OhioEPA

State of Ohio Environmental Protection Agency

Northeast District Office

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

May 2, 2008

RE: CITY VIEW CENTER
NOTICE OF VIOLATION/DEFICIENCY
CAP CERTIFICATION REPORT 19A

CERTIFIED MAIL

Bennett Kest
c/o Thomas Klein
Kest Property Management Group
25200 Chagrin Blvd., Suite 300
Beachwood, Ohio 44122

Matt McGill
McGill Property Group
125 W. Indiantown Road, #102
Jupiter, Florida 33458

Dear Sirs:

On February 11, 2008, the Ohio Environmental Protection Agency (Ohio EPA) received a document titled *Cap Certification 19A, City View Center, Garfield Heights, Cuyahoga County, Ohio.* The report was submitted by NTH Consultants, Ltd. for certification of 2.87 acres of cap construction within the I-480 Outlot area at the City View Center Project located on the R&B Development Landfill.

After review of the certification report, Ohio EPA notes the following violation and deficiencies:

Violation:

(DFF&Os) issued March 18, 2005, Order A.2)., which states in part, *"upon the effective date of these Orders, Respondents MPG, Garfield, and GHLFP are authorized to perform activities at the Facilities…in strict accordance with these Orders and the plans, specifications, and other information contained in Appendices C, D, E and F. There may be no deviation from the requirements of Appendices C, D, E and F without prior written authorization form Ohio EPA. Any future activities at the Facilities beyond those required or authorized under these Orders may require additional Ohio EPA approval."*

Section 8.1 of Appendices D and E of the March 18, 2005, DFF&Os states in part, *"The majority of waste relocation activities will be completed and the certified 2-foot clay cap installed prior to the start of the site activities outlined in this application…Once the final cover system is certified and approved, the soil fill layer and gas collection layers will be constructed."*

The cap construction area included in certification report No. 19A was not submitted and concurred with prior to work taking place above this cap. McGill Property Group and City View Center, LLC are therefore in violation of Order A.2)., and Section 8.1 of Appendices D and E of the DFF&Os issued March 18, 2005.

Deficiencies:

1. Section 5.0 of the report suggests that this certification report also certifies utility installation. However, the entirety of the report appears to only include certification documentation of cap installation. Please revise the narrative to clarify this discrepancy.

2. The report, including the Engineer's Certifying Statement, indicates that the Quality Assurance/Quality Control for the cap installation was constructed in compliance with the December 13, 2003 OAC 3745-27-13 (Rule 13) Authorization. However, the report does not indicate that the cap was also constructed in accordance with the Director's Final Findings and Orders (DFF&Os) as issued on March 18, 2005. Please update the narrative accordingly.

3. The plan drawings and testing data do not clarify that the two foot thick clay barrier layer was constructed in strict compliance with the authorizing documents. Ohio EPA has noted the following deficiencies:

    a. It appears that certain test locations which are as close as 20 feet, have an elevation change of up to 8 ½ feet. In addition, the topographic map of the top of cap indicates that said areas are virtually flat.

    b. The plan drawings are not clear as to how each lift was constructed. The plan drawings indicate that in some instances lift one was constructed a month or two prior to lift two, but does not describe how the first lift was protected or reworked prior to lift two being constructed. Or, certain lift locations were tested one month, then only 20 feet away the rest of the lift was constructed and tested two to three months later.

    c. At several locations the elevations of tests indicate that lift two is well below the top of waste grades.

    Please update the plan drawings and/or narrative to clarify the above noted deficiencies.

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 McGill Property Group, LLC, Garfield Land Development, LLC, GHLFP, LLC, City View Center, LLC 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) 963-1244.

Sincerely,

Karen Naples
Environmental Specialist
Division of Solid and InfectiousWaste Management

KN/cl

cc: Jarnal Singh, DSIWM, NEDO
Melinda Berry, DSIWM, CO
Denise Romano, Cuyahoga County Board of Health
Joseph J. O'Connell, SET, NTH Consultants, Ltd.
File: [SOWERS/COUN/CITY VIEW/COR/18]
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