



State of Ohio Environmental Protection Agency

Northeast District Office

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

October 22, 2007

**RE: CITY VIEW CENTER
REQUEST FOR ADDITIONAL
INFORMATION AND FINANCIAL
ASSURANCE UPDATE
NOTICE OF VIOLATION &
DEFICIENCY**

CERTIFIED MAIL

Mr. Matt McGill
McGill Property Group, LLC
GHLFP, LLC
Garfield Land Development, LLC
30575 Bainbridge Road, Suite 100
Solon, Ohio 44139

Mr. Thomas Klein
City View Center, LLC
City View Center Holding Company, LLC
21 Orchard Street
Monsey, New York 10952-3018

Dear Sirs:

Ohio EPA is in receipt of a letter from Mr. McGill dated September 24, 2007 and a separate September 26, 2007 letter from Mr. Michael McMahon (of McMahon Deguilis LLP) submitted on behalf of City View Center, LLC. Mr. McGill's letter addressed Ohio EPA's request for access to additional information and each letter responded to Ohio EPA's August 15, 2007 Notice of Violation (NOV) regarding financial assurance updates.

With regard to Ohio EPA's request for access, Mr. McGill's response offered to the Ohio EPA the future delivery of the documents that the Ohio EPA requested to access. Mr. McGill's response effectively is a denial of access and, thereby, a violation of the March 18, 2005 Orders, Section VI, Access, Paragraph 6.C., which states, in part, the following:

Ohio EPA shall have access at all reasonable times, including during business hours, to the Facilities and any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by Respondents. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including but not limited to... Inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of these Orders;

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Approximately three months prior to Ohio EPA's September 11, 2007 request for access, in a June 15, 2007 Ohio EPA letter, the Ohio EPA pursued the avenue of receiving the information it needed via delivery from McGill Property Group, Garfield Land Development or GHLFP (collectively MPG). In light of the length of time Ohio EPA has awaited the requested documents, McGill Property Group's new non-specific time line for providing documents in lieu of providing access is unacceptable.

Further, Mr. McGill's response states that the Ohio EPA already has the information that it requested through weekly reports submitted by MPG or its consultants. Such is not the case, nor is Mr. McGill's belief that Ohio EPA may have such information be reason to deny the Ohio EPA access. The information provided in your reports does not contain detailed information pertaining to all consultants, contractors, subcontractors, QA/QC personnel that Ohio EPA needs. The Ohio EPA needs the name, address, and phone number, represented corporations, time periods of work, and list of duties of the consultants, contractors, subcontractors, or QA/QC persons that conducted activities at the site.

Within five (5) days of your receipt of this letter, please provide written instructions on how and when Ohio EPA can obtain access to the requested information. Ohio EPA is available to review documents on the following dates: October 29, 2007, November, 7, 8, 9, 13, 15, 19, 20, and 21, 2007.

With regards to financial assurance, in accordance with the March 18, 2005 Orders, Order No 5.C.5, MPG remains liable for closure and post-construction care financial assurance for the entire 77 acres of the City View Center Facilities. MPG and City View Center, LLC are jointly and severally liable for the 60 acres sold to City View Center, LLC.

Each submittal from Mr. McGill and Mr. McMahon included the same attached letter from SCS Engineers. However, the SCS letter attached to Mr. McGill's submittal was in draft form and was not addressed to MPG. MPG must update its financial assurance based on an assessment of its financial assurance responsibilities for the entire 77 acres of the City View Center property. By relying on City View Center, LLC's financial assurance response, MPG neglects 17 acres of the City View Center property for which City View Center, LLC is not responsible. Further, the submittal from City View Center, LLC, which MPG relies on, is inadequate for the 60 acres it addresses, as pointed out below.

Ohio EPA has reviewed the submittals and has noted the following deficiencies for closure financial assurance:

1. The March 18, 2005 Orders, Order 5.C.1 requires the cost estimates for closure to include the cost to re-establish closure of the City View Center Facilities in the event that those bound by the Orders are unwilling or unable to complete the construction

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activities undertaken at the Facilities. No financial assurance update for closure of the Facility was submitted. The update for the closure cost estimate shall include, but is not limited to, the following: repair of test pit and Boutwell locations; final capping of areas not yet capped; re-capping of areas not constructed in accordance with the authorizing documents; site monitoring and maintenance prior to closure including methane monitoring, leachate disposal and repair of leachate outbreaks; and the costs associated with the actions required to eliminate off site gas migration from the Northeast Mound. In short, any work that has not been completed for the closure of the City View Center site must be included in the financial assurance cost estimate.

Ohio EPA has reviewed the submittals and has noted the following deficiencies for post-construction care financial assurance.

2. The post-construction cost estimate of \$242,000 for maintenance of cap is inadequate.
 - a. The post-construction cost estimate for cap maintenance only considered one percent of unpaved areas for repair each year. The estimate should include cap maintenance for all of the paved and unpaved areas of the Facility (approx. 64 acres) and must anticipate settlement based on the amount of settlement that has taken place since construction.
 - b. Also, the post-construction cost estimate for cap maintenance did not take into consideration maintenance and repair of utilities that are and will be affected by settlement.

The estimate of 40 man-hours per year and cost of \$44,400 for 30 years post-construction care for site inspections is inadequate. Currently, site inspections for leachate management are being conducted daily and weekly, based on the Leachate Management Contingency Plan and the Operation and Maintenance Plan for the Facility. These ongoing site inspections must also be taken into consideration in the site inspection cost estimates.

3. The submittal did not include a post-construction cost estimate for site monitoring.
 - a. Explosive gas monitoring is required to be conducted in accordance with OAC 3745-27-12. Costs associated with this monitoring shall be included in the post-construction care cost estimate for site monitoring.

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- b. According to Section 2.3, of Appendix H of Appendices E and F of the March 18, 2005 Orders, the floor monitoring ports in each building shall be monitored on a monthly basis and explosive gas sensors and alarms shall be tested and/or re-calibrated on a quarterly basis. Costs associated with this monitoring must be included in the post-construction care cost estimate for site monitoring.
4. The post-construction cost estimate for maintenance of the gas collection system is not adequate. Costs associated with repairs of the gas extraction system due to settlement at the Facility must be included in this estimate.
5. The post-construction cost estimate for storm water controls is not adequate. This cost estimate must consider the extensive erosion damage that currently exists at the site and future maintenance of the erosion controls installed to fix the existing damage.
6. The overall post-construction financial assurance did not include a cost estimate for leachate collection and disposal and, instead, assumed that the leachate problem will be eliminated by MPG. However, there is a persistent historical and ongoing problem with leachate being generated and disposed of from the Facility. Further, neither MPG nor City View Center, LLC has taken the required steps to fully implement the Leachate Management Contingency Plan to attempt to eliminate the leachate problems at the City View Center site.
 - a. The costs associated with the current disposal of leachate (from leachate outbreaks, gas extraction system condensate, etc.) must be considered as an on-going cost and, therefore, must be included in the cost estimate.
 - b. Costs associated with implementing different stages of the Leachate Management Contingency Plan must be considered in the cost estimate for leachate collection and disposal.

Again, Ohio EPA requests that the complete submittal of all updated financial assurance cost estimates for the above required information occur within 15 days of the date of this Request and that it be submitted in an organized fashion for quick review. Please do not hesitate to contact Karen Naples at (330) 963-1244 or Jarnal Singh at (330) 963-1276, should you require additional clarification on matters included in this letter.

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 the owner or operator of the facility or others from responsibility under ORC Chapters 3704., 3714., 3734. or 6111; under the Federal Clean Water Act, the Resource

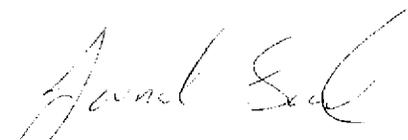
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Conservation and Recovery Act, or the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable requirements for remedying conditions resulting from any release of contaminants to the environment.

Sincerely,



Karen J. Naples
Environmental Specialist
Division of Solid and Infectious
Waste Management



Jarnal Singh
Environmental Specialist
Division of Solid and Infectious
Waste Management

KJN/cl

pc: Melinda Berry, DSIWM, CO
Robert Eubanks, AGO
File: [SOWERS/County/City View/COR/18]