

**Environmental
Protection Agency**

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

January 9, 2012

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

CERTIFIED MAIL 7011 0470 0002 3496 0538

Matt McGill, Project Manager
McGill Property Group, LLC
Garfield Land Development, LLC
GHLFP, LLC
4425 Military Trail, Unit 202
Jupiter, Florida 33458

Dear Mr. McGill:

On March 18, 2005 and December 2, 2008, McGill Property Group, LLC, Garfield Land Development, LLC, and GHLFP, LLC (respectively referred to as Respondents MPG, Garfield and GHLFP from here forth) entered into Director's Final Findings and Orders (Orders) and a Consent Order and Final Judgment Entry filed in the Cuyahoga County Court of Common Pleas. The Orders required activities to be undertaken with regard to the Rule 13 authorizations (issued pursuant to OAC 3745-27-13) conducted at the City View Center located in Garfield Heights, Ohio. The December 2, 2008 Consent Order and Final Judgment Entry required actions to be performed at the City View Center to correct past and/or existing violations. As you are aware, requirements of the March 18, 2005 Orders and the December 2, 2008 Consent Order and Final Judgment Entry have not been complied with. A partial inspection of the City View Center was conducted on December 22, 2011, and violations of the following requirements were determined to exist at the site.

March 18, 2005 Director's Final Findings and Orders

Order #5. A.2.

Requires that all activities described in the approved March 18, 2005 Orders (Rule 13's) be performed in strict accordance with these Orders and the plans, specifications, and other information contained with the Orders (Appendices C, D, E and F). There may be no deviation from the requirements of the Orders without prior written authorization from Ohio EPA.

Respondents MPG, Garfield and GHLFP have failed to perform activities, including but not limited to installation of the landfill cap and other engineered components, in accordance with the activities authorized in the March 18, 2005 Orders.

Order #5. A.5. Requires Respondents MPG, Garfield, and GHLFP to conduct all on-site activities in compliance with all applicable state and federal laws and regulations pertaining to environmental protection, including, but not limited to, the control of air pollution, leachate, surface water runoff and runoff, and protection of ground water.

Respondents MPG, Garfield and GHLFP have failed to conduct all on-site activities in compliance with all applicable state and federal laws and regulations pertaining to environmental protection. Leachate and landfill gas continues to migrate off site.

Order #5.A.6. States in part, Respondents MPG, Garfield, and GHLFP shall not create a nuisance and shall not adversely affect the public safety or health or the environment.

Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement. Uncontrolled landfill gas continues to collect in subsurface structures at the site at levels above 25% of the lower explosive limit (LEL). Open dumping of solid waste also exists on properties owned by Respondents Garfield.

Order #5.A.11. Requires use of best management practices and standards as specified in the National Resources Conservation manual titled Rainwater and Land Development for erosion control purposes at the site.

Respondents MPG, Garfield and GHLFP have failed to use best management practices to control erosion at the site. Uncovered areas and deep erosion channels exist on most slopes on the Facilities.

Order # 5.C.3. Requires financial assurance to be maintained until all construction activities undertaken by or on behalf of Respondents at the Facilities have been completed. The financial assurance instrument in the form of a letter of credit or surety bond established in Order No. 5.D.2, shall be updated annually in accordance with 3747-27-15(D), and shall comply with the requirements of OAC Rules 3745-27-15 and 3745-27-17.

Respondents MPG, Garfield and GHLFP have failed to maintain financial assurance for the Facilities.

Order # 5.C.5. Requires financial assurance to be posted for post construction care and operation and maintenance (O&M) for the gas extraction and control system, leachate collection system and final cover system.

Respondents MPG, Garfield and GHLFP have failed to post financial assurance for post construction care and O&M for the gas extraction and control system, leachate collection system and final cover system.

Order # 5.C.6. Requires financial assurance to be maintained for 30 years from the date of completion of all construction activities at the site and updated annually in accordance with 3745-2716(D).

Respondents MPG, Garfield and GHLFP have failed to maintain and update financial assurance for the Facilities.

Order # 5.D.1. Requires Operation and Maintenance to:

- a. Operate and maintain the explosive gas monitoring, collection and extraction system at the Facilities and prevent the formation and migration of explosive gas at or above 25% of the lower explosive limit (1.25% CH₄ v/v) within any building at the Facilities and at 100 % of the lower explosive limit (5.0% CH₄ v/v) at the Facilities' boundaries;

Explosive gas at levels greater than 100% LEL continues to migrate off site from the northeast mound (NEM). Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

- b. Operate and maintain any leachate collection system at the Facilities, repair all leachate outbreaks and prevent the discharge of leachate from the Facilities;

Leachate collection tanks are not being maintained at the site, leachate outbreaks are not being repaired and leachate continues to migrate off site. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

- c. Maintain the landfill cap system at the Facilities and repair damage to the engineered components; and

Damaged landfill cap systems and engineered components such as sewers, etc. are not being maintained or repaired at the site. Erosion exists on Facilities owned by Respondents MPG, Garfield and GHLFP. Large trees which are growing on the surface of the landfill are causing damage to the cap system. All erosion must be

repaired and trees must be removed from the western slope and the Northeast Mound cap systems. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

- d. Use their best efforts to prevent trespass onto the Facilities and to ensure that the Facilities do not become a nuisance.

Efforts to prevent trespass onto the properties owned by Respondents MPG, Garfield and GHLFP are not being undertaken. A considerable amount of open dumping has and continues to occur on parcels owned by the Defendants Garfield. Respondents MPG and Garfield have failed to comply with the above requirement.

Order # 5.G.1

Requires that all activities conducted under these Orders be conducted in accordance with the time frames specified in these Orders unless such time frames are otherwise extended by Ohio EPA in writing.

Respondents MPG, Garfield and GHLFP have failed to conduct activities in accordance with the time frames specified in the March 18, 2005, Orders.

Order # 5.H.2.e.

Requires that Respondents maintain compliance with SWCGP OHC00002, permit no. 3GC00458*AG and the SWP3 (storm water) throughout the life of the project's construction activities.

Respondents MPG, Garfield and GHLFP have failed to maintain compliance with SWCGP OHC00002, permit no. 3GC00458*AG and the SWP3 (storm water).

Order # 15

Requires that the Facilities be inspected on a quarterly basis and to immediately inform Ohio EPA in writing of any leachate outbreaks, subsidence at the landfills and/or damage to the Facilities' engineered components.

Respondents MPG, Garfield and GHLFP have failed to conduct and submit quarterly inspection reports for the Facilities.

December 2, 2008, Consent Order & Final Judgment Entry

Paragraph # 24

Requires that the gas extraction systems at the Facilities be maintained to prevent gas from accumulating in underground structures at or above 25%LEL and to maintain compliance with OAC 3745-27-12.

Gas levels in excess of 25% LEL continue to be detected in underground structures. Violations of OAC 3745-27-12 also exist at the Facilities. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirements.

Paragraph # 26 Requires the gas extraction system to be expanded if the Gas Performance Standards (25%LEL in subsurface structures) is not achieved at the Facilities.

The gas extraction system has not been expanded to achieve the Gas Performance Standards of 25%LEL in all subsurface structures at the Facilities. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

Paragraph # 29 Requires monitoring for 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 submit monthly monitoring reports to Ohio EPA.

Off-site gas migration from the Northeast Mound is not being monitored. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirements.

Paragraph # 30 Requires replacement of permanent gas monitoring probes 1 through 4 located on the property boundary between the Northeast Mound and the Southside Corporate Center, Ltd.

Permanent gas monitoring probes 1 through 4 have not been replaced. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

Paragraph # 33 Requires a slope stability monitoring plan be submitted and implemented for the western slope of the Northeast Mound.

A slope stability monitoring plan for the Northeast Mound has not been submitted or implemented. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

Paragraph # 36 Requires monthly visual inspections to be conducted of the Facilities for leachate outbreaks. Monthly inspection reports to be submitted to Ohio EPA.

Monthly inspections are not being conducted or reported on properties on the McGill Facilities. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirements.

Paragraph # 37 Requires that all leachate outbreaks be repaired within seven (7) business days of becoming aware of the leachate outbreaks.

Leachate outbreaks are not being repaired on the Respondents properties. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

Paragraph # 38 Requires plans to construct the Western Slope Leachate System be submitted to Ohio EPA. Plans to include connection of the 42-inch storm sewer pipe that daylight on the Western Slope to the Western Slope Leachate System and to submit a request to NEORSD to allow for the Western Slope Leachate System to discharge into the NEORSD sewer system.

Plans to construct the Western Slope Leachate System have not been submitted to Ohio EPA or NEORSD. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirements.

Paragraphs # 39 & 40 Require the Northeast Mound Storm Drains to be connected to the NEORSD sewer system (also need to install meters in manholes).

Respondents McGill and GHLFP have failed to connect the Northeast Mound storm drains to the NEORSD sewer system.

Paragraph # 41 Require repairs to the interior of the 54" storm sewer pipes at the Facilities and to provide a written report of the repairs.

Repairs to the interior of the 54" storm sewer pipes have not been conducted. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirements.

Paragraph # 42 Requires continued implementation of the Leachate Management Contingency Plan ("LMCP") for the Facilities (as approved by Ohio EPA pursuant to the March 18, 2005 Orders).

Leachate Management Contingency Plan is not being implemented at the McGill Facilities. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

Paragraph # 43 Requires submittal of the storm water inspection reports for the Facilities.

Storm water inspection reports are not being submitted for the Garfield and GHLFP properties. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

Paragraph # 46 Requires the application of a 6" soil layer on areas currently not paved or where building construction has not commenced. Areas should also have been graded to prevent the ponding of water and should have been seeded to establish a dense vegetative cover. Dense vegetation must be maintained until construction commences on such areas.

A 6" soil layer and vegetative cover has not been established on unpaved or unconstructed areas. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirements.

Paragraph # 47 Requires sealing of all underground structures at the Facilities.

All underground structures at the Facilities have not been sealed. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

Paragraph # 49 Requires the submittal and implementation of operation, maintenance, and monitoring plans of the Main Facility Gas System and to provide yearly reports (due January 1st of each year) to Ohio EPA detailing the repairs completed on the Main Facility Gas System throughout the year and the total cost for operation, maintenance and monitoring of the system throughout the year.

O&M plans and yearly reports have not been submitted for the Main Facility Gas System. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

Paragraph # 50 Requires daily monitoring of all underground structures (i.e. catch basins, manholes and vaults) for methane gas, and to submit a weekly written report of the findings to Ohio EPA. If methane gas is detected at or above the action level of 18% LEL peak reading during any monitoring event, Defendants McGill and CVC are required to immediately cordon off the area with a 10 foot perimeter and insert a blower to remove the

build-up of methane gas. After a blower is installed, the blower will remain in place until the Main Facility Gas System is installed and all underground structures are sealed. Each finding at or above action levels must be reported to Ohio EPA by electronic mail within 24 hours of the detection along with the actions that were taken to reduce the explosive gas level at the affected structure.

Underground structures on Facilities owned by Garfield and GHLFP are not being monitored. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

Paragraph # 52 Requires a study to determine if VOC vapor intrusion is occurring into any occupied buildings at the Facilities. If report determines that VOC vapors exist in an occupied building at or above action levels, a determination of the origin of the VOC vapors must be made and appropriate actions must be taken to mitigate the threat from the VOC vapors.

A report determining whether VOC vapor intrusion into buildings is occurring has not been submitted to Ohio EPA. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

Paragraph # 53 Requires the submittal of updated explosive gas monitoring plans for the R&B Development and Matousek Landfills.

Updated explosive gas extraction monitoring plans have not been submitted. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

Paragraph # 55 Requires existing damage to the Landfills' cap systems that resulted from intrusive cap investigations and areas where straws were removed to be repaired. A cap certification report should be submitted documenting the work.

Areas of damaged cap have not been repaired. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

Paragraph # 57 Requires inspection of the Facility on a monthly basis for damage to the cap and pavement and to repair all such damage, and submit monthly inspection reports to Ohio EPA.

Monthly cap and pavement inspection and repair reports are not being conducted or submitted to Ohio EPA. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

Paragraph # 58 Require funding of a \$700,000 financial assurance mechanism for Closure and Post Construction Care Activities (including maintenance for gas extraction systems).

The required financial assurance fund has not been established by Respondents McGill. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

Paragraph # 59 Requires operation and maintenance of the Main Facility Gas System until the end of the Post-Construction Care Period.

Respondents McGill have failed to operate and maintain the Main Facility Gas System. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

Paragraph # 60 Requires submittal of a financial assurance cost estimate for post-construction care activities for the NEM gas extraction system.

Financial assurance cost estimates of post-construction care activities for the NEM gas extraction system have not been submitted. Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

Paragraph # 62 Requires financial assurance cost estimates to be updated annually by Defendants McGill in accordance with OAC 3745-27-15(D) and 3745-27-16(D).

Financial assurance cost estimates have not been updated annually by Respondents McGill. MPG has failed to comply with the above requirement.

Paragraph # 65 Requires the submittal of annual reports certifying the proper operation, maintenance, and function of the Main Facility Gas System and/or the NEM Gas System until the end of the Post-Construction Care Period.

Respondents MPG, Garfield and GHLFP failed to submit an annual report certifying proper operation, maintenance and performance of the gas extraction systems at the Facilities.

Paragraph # 83

Requires Defendants McGill (MPG, Garfield, GHLFP and John McGill) 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). 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 30th and December 31st of 2009 and, if necessary, in 2010 respectively, until the balance is paid in full.

Respondents MPG, Garfield and GHLFP have failed to pay the above mentioned civil penalty.

Paragraph # 84

Requires timely payment of the semi-annual penalty installment when due, Ohio EPA is authorized to draw upon any current or future financial assurance to pay the penalty and the associated stipulated penalty and Defendants McGill shall, within ten (10) business days after receiving notice of such draw, replenish the financial assurance in the amount drawn by the Ohio EPA.

Respondents MPG, Garfield and GHLFP have failed to replenish the financial assurance in the amount that was drawn by Ohio EPA.

Paragraph # 85

States in part that failure to complete the payment of the civil penalty within the timeframe set forth in this Order will result in an additional \$1,000 (One Thousand Dollars) per day stipulated civil penalty. This stipulated civil penalty shall be payable immediately with any late civil penalty payment.

Respondents MPG, Garfield, and GHLFP have failed to pay the stipulated penalty.

Paragraph # 89 Requires that all activities to be undertaken in accordance with the requirements of all applicable federal and state and local laws, rules and regulations, permits, orders, and authorizations.

Respondents MPG, Garfield and GHLFP have failed to comply with the above requirement.

Open dumping of solid waste, commingled with construction and demolition debris is occurring at the southern section of the Facilities (the former proposed Home Depot pad). Large amounts of debris have been dumped on the property and no actions have been taken to prevent or remove the dumped materials. Open dumping of this debris is also a violation of the following requirements:

1. **Ohio Revised Code (ORC) Section 3734.03** which states in part, *"No person shall dispose of solid wastes by open burning or open dumping," and*
2. **Ohio Administrative Code (OAC) 3745-27-05(C)** which states *"No person shall conduct, permit or allow open dumping."*

Respondents MPG and Garfield are in violation of the above referenced requirements for allowing open dumping to occur on the above identified property. All solid waste and demolition debris dumped on this property must be removed and properly disposed of at a licensed solid waste landfill.

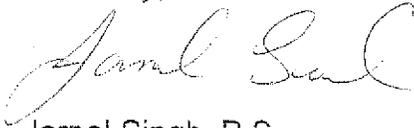
Respondents MPG, Garfield and GHLFP need to immediately take the necessary measures to return to compliance with Ohio's environmental laws. Within 14 days of receipt of this letter, Respondents MPG, Garfield and GHLFP are requested to provide documentation to this office including the steps taken to abate the violations cited above. Documentation of steps taken to return to compliance includes written correspondence, updated policies, and photographs, as appropriate, and may be submitted via the postal service or electronically to Jarnal.singh@epa.state.oh.us.

Please be advised that violations cited above will continue until the violations have been properly abated. Failure to comply with Chapter 3734 of the Ohio Revised Code and rules promulgated thereunder may result in a civil penalty of up to \$10,000 per day for each violation. It is imperative that you return to compliance. If circumstances delay the abatement of violations, Respondents MPG, Garfield and GHLFP are requested to submit written correspondence of the steps that will be taken by date certain to attain compliance.

Matt McGill, Project Manager
McGill Property Group, LLC
January 9, 2012
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If you have any questions, please contact me by telephone at (330) 963-1276, or by e-mail at Jarnal.singh@epa.state.oh.us.

Sincerely,



Jarnal Singh, R.S.
Environmental Specialist
Division of Materials and Waste Management

JS/cl

cc: Robert Eubanks, AGO, EES
Melinda Berry, DMWM-CO
Colin Johnson, Cuyahoga County Board of Health
John McGill, McGill Property Group, LLC
File: [Sowers/COUN/CityViewCenter/COR/18]