours. If the owner or operator has established an operating record, the records and reports shall be kept in the operating record in accordance with rule 3745-27-09 of the Administrative Code."

To attain compliance, Mr. Rock and Mercomp, Inc. must make records available for review during the quarterly inspection.

Please respond to this letter in writing within fourteen (14) days to indicate how you have abated or will abate the above violations. The content of this letter does not relieve the owner/operator from its obligation to comply with other applicable requirements set forth in ORC Chapter 3734 and the rules promulgated there under, nor the obligation to comply with other applicable State and Federal laws and regulations.

If you have any questions, call me at (330) 963-1268.

Sincerely,



Colum McKenna
Environmental Specialist
Division of Solid and Infectious Waste Management

CM:cl

cc: Murat Tukul, DSIWM, NEDO
Brett Kravitz, Assistant Attorney General
Bruce McCoy, CMEU, DSIWM
Jerry Parker, DSIWM, NEDO
Matt Johnson, CCBH
File: [LAND/Cleveland Land Development/COR/18]