



State of Ohio Environmental Protection Agency

Northeast District Office

2110 East Aurora Rd.
Twinsburg, Ohio 44087

TELE: (330) 963-1200 FAX: (330) 487-0769
www.epa.state.oh.us

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

February 11, 2009

**RE: NOTICE OF VIOLATION
TRINITY SQUARE RETAIL SITE
SUMMIT COUNTY, OAC 3745-27-13
AUTHORIZATION, DEMOLITION GRADING
AND CONSTRUCTION**

CERTIFIED MAIL

Mr. Adam Kyser
Preferred-Cuyahoga LLC
141 West Jackson Boulevard, 35th floor
Chicago, IL 60604

Dear Mr. Kyser:

On February 9, 2009, the Ohio Environmental Protection Agency (Ohio EPA) conducted a site inspection of the proposed Trinity Square Retail Site, located at 753-755 Howe Avenue, city of Cuyahoga Falls. The site was unoccupied during the site visit. The purpose of the inspection was in relation to a complaint received from Ohio EPA's Division of Surface Water (DSW) concerning uncovered waste at the facility. Work at the facility is being conducted pursuant to an April 3, 2008 authorization request titled *Application for Authorization to Engage in Grading and Construction of the Proposed Trinity Square Retail Development, 753 and 755 Howe Avenue, Cuyahoga Falls, Ohio, April 2008*, revised through November 12, 2008. The request was authorized via rule on November 18, 2008 for demolition of existing structures, site grading, and construction of a retail development at the former Trinity United Methodist Church Site (Trinity Square). The authorization was requested by and granted to Preferred-Cuyahoga, LLC (PC). The parcels on which waste has been identified are currently owned by PC. The site is believed to have operated as a municipal solid waste disposal facility from approximately 1947 to 1955, and sold in 1959. The site was never licensed or permitted by the Summit County General Health District, Ohio Department of Health, or Ohio EPA.

During the February 9, 2009 inspection, Ohio EPA observed waste at the surface and was not covered with daily or intermediate cover, in violation of the November 18, 2008 authorization and Ohio Administrative Code (OAC) rule 3745-27-13. Specifically, PC is in violation of the following:

1. OAC 3745-27-13(H)(5) states, in part:

All filling, grading, excavating, building, drilling, or mining activities shall be performed in compliance with Chapters 3704., 3734., and 6111. of the Revised Code and applicable local, state, and federal laws and regulations pertaining to

environmental protection, including but not limited to protection of ground water and control of air emissions, leachate, and surface water run-on and run-off.

The April 3, 2008 authorization request, as revised through November 12, 2008, and authorized pursuant to OAC 3745-27-13(D)(2) on November 18, 2008, contained requirements that all exposed waste covered at the end of each day with at least six inches of soils or a tarp, and that any soils left undisturbed for more than thirty days be covered with at least 12 inches of soils. As evidenced by the attached photographs, waste was observed exposed at the surface, in violation of both OAC 3745-27-13(H)(5) and the November 18, 2008 authorization. Any precipitation in contact with waste is by definition leachate pursuant to OAC 3745-27-01(L)(1) and cannot be handled, managed, and disposed of as storm water.

To resolve the violation, PC must ensure that all exposed waste is covered with at least six inches of soils or tarps at the end of each and every working day, and that areas left undisturbed for more than 30 days be covered with at least 12 inches of soils. All waters that are in contact with waste is considered to be leachate, and must be collected, managed, and disposed of in accordance with ORC 6111. Please provide documentation (activity logs, photographs) that all waste has been properly covered and leachate properly disposed.

2. ***Ohio Revised Code (ORC) Section 3734.11(A) states, in part:***
No person shall violate any section of this chapter, any rule adopted under it, or any order issued under section 3734.13 of the Revised Code.

PC is in violation of the above law for failure to comply with ORC Chapter 3734 and OAC Chapter 3745-27.

PC is reminded that installation of flexible membrane liner (FML) is dependent upon weather conditions as specified in the construction quality assurance and quality control (CQA/QC) document, including both precipitation and temperature. Please provide Ohio EPA and the Summit County General Health District with notice prior to commencing the installation of the FML.

Please respond to the above violations within 14 days from receipt of this letter. Failure to do so may result in escalated enforcement action.

Nothing in this letter shall be construed to authorize any waiver from any requirements of applicable state solid waste laws or regulations. This authorization shall not be interpreted to release Preferred Cuyahoga, LLC, Mannik & Smith Group, Inc., or others from responsibility under Ohio Revised Code Chapters 3704, 3714, 3734, or 6111, the Federal Clean Water Act, the Resource Conservation and Recovery Act, the Toxic Substance

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Preferred-Cuyahoga, LLC
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Control Act, or the Comprehensive Environmental Response, Compensation and Liability Act, or from other applicable requirements for remedying conditions resulting from any release of contaminants from the facility to the environment.

If you have comments or questions concerning this letter, please feel free to contact me at (330) 963-1175.

Sincerely,



John M. Schmidt, P.E., R.S.
Environmental Engineer
Division of Solid and Infectious Waste Management

JMS/cl

Encl: Select Photographs from February 9, 2009 Site Visit

pc: Dave Dysle, DSIWM-NEDO
Kelvin Rogers, DSW-NEDO
Nancy Zikmanis, DERR-NEDO
Marty Cooper, Legal
Brian James, Summit County Soil and Water Conservation District
Darrick Willis, Summit County General Health District
Michael Momenee, Mannik & Smith Group, Inc.
Brian Binkowski, C E Gleeson Constructors, Inc.
Justen Musick, Mannik & Smith Group, Inc.
Dan Pittman, Mannik & Smith Group, Inc.
File: [COUN/Trinity Square Site/AUT/77]

DSIWM # - None

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Sent To *Adam Kyser*
 Street, Apt. No.,
 or PO Box No. *Preferred - Cuyahoga LLC*
 City, State, ZIP+4 *Chicago Ill*

PS Form 3800, August 2006 See Reverse for Instructions

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- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

 Mr. Adam Kyser
 Preferred-Cuyahoga LLC
 141 West Jackson Boulevard
 35th floor
 Chicago, IL 60604

COMPLETE THIS SECTION ON DELIVERY

A. Signature *[Signature]* Agent
 Addressee

B. Received by (Printed Name) *[Signature]* C. Date of Delivery *2-20-09*

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2. Article Number (Transfer from service label) *700801500001711081599 Schmidt 2-16-09*