



**Environmental
Protection Agency**

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

September 20, 2012

Mr. Sean Cullen
Echo/Continental Kingsdale, LLC
150 East Broad Street, Suite 800
Columbus, OH 43215

**Re: Echo/Continental Kingsdale, LLC
OHR000156604
Large Quantity Generator
Treatment, Storage, and Disposal Facility
Franklin County
Notice of Violation**

Dear Mr. Cullen:

During a review of a No Further Action (NFA) submittal regarding a parcel of land being taken through Ohio's Voluntary Action Program, Ohio EPA came to learn that in September 2009 CTL Engineering Inc. (CTL), working on behalf of Echo/Continental Kingsdale, LLC (ECK), conducted remedial activities in order to address contaminated soil "hotspots" which existed under the former Swan Cleaners and Stein Mart facilities where the current Giant Eagle Store #6515 – Kingsdale Shopping Center operates, at 3120 Tremont Road, Upper Arlington, Ohio in Franklin County. From the information in the NFA and additional information requested by Ohio EPA, previous investigations, including subsurface sampling, found soil and groundwater were known to have been adversely impacted by releases of dry cleaning solvents from Swan Cleaners, specifically, Tetrachloroethene (PCE). To address these "hotspots," contaminated soil was excavated from two (2) areas beneath the former Swan Cleaners and Stein Mart stores, located at 3120 Tremont Road, Upper Arlington, OH 43221 in Franklin County. Rather than do further delineation of this area, ECK directed CTL to remove the contaminated soil "hotspots" as the removal of the contaminated soil was necessary due to the proposed redevelopment of this site.

The contaminated soils were excavated, removed from the area(s) of contamination, and placed into three (3) distinct soil piles, based upon contamination levels, located on the facility property (see Enclosure 1) outside the known area(s) of contamination.

The contaminated soils from the piles were sampled and analyzed. All soil pile results indicated the presence of PCE at concentrations above the laboratory detection limits and also at least above the regional screening levels for protection of ground water. Sampling results from soil pile #3 indicated that the soils contained characteristically hazardous waste PCE, in accordance with rules 3745-51-20 through 3745-51-24 of the

Ohio Administrative Code (OAC). Furthermore, based upon a review of the information provided regarding this site, including former businesses at this site, their associated business practices, products used, and wastes generated, it is Ohio EPA's opinion that all the contaminated soil excavated would contain a listed hazardous waste, as described in OAC rules 3745-51-31 and 3745-51-33.

Subsequently, CTL disposed the excavated contaminated soils from soil pile #1 back into the original excavation area(s) and contaminated soils from soil piles #2 and #3 were disposed into a new, reportedly non-impacted excavation area (see Enclosure 1).

Upon learning of this activity, Ohio EPA contacted ECK to discuss possible options to perform closure of the hazardous waste disposal unit pursuant to the hazardous waste regulations. During several discussions, Ohio EPA and ECK, with their consultant, discussed plan options which, in Ohio EPA's opinion, would meet the closure performance standard. In these discussions, Ohio EPA outlined the administrative process in which ECK would submit a closure plan for review and approval by the Director of Ohio EPA. ECK, through their consultant, submitted a draft closure plan for Ohio EPA's review and comment. Included in this draft closure plan was a sampling plan for delineating and evaluating the hazardous waste disposal unit. Ohio EPA and ECK's consultant had several communications regarding how to develop this sampling plan which would be generally acceptable to Ohio EPA. In addition to comments regarding the sampling plan in the draft closure plan, Ohio EPA also provided comments how the sampling results should be interpreted. After reviewing Ohio EPA's comments and a subsequent discussion about those comments, ECK decided, at this time, to forgo submitting a formal closure plan for the director's review and approval, and decided to move forward on sampling the hazardous waste disposal unit based upon Ohio EPA's comments on the sampling plan. This sampling event took place on September 18, 2012. Ohio EPA reiterated that a closure plan submitted through a formal process would ultimately be required of ECK.

ECK does not have an Ohio hazardous waste facility installation and operation permit for hazardous waste treatment, storage, and disposal activities.

Based on these findings, Ohio EPA has determined that ECK is currently in violation of the following hazardous waste laws and rules:

Ohio Revised Code (ORC) § 3734.02(E)&(F), Treatment, Storage, Disposal: No person shall establish or operate a hazardous waste facility without an Ohio hazardous waste facility installation and operation permit.

Based upon information described above, ECK currently owns, operated and established a hazardous waste facility without a hazardous waste permit through the management and disposal of hazardous waste (contaminated soil) generated from the former Swan Cleaners and Stein Mart facility locations, in violation of ORC § 3734.02(E)&(F).

Due to the establishment and operation of a hazardous waste facility ECK, as owner of the Facility, is required to have a hazardous waste facility installation and operation permit and is subject to all general facility standards found in OAC Chapters 3745-54 and 55, including but not limited to, closure in accordance with OAC rules 3745-55-11 through 3745-55-20, the financial assurance for closure requirements contained in OAC rules 3745-55-42 through 3745-55-51 and corrective action for waste management units in accordance with OAC rule 3745-54-101.

ECK must conduct closure pursuant to OAC rules 3745-55-11 through 3745-55-20. You must submit a closure plan which ensures that the closure performance standard set forth in OAC rule 3745-55-11 is met. The closure plan can be prepared in accordance with Ohio EPA's *Closure Plan Review Guidance for RCRA Facilities*. To address the closure component of this violation, the closure plan must be submitted to Ohio EPA for approval.

A response should be submitted to this office within fourteen (14) days of receipt of this notice of violation (NOV). A hazardous waste facility closure plan must be submitted to this office for review within forty-five (45) days of receipt of this NOV. Please be advised, your facility has been referred to our Central Office for escalated enforcement.

Should you have any questions, I can be reached by telephone at 614-728-5037.

NOTICE: Ohio EPA's failure to list specific violations or deficiencies in this NOV does not relieve ECK from having to comply with all applicable rules and regulations.

Respectfully

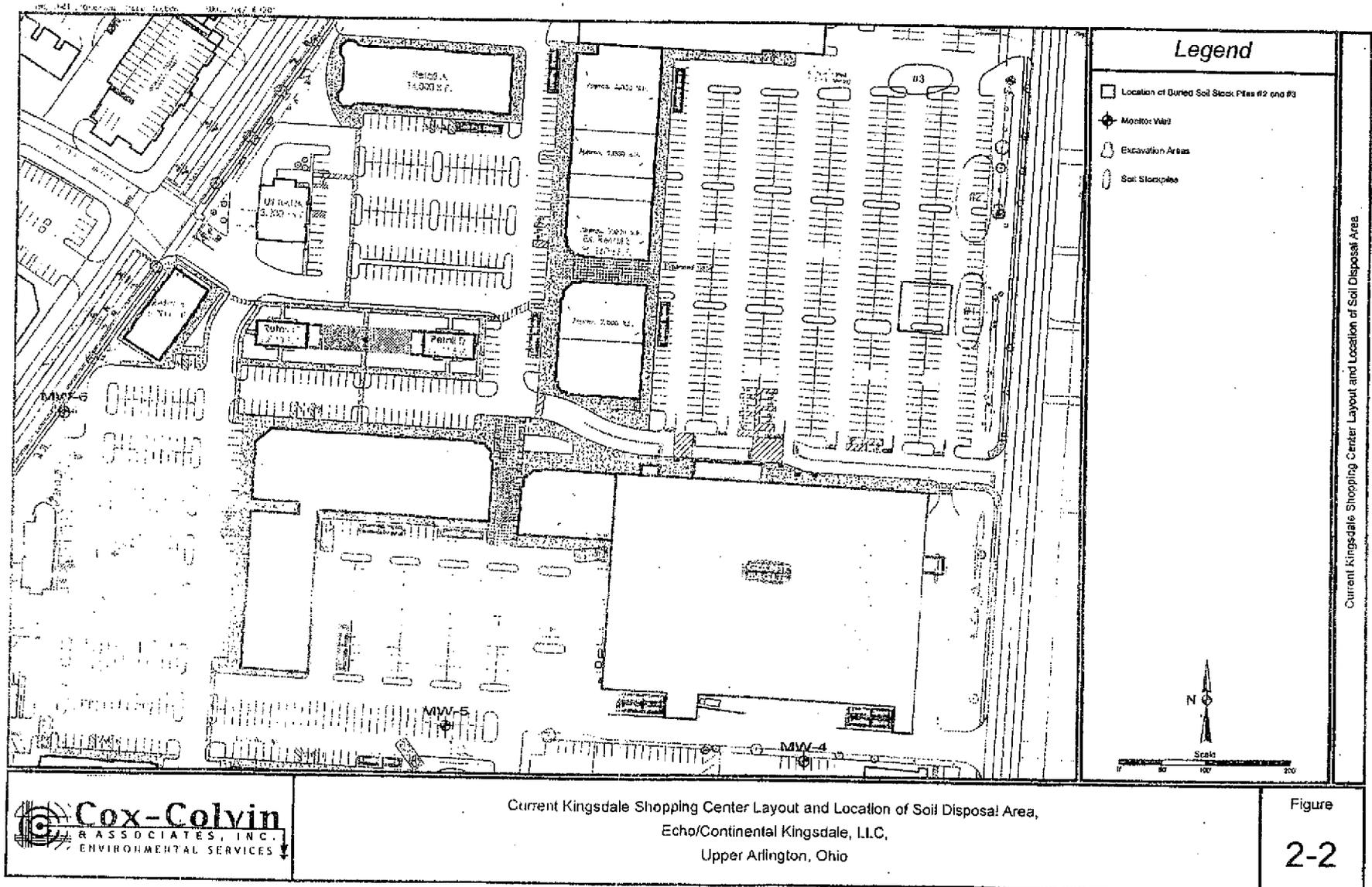


Randy Sheldon
Environmental Specialist
Division of Materials and Waste Management
Central District Office

Enclosure

c: Mitch Mathews, DMWM, CO
Todd Anderson, Legal
Debbie Strayton, DERR, CDO
Joseph M. Reidy, Ice Miller LLP
.DMWM, CDO File

Enclosure 1



Cox-Colvin
 & ASSOCIATES, INC.
 ENVIRONMENTAL SERVICES

Current Kingsdale Shopping Center Layout and Location of Soil Disposal Area,
 Echo/Continental Kingsdale, LLC,
 Upper Arlington, Ohio

Figure
 2-2

Current Kingsdale Shopping Center Layout and Location of Soil Disposal Area