



State of Ohio Environmental Protection Agency

Northeast District Office

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Twinsburg, Ohio 44087

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www.epa.state.oh.us

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

February 24, 2009

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

CERTIFIED MAIL

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

Kim K. Burke, Esq.
Taft, Stettinius & Hollister, LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202-3957

Dear Mr. Klein and Mr. Burke:

The Ohio Environmental Protection Agency (Ohio EPA), Division of Solid and Infectious Waste Management (DSIWM) has completed review of the O&M Explosive Gas Monitoring and Inspection Reports for January 2009 for the City View Center site, located in Garfield Heights, Ohio. The report was submitted by SCS Engineers on behalf of City View Center, LLC, and included results from floor monitoring ports sampled on January 27, 2009.

The January 2009 O&M Explosive Gas Monitoring and Inspection report indicates that "no interior monitoring was completed for Wal-Mart due to store closing." Failure to monitor all FMPs in compliance with the Operation and Maintenance Manual contained in Appendix H of Appendices E and F of the March 18, 2005 Director's Final Findings and Orders, is in violation of the following:

Order A. 2. of the March 18, 2005, Director's Final Findings and Orders (DFF&Os), which states in part, "...Respondents shall perform all activities described in Appendices C, D, E and F as they pertain to the Facilities, and Respondents shall perform all such activities 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 from Ohio EPA. Any future activities at the Facilities beyond those required or authorized under these Orders may require additional Ohio EPA approval."

Floor monitoring ports within all stores, whether occupied or not, must be monitored monthly per the March 18, 2008 DFF&Os. In the past, access to Wal-Mart's floor monitoring ports has been gained by contacting Renee Dawson (store Manager at the Mayfield store) at (440) 796-7608.

Thomas Klein, City View Center, LLC
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Also, a number of floor monitoring ports (FMPs) in Bed Bath & Beyond (BBB) and JoAnn Fabrics continue to experience elevated gas readings. Ohio EPA is aware that repairs were made to a gas extraction valve box at the rear of JoAnn Fabrics and that those repairs aided in temporarily reducing levels in FMP #3. However, readings taken on February 18, 2009, detected 17% methane by volume, at FMP #3. Gas levels detected in BBB's FMP #4 also consistently remain above the 1.25% by volume threshold (FMP #4 recorded 14.7% methane by volume, on February 18, 2009). Additional work is needed to bring levels down below the threshold of 1.25% by volume (25% LEL) at FMP's within these two stores.

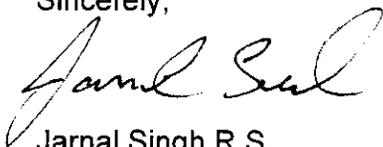
It also appears that BBB's FMP #2 may require maintenance or may not be installed correctly. This matter was raised with SCS Engineers (see attached copy of email dated December 4, 2008), however; Ohio EPA has not received notice of any pending investigatory work to determine whether this port was correctly installed or whether it is functioning properly. Please confirm how and when FMP #2 at BBB will be investigated.

Please submit a written response, within 10 days of your receipt of this letter, identifying what actions have been, or are being taken, to address the above mentioned items.

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

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, 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.

Sincerely,



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

JS/cl

cc: Melinda Berry, DSIWM-CO Bob Skirkanic, Alemko LLE
Robert Eubanks, AGO, EES File: [Sowers/Land/CityView /COR/18]
Colin Johnson, Cuyahoga County Board of Health
Bennett Kest, Kest Property Management Group

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Sent to *Thomas Keen*
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