



State of Ohio Environmental Protection Agency

Northeast District Office

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Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korleski, Director

December 8, 2009

**RE: CITY VIEW CENTER PROJECT  
R&B DEVELOPMENT LANDFILL  
MATOUSEK LANDFILL  
NOTICE OF VIOLATION**

**CERTIFIED MAIL**

John McGill  
McGill Property Group, LLC  
Garfield Land Development, LLC  
GHLFP, LLC  
125 W. Indiantown Road, Suite 101  
Jupiter, Florida 33458

Dear Mr. McGill:

On December 2, 2008, Defendants McGill Property Group, LLC, Garfield Land Development, LLC, GHLFP and John McGill (collectively defined as Defendants McGill) entered into a Consent Order and Final Judgment Entry filed in the Cuyahoga County Court of Common Pleas (the December 2, 2008, Consent Order). The Consent Order required actions to be taken with regard to the Rule 13 (OAC 3745-27-13) activities conducted at the City View Center located in Garfield Heights, Ohio.

The following violations of the **December 2, 2008, Consent Order** continue to exist on portions of the properties for which Defendants McGill are still responsible:

- 1) **Paragraph 29**, which states, "Until Defendants McGill are informed otherwise by Ohio EPA in writing, Defendants McGill shall monitor off-site migration of Landfill gas from the Northeast Mound in accordance with the contingency monitoring plan in the approved R&B Development Landfill Explosive Gas Monitoring Plan and shall submit to Ohio EPA monthly monitoring reports by the 15th day of each month for the preceding month's monitoring. Defendants McGill shall record levels of gas migration in percent volume and percent LEL and shall submit such monitoring results in the monthly monitoring reports."

Defendants McGill have failed to comply with the requirements of Paragraph 29 in violation of the December 2, 2008, Consent Order since issuance of the Orders.

- 2) **Paragraph 36**, which states, "Within 5 days of the effective date of this Order, Defendants McGill and CVC shall begin monthly visual inspection(s) of the Facilities for leachate outbreaks. By the 10<sup>th</sup> day of each month for the preceding month's inspections, Defendants McGill and CVC shall submit, in an inspection

report, the date, time, and location of all outbreaks identified and the work undertaken to correct the leachate outbreaks and submit those reports to Ohio EPA and the Cuyahoga County Board of Health. Defendants McGill and CVC shall continue under the requirements of this provision until such time that Ohio EPA expressly determines in writing that leachate outbreaks and off-site migration of leachate at the Facilities have been permanently addressed."

Defendants McGill have failed to comply with the requirements of Paragraph 36 in violation of the December 2, 2008, Consent Order since January 2009, to present.

- 3) **Paragraph 38**, which states, "Within 45 days of the effective date of this Order, Defendants McGill shall submit to Ohio EPA plans to construct the Western Slope Leachate System. The plan shall include the connection of the 42-inch storm sewer pipe that daylights on the Western Slope to the Western Slope Leachate System. Within 30 days of receiving approval of the plan from the Ohio EPA, Defendants McGill shall request from the NEORSD a Permit to Install to allow the Western Slope Leachate System to discharge into the NEORSD sewer system. By October 31, 2009, Defendants McGill shall complete the Western Slope Leachate System in accordance with the Ohio EPA approved plan."

Defendants McGill have failed to submit to Ohio EPA plans to construct the Western Slope Leachate System by January 16, 2009, and failed to complete construction of the City View Center Western Slope Leachate Collection System in violation of Paragraph 38 of the December 2, 2008, Consent Order.

- 4) **Paragraph 40**, which states, "Within 60 days of obtaining the required Ohio EPA and NEORSD approvals, Defendants McGill shall complete the connection of the Northeast Mound Underdrains to NEORSD sewer system and shall remove the gravel-filled trench at the northwest toe of the Northeast Mound. The trench shall be backfilled with a material suitable to prevent off-site leachate migration into the Southside Corporate Center, Ltd. storm water catch basin."

Defendants McGill have failed to connect the Northeast Mound Underdrains to NEORSD's sewer system in violation of Paragraph 40 of the December 2, 2008, Consent Order.

- 5) **Paragraph 41**, which states, "Within 30 days of the effective date of this Order, Defendants McGill shall video (camera and record) the interior of the two 54" storm sewers discharging to the Western Slope to determine if any repairs are needed to the sewers. Within 30 days of Defendants McGill videoing the two 54" storm sewers, Defendants McGill shall provide to Ohio EPA a copy of the video and a written analysis of the results of the video. Within 120 days of the effective

date of this Consent Order, Defendants McGill shall repair the interior of either or both of the 54" storm sewer pipes at the Facilities, in the event the video film shows repairs are required. Within 30 days of Defendants McGill performing repairs on the 54" sewers, Defendants McGill shall provide to Ohio EPA a written report of the repairs made."

Defendants McGill have failed to make repairs to the interior of both 54" storm sewer pipes at the Facilities, in violation of Paragraph 41 of the December 2, 2008, Consent Order.

- 6) **Paragraph 42**, which states, "Defendants McGill and CVC shall continue to implement the Leachate Management Contingency Plan ("LMCP") for the Facilities, as approved by Ohio EPA pursuant to the March 18, 2005 Orders, during and after the implementation of any or all of the provisions of this Section of this Order, entitled "**Work Requirements Addressing Leachate Outbreaks.**"

Defendants McGill have failed to implement the Leachate Management Contingency Plan for the Facilities in violation of Paragraph 42 of the December 2, 2008, Consent Order. Leachate outbreaks presently exist on the Northeast Mound, along the east slope of the Retail 'L' building pad, and along the toe of the western slope of the landfill.

- 7) **Paragraph 43**, which states, "Upon the effective date of this Order, Defendants McGill shall begin submitting copies of the storm water inspection reports for the Facilities to the Division of Surface Water at the Ohio EPA Northeast District Office and the Cuyahoga Soil & Water Conservation District as required by Section H.2.(c) of the March 18, 2005 Orders..."

Defendants McGill have failed to submit copies of storm water inspection reports to Ohio EPA in violation of Paragraph 43 of the December 2, 2008, Consent Order.

- 8) **Paragraph 46**, which states, "Within 30 days of the effective date of this Order Defendants McGill shall apply a soil layer with a minimum thickness of six inches and of sufficient fertility to support dense vegetation on areas currently not paved or where building construction has not commenced. These areas shall also be graded to prevent the ponding of water on the surface and shall be seeded to establish a dense vegetative cover. Dense vegetation shall be maintained until construction commences on such areas."

Defendants McGill have failed to provide a 6" soil layer, establish dense vegetative cover and to prevent the ponding of water on unpaved areas at the Facilities, in violation of Paragraph 46 of the December 2, 2008, Consent Order.

- 9) **Paragraph 47**, which states, "Within 30 days of the effective date of this Order, Defendants McGill shall submit a detailed plan and implementation schedule for sealing all underground structures such as catch basins, storm and sanitary sewers, manholes, and utility vaults using the method of sealing employed on the CVC owned Facilities by Marra Constructors, Inc. or as approved by Ohio EPA. Within 30 days of the Ohio EPA's approval of the detailed plan and implementation schedule, Defendants McGill shall commence to seal all underground structures as approved. Defendants McGill shall complete the work within 60 days of commencing to seal the underground structures."

Ohio EPA approved a Subsurface Structures Repair Plan on March 27, 2009. However, Defendants McGill have failed to conduct repairs or seal any underground structures, in violation of Paragraph 47 of the December 2, 2008, Consent Order.

- 10) **Paragraph 48**, "Within 30 days of the effective date of this Order, Defendants McGill shall submit a detailed design plan and an installation schedule for the Main Facility Gas System, in conjunction with the required submittals for the NEM Gas System. Within 30 days of the Ohio EPA's approval of the detailed design plan and implementation schedule, Defendants McGill shall commence with the installation of the Main Facility Gas System as approved. Within 60 days of commencing with the installation of the Main Facility Gas System, Defendants McGill shall complete the installation. In accordance with Section XII. of this Order, Ohio EPA shall draw up to Fifteen Thousand Dollars (\$15,000.00) from the Garfield Trust Account to pay to SCS Engineers or any other Injunctive Relief Personnel of Defendants McGill to prepare the detailed design plans for the Main Facility Gas System and shall draw up to Two Hundred and Fifty Thousand Dollars (\$250,000.00) to pay to any such Injunctive Relief Personnel for the installation, QA/QC documentation, supervision and certification of the Main Facility Gas System. Any costs above the sums of \$15,000.00 and \$250,000.00 stated in this paragraph shall be paid by Defendants McGill."

Defendants McGill have failed to comply with the requirements of Paragraph 48 in violation of the December 2, 2008, Consent Order.

- 11) **Paragraph 49**, which states in part, "Within 30 days of the date the Ohio EPA approves the Main Facility Gas Extraction System, Defendants McGill and CVC shall submit, to Ohio EPA for approval, detailed plans and schedules for the operation, maintenance, and monitoring of the Main Facility Gas System..."

Defendants McGill have failed to comply with the requirements of Paragraph 49 in violation of the December 2, 2008, Consent Order.

- 12) **Paragraph 50**, which states in part, "Upon the effective date of this Order and before the installation of the Main Facility Gas System and the sealing of the underground structures, Defendants McGill and CVC shall monitor daily all underground structures (i.e. catch basins, manholes and vaults) for methane gas, unless otherwise approved by Ohio EPA, and submit a weekly written report of the findings to Ohio EPA..."

Defendants McGill have failed to conduct daily monitoring for methane in underground structures situated on their properties, in violation of Paragraph 50 of the December 2, 2008, Consent Order.

- 13) **Paragraph 52**, which states, "Within 30 days of the effective date of this Order, Defendants McGill shall retain qualified Injunctive Relief Personnel to determine if there is any volatile organic compound ("VOC") vapor intrusion into any occupied buildings at or above any Ohio law and/or federal law action levels, and report the finding to Ohio EPA within 10 days of completing such work. If Defendants McGill determine that certain VOC vapors exist in the occupied buildings at or above action levels, within 60 days of the effective date of this Order, Defendants McGill shall determine the origin of such VOC vapors and report the findings to Ohio EPA and/or any other applicable regulatory body within 10 days of making such determination. Defendants McGill shall take all appropriate actions to mitigate the threat of the VOC vapors to the City View Center patrons."

Defendants McGill have failed to submit a complete VOC vapor intrusion study and determination report, in violation of Paragraph 52 of the December 2, 2008, Consent Order.

- 14) **Paragraph 54**, which states, "Within 180 days of the effective date of this Order, Defendants McGill shall regrade and cap the solid waste at the Facilities that is above grades currently approved in the March 18, 2005 Orders. The cap shall be installed in accordance with the March 18, 2005 Orders. Within 30 days of the completion of the regrading and capping, Defendants McGill shall submit a cap certification report to Ohio EPA documenting the work, in accordance with the March 18, 2005 Orders."

Defendants McGill have failed to regrade and cap areas in violation of Paragraph 54 of the December 2, 2008, Consent Order.

- 15) **Paragraph 55**, which states, "Within 75 days of the effective date of this Order, Defendants McGill shall identify and repair existing damage to the Landfills' cap systems, resulting from intrusive cap investigations and areas where straws were removed. The cap shall be installed and/or repaired, in accordance with the

March 18, 2005 Orders. Within 30 days thereafter, Defendants McGill shall submit a cap certification report to Ohio EPA documenting the work, in accordance with the March 18, 2005 Orders.”

Defendants McGill have failed to repair damage to the Landfills’ cap systems that resulted from past intrusive cap investigations and in areas from where straws were removed, in violation of Paragraph 55 of the December 2, 2008, Consent Order.

- 16) Paragraph 56**, which states, “Within 30 days of the effective date of this Order, Defendants McGill and CVC shall submit a report to the Ohio EPA identifying all existing erosion at the Facilities, repair all such erosion within 30 days of the effective date of this Order, and within 45 days of the effective of this Order submit a report to the Ohio EPA identifying the repairs that were performed.”

Defendants McGill have failed to submit a report identifying whether erosion repairs were performed at the site, in violation of Paragraph 56 of the December 2, 2008, Consent Order.

- 17) Paragraph 57**, which states, “Upon the effective date of this Order, Defendants McGill and CVC shall inspect the Facility on a monthly basis for damage to the cap and pavement and repair all such damage, and submit copies of the preceding month’s inspection reports to Ohio EPA no later than the 15th day of each month. The reports shall identify areas of concern and give detailed descriptions of the actions taken to repair all such areas of concern.”

Defendants McGill have failed to inspect and submit monthly cap and pavement inspection reports to Ohio EPA in violation of Paragraph 57 of the December 2, 2008, Consent Order.

- 18) Paragraph 58**, which states, “Not later than May 1, 2009, Defendants McGill shall fund a \$700,000.00 (Seven-Hundred-Thousand Dollars) financial assurance mechanism (the “McGill Financial Assurance Fund(s)”) in the form of cash in a trust fund, letter of credit or surety bond in accordance with Ohio Adm. Code Rules 3745-27-15, 3745-27-16 and 3745-27-17 (but modified to allow the financial assurance to be drawn by Ohio EPA to pay for civil and stipulated penalties). The McGill Financial Assurance Fund(s) can be used by Ohio EPA for any Closure and Post-Construction Care Activities, including maintenance of any Landfill gas extraction systems, and to pay for any civil or stipulated penalties as provided in this Order.”

Defendants McGill have failed to fund the \$700,000.00 financial assurance mechanism in violation of Paragraph 58 of the December 2, 2008, Consent Order.

- 19) Paragraph 64**, which states, "Within 60 days of the effective date of this Order, Defendants McGill shall submit certification reports for all Landfill gas related Engineered Components constructed on the Facilities prior to the effective date of this Order. Defendants McGill are not required to provide certification reports for cap construction completed prior to the effective date of this Order. For all other Engineered Components constructed prior to the effective date of this Order, Defendants McGill shall provide certification reports and/or a list of Engineered Components that cannot be certified. Defendants McGill shall provide a written justification explaining why any Engineered Components cannot be certified and provide a list all persons or entities that can certify the Engineered Components. For all Engineered Components constructed after the effective date of this Order, Defendants McGill and/or CVC shall submit certification reports within 60 days after construction of such Engineered Components, but no later than 30 days before any building is occupied containing any such Engineered Components."

Defendants McGill have failed to submit all required information in violation of Paragraph 64 of the December 2, 2008, Consent Order.

- 20) Paragraph 83**, which states, "Defendants McGill are ordered and enjoined to pay to Ohio EPA, Division Surface Water and the Division of Solid and Infectious Waste Management, a combined civil penalty of One Million Two Hundred Thousand Dollars (\$1,200,000.00). Upon the effective date of this Order, Six-Hundred-Eighty-Five-Thousand Dollars (\$685,000.00) from the Garfield Trust Account shall immediately be paid to Ohio EPA as civil penalty. Of the \$685,000.00 amount, Six-Hundred-Twenty-Thousand Dollars (\$620,000.00) shall go to Ohio EPA, Division of Solid and Infectious Waste Management, and Sixty-Five Thousand Dollars (\$65,000.00) shall go to Ohio EPA, Division of Surface Water. The remaining balance of the civil penalty owed by Defendants McGill totaling Five Hundred Fifteen Thousand Dollars (\$515,000.00), shall be paid to the Ohio EPA, Division of Solid and Infectious Waste, in semi-annual installments not required to exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00), to be paid no later than June 30<sup>th</sup> and December 31<sup>st</sup> of 2009 and, if necessary, in 2010 respectively, until the balance is paid in full. As described in Section XI. and Section XII. of this Order, the remaining civil penalty amount of \$515,000.00 can be further reduced in the event that the money reserved in the Garfield Trust Account for installation of the Main Facility Gas System and NEM Gas System is not completely disbursed for such projects."

John McGill  
McGill Property Group, LLC  
December 8, 2009  
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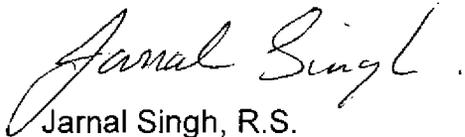
Defendants McGill have failed to pay the semi-annual civil penalty installment of \$250,000.00 (due not later than June 30, 2009) in violation of Paragraph 82 of the December 2, 2008, Consent Order.

Please submit a written response within 15 days of your receipt of this letter, identifying what actions have been or are being taken to address the above cited violations.

Nothing in this letter shall be construed to authorize any waiver from any requirements of applicable state solid waste laws or regulations. This letter shall not be interpreted to release MPG and GHLFP or others from responsibility under ORC Chapters 3704., 3714., 3734. or 6111; under the Federal Clean Water Act, the Resource Conservation and Recovery Act, or the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable requirements for remedying conditions resulting from any release of contaminants to the environment.

If you have any questions regarding this letter, please do not hesitate to contact me at (330) 963-1276.

Sincerely,



Jarnal Singh, R.S.  
Environmental Specialist  
Division of Solid & Infectious Waste Management

JS/cl

cc: Robert Eubanks, AGO, EES  
Michelle T. Sutter, AGO, EES  
Melinda Berry, DSIWM-CO  
Colin Johnson, Cuyahoga County Board of Health  
Matt McGill, McGill Property Group  
Dale Markowitz, Thrasher, Dinsmore & Dolan  
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1. Article Addressed to:

John McGill  
 McGill Property Group, LLC  
 Garfield Land Development, LLC  
 GHLFP, LLC  
 125 W. Indiantown Road, Suite 101  
 Jupiter, Florida 33458

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