Ohio | Environmental Protection Agency
John R. Kasich, **Governor**
Mary Taylor, **Lt. Governor**
Scott J. Nally, **Director**

March 13, 2012

RE: NOTICE OF VIOLATION
NICKY BLVD. LANDFILL
CUYAHOGA COUNTY

CERTIFIED MAIL 7011 0470 0002 3496 0842

Michael Boyas
Boyas Excavating, Inc.
10055 Sweet Valley
Valley View, OH 44125

Dear Mr. Boyas:

This letter provides a notice of violations identified during the February 8, 2012 site inspection of Nicky Boulevard Landfill, also known as Boyas Excavating Landfill located at 6700 Grant Avenue, Cleveland Heights.

On February 8, 2012 Ohio Environmental Protection Agency (Ohio EPA) met with you to inspect erosion areas at the landfill. The purpose of the inspection was to determine compliance with Ohio Administrative Code (OAC) 3745-30-10.

Attending the inspection were: yourself from Boyas Excavating, Inc.; Michael Leone from Burgess and Niple; Todd Sciano from Donald G. Bohning & Associates, Inc.; Paul Dey from Village of Cuyahoga Heights; Colin Johnson and Dane Tussel from Cuyahoga County Board of Health (CCBH); Bill Zawiski, Mandy Razzano, and Dan Bogoevski from Ohio EPA, Division of Surface Water; Eric Adams and Al Mueller Ohio EPA, Division of Drinking and Ground Waters, and Lynn Sowers, Judy Bowman, and Jennifer Carlin from Ohio EPA, Division of Materials and Waste Management.

Upon completing my inspection of the subject property, we determined that the following violations of the OAC continue to exist at the subject property:

1. **OAC Rule 3745-30-10(C)(1)** *"Continuing operation and maintenance of the leachate management system, the surface water management system, any explosive gas extraction and/or control system, any explosive gas monitoring system, and the ground water monitoring system."*

   The owner/operator has failed to properly maintain the surface water management system. Erosion channels have developed next to the surface water control ditches. The ditches are not operating as designed and water is flowing outside the channels and eroding the cap system.

   To return to compliance with OAC Rule 3745-30-10(C)(1), the owner/operator must ensure that all components of the surface water management system are maintained as designed and continue to function properly.

Northeast District Office
2110 East Aurora Road
Twinsburg, OH 44087-1924

330 | 963 1200
330 | 487 0769 (fax)
www.epa.ohio.gov

2. ***OAC Rule 3745-30-10(C)(2)*** *"Maintaining the integrity and effectiveness of the cap system, including making repairs to the cap system as necessary to correct the effects of settling, dead vegetation, subsidence, ponding, erosion, or other events and preventing run-on and runoff from eroding or otherwise damaging the cap system."*

   The owner/operator has failed to properly maintain the cap system. Ponding and subsidence (see picture #9) were observed on top of the landfill near the entrance. The surface water management system has not been properly maintained which has contributed to the erosion of the cap. Several deep erosion rills were located along the south, west and east side slopes (see pictures # 3-4). The erosion rills are greater than one foot and appear to indicate that erosion at this site has been a problem for some time. Slumping of soil was also seen along the west slope. Surface water runon and runoff from neighboring properties is not being controlled which is contributing to ponding and erosion of the cap.

   Trees were observed growing on top of the cap and along the side slopes (see pictures # 1-2).

   Further, these observations indicate non-compliance with Ohio EPA storm water regulations. Our records show that Boyas Excavating, Inc. obtained coverage on August 26, 1997, under the Ohio EPA General National Pollutant Discharge Elimination System (NPDES) Permit #OHR100000 to discharge storm water associated with construction activities to complete landfill closure (facility permit #OHR105948). This permit required the installation of erosion controls to permanently stabilize areas disturbed by construction activities. As noted above, we observed erosion rills across the landfill cap on the south, west and east sides as well as erosive flow on the west side. Thus, Boyas Excavating did not achieve final site stabilization as required by Part IV.A of the NPDES permit. Failure to comply with the conditions of an NPDES permit is a violation of Ohio Revised Code (ORC) 6111.07.

   To return to compliance with OAC Rule 3745-30-10(C)(2), the owner/operator must ensure that all components of the cap system are maintained and function properly. To achieve compliance with the NPDES permit, measures must be taken to repair erosion gullies and prevent future reoccurrences. Appropriate erosion controls may include seeding, mulching, matting and other measures suitable for site and soil conditions. Permanent stabilization may also require the installation of additional measures to ensure long-term stability of slopes and the landfill cap. These measures include establishing less severe slopes and the installation of non-erosive storm water collection and conveyance systems across the site.

3. ***OAC Rule 3745-30-10(C)(3)*** *"Repairing any leachate outbreaks detected at the residual waste landfill facility by doing the following:*

   (a) Contain and properly manage the leachate at the residual waste landfill facility.

(b) If necessary, collect, treat, and dispose of the leachate, including if necessary, following the contingency plan for leachate storage and disposal prepared pursuant to rule 3745-30-14 of the Administrative Code.

(c) Take action to minimize, control, or eliminate the conditions which contribute to the production of leachate."

Numerous leachate outbreaks from the landfill were observed entering the stream at the base of the southwest slope. Several of these outbreaks had a steady and consistent high flow rate. A rust colored stain was observed in the water, soil and rocks around the area of the outbreaks (see pictures # 5-8). The stream discharges to a culvert that goes under the nearby railroad, and flows ultimately to the Cuyahoga River. The owner/operator has failed to control surface water runon, failed to maintain the cap system, failed to maintain the surface water management system and failed to construct a cap system which minimizes infiltration and leachate production. The owner/operator is in violation of the above rule for not collecting, treating and disposing of leachate, and for not taking action to minimize, control or eliminate conditions which contribute to the production of leachate.

To return to compliance with OAC Rule 3745-30-10(C)(3), the owner/operator must immediately take action to collect and dispose of the leachate. The owner/operator must also correct all surface water control systems and cap system violations and take actions necessary to minimize leachate production, including but not limited to, making improvements to the cap and surface water control systems and construction of a leachate collection system.

Further, although Boyas Excavating maintains coverage under the Ohio EPA General Storm Water NPDES Permit for Construction Activities, this permit does not authorize the discharge of wastewater, i.e., leachate. Rather, Boyas Excavating must take any and all measures necessary to prevent the discharge of leachate to waters of the state. Failure to control the discharge of leachate is a violation of ORC 6111.04 and 6111.07.

4. ***OAC Rule 3745-30-10(C)(6)*** *" Submitting a report to the appropriate Ohio EPA district office and approved health department not later than the first day of April of each year, which contains..."*

   The owner has not submitted any annual reports for Nicky Boulevard Landfill during the post-closure care period as required by this rule.

   To return to compliance with OAC Rule 3745-30-10(C)(6), the owner/operator must submit annual reports.

5. ***OAC Rule 3745-30-10(C)(7)*** *" Records and reports generated by paragraphs (C)(4) to (C)(6) of this rule are to be kept for the duration of the post-closure care period at a*

location where the records and reports are available for inspection by Ohio EPA or the approved health department during normal working hours."

Annual reports for Nicky Boulevard Landfill have not been generated and were not available for inspection.

To return to compliance with OAC Rule 3745-30-10(C)(7), the owner/operator must maintain all records required by rule for the duration of the post-closure care period.

Please address the above violations and respond, in writing, within 30 days of receiving this letter. The response should indicate the measures which have been taken to correct these violations.

Nothing in this letter shall be construed to authorize any waiver from the requirements of any applicable state or federal laws or regulations. This letter shall not be interpreted to release Boyas Excavating, Inc., or others, from responsibility under Chapters 3704., 3714., 3734., or 6111. of the Ohio Revised Code or under the Federal Clean Water or Comprehensive Environmental Response, Compensation, and Liability Acts remedying conditions resulting from any release of contaminants to the environment.

If you have any questions regarding surface water issues, please contact Bill Zawiski of the Division of Surface Water at (330) 963-1134, and any solid waste issues, please contact Lynn Sowers of the Division of Materials and Waste Management at (330) 963-1254.

Sincerely,

Lynn Sowers, RS
Environmental Supervisor
Division of Materials and Waste Management

Bill Zawiski
Environmental Supervisor
Division of Surface Water

LS/BZ/JC/cl

cc: Mandy Razzano, DSW, NEDO
Judy Bowman, DMWM, NEDO
Jennifer Carlin, DMWM, NEDO
Al Mueller, DDAGW, NEDO
Eric Adams, DDAGW, NEDO
Dan Bogoevski, DSW, NEDO
Colin Johnson, Cuyahoga County Board of Health
Dane Tussel, Cuyahoga County Board of Health
File: [Sowers[LAND/Nicky Blvd/COR/18]

Appendix A: Picture 1

Picture of trees growing on top of landfill
Taken by Jennifer Carlin, Ohio EPA
Nicky Boulevard – 2/8/2012

Appendix A: Picture 2

Picture of trees growing on top of landfill
Taken by Jennifer Carlin, Ohio EPA
Nicky Boulevard – 2/8/2012

Appendix A: Picture 3

Picture of erosion rills on the side of the landfill
Taken by Jennifer Carlin, Ohio EPA
Nicky Boulevard – 2/8/2012

Appendix A: Picture 4

Picture of erosion rills on the side of the landfill
Taken by Jennifer Carlin, Ohio EPA
Nicky Boulevard – 2/8/2012

Appendix A: Picture 5

Picture of leachate outbreak coming from the landfill and draining into the stream
Taken by Jennifer Carlin, Ohio EPA
Nicky Boulevard – 2/8/2012

Appendix A: Picture 6

Picture of leachate outbreak coming from the landfill and draining into the stream
Taken by Jennifer Carlin, Ohio EPA
Nicky Boulevard – 2/8/2012

Appendix A: Picture 7

Picture of leachate outbreak coming from the landfill and draining into the stream
Taken by Jennifer Carlin, Ohio EPA
Nicky Boulevard – 2/8/2012

Appendix A: Picture 8

Picture of leachate outbreak coming from the landfill and draining into the stream
Taken by Jennifer Carlin, Ohio EPA
Nicky Boulevard – 2/8/2012

Appendix A: Picture 9

Picture of ponding occurring on top of the landfill
Taken by Jennifer Carlin, Ohio EPA
Nicky Boulevard – 2/8/2012