IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, ***ex rel.***	:	
NANCY H. ROGERS	:	
ATTORNEY GENERAL OF OHIO	:	**CASE NO. CV 08 664197**
	:	
Plaintiff,	:	**JUDGE KENNETH R. CALLAHAN**
	:	
	:	
-v-	:	
	:	
	:	
MCGILL PROPERTY GROUP, LLC,	:	
GARFIELD LAND DEVELOPMENT, LLC,	:	
GHLFP, LLC,	:	
JOHN MCGILL,	:	
CITY VIEW CENTER, LLC and	:	
CITY OF GARFIELD HEIGHTS	:	
	:	
Defendants.	:	

CONSENT ORDER AND FINAL JUDGMENT ENTRY ON PLAINTIFF'S COMPLAINT

Plaintiff State of Ohio, on relation of its Attorney General, Nancy H. Rogers, has filed the Complaint in this action against the above captioned Defendants to enforce Ohio's environmental laws found in Chapters 3734 and 6111 of the Ohio Revised Code ("R.C.") and the Ohio Administrative Code ("Ohio Adm. Code") rules adopted under these Chapters. Plaintiff and all Defendants other than the City of Garfield Heights have consented to the entry of this Order.

NOW THEREFORE, without adjudication or admission of any issue of law, fact, or liability, this consented entry is **ORDERED, ADJUDGED** and **DECREED**.

I. DEFINITIONS

1. Unless otherwise stated, all terms used in this Order shall have the same meaning as used in R.C. Chapters 3734 and 6111 and the Ohio Adm. Code rules adopted thereunder and as defined in the "March 18, 2005 Orders," as such term is defined herein.

2. As used in this Order:

"Additional Work" means any work contemplated under Section IX. of this Order;

"City View Center Facilities" or **"Facilities"** means the "Landfills" and/or the "Engineered Components" installed on the "Landfills," as such terms are defined in this Order;

"Closure and Post-Construction Care Activities" means the activities required to implement this Consent Order, the March 18, 2005 Orders, and any Additional Work;

"Consent Order" or **"Order"** means this Consent Order and Final Judgment Entry on Plaintiff's Complaint and all appendices hereto and work plans approved in relation hereto. In the event of a conflict between this Order and any appendix or work plan, this Order shall control. This Order is to be considered an Ohio Adm. Code 3745-27-13 authorization;

"Conveyance of Interest" means the obtainment of any ownership interest in real property, including, but not limited to, easements, titles, deeds, leases, mortgages, and/or other purchases of the "Facilities," as such term is defined herein;

"CVC" means City View Center, LLC;

"Defendants McGill" means Defendants McGill Property Group, LLC, Garfield Land Development, LLC, GHLFP, LLC, and John McGill;

"Director" means the Director of the Ohio Environmental Protection Agency;

"Engineered Components" means any component placed or to be placed on the Facilities, including, but not limited to, the cap, sewers, utility vaults, utility trenches, gas

monitoring probes, passive Landfill gas vents, active Landfill gas extraction and ventilation systems, FML layers, pavement, Landfill gas alarm systems, Landfill leachate extraction and collection systems, and/or any other component which is placed on or could only be legally placed on the Landfills through Ohio Adm. Code 3745-27-13 authorizations;

"FML" means Flexible Membrane Liner;

"Garfield Trust Account" means the funds currently being held by National City Bank, which were deposited in such bank as a result of draws by the Ohio EPA on two Letters of Credit issued by Defendants McGill, which were provided as financial assurance to cover Closure and Post-Construction Care Activities;

"GLD" means Garfield Land Development, LLC;

"Injunctive Relief Personnel" means employees, contractors, consultants and/or any other persons and/or entities that perform any Closure or Post-Construction Care Activities;

"Landfill(s)" means the portions of either the R&B Development Landfill or the Matousek Landfill located in the City of Garfield Heights, Cuyahoga County, Ohio, that are owned or were owned by Defendants McGill on or before March 18, 2005 and that fall under the provisions of the "March 18, 2005 Orders," as such term is defined herein;

"LEL" means lower explosive limit;

"March 18, 2005 Orders" means the Director's Final Findings and Orders issued on March 18, 2005, all modifications of those Orders, and all associated authorizations, alterations, and approved plans;

"Main Facility Gas System" means the active Landfill gas extraction system to be installed across the Facilities (other than on the Northeast Mound), in accordance with this Order;

"McGill Financial Assurance Fund(s)" means the financial assurance funds that Defendants McGill are required under this Order to provide for the "NEM Gas System" (as the term is defined herein), the Facilities in general, and any increase in financial assurance Defendants McGill may be required to provide for Additional Work;

"NEDO-DSIWM" means the Ohio Environmental Protection Agency, Northeast District Office, Division of Solid and Infectious Waste Management;

"NEM Gas System" means the active Landfill gas extraction system required to be installed on the Northeast Mound, in accordance with this Order;

"NEORSD" means the Northeast Ohio Regional Sewer District;

"Non-specific Additional Work" means Additional Work ordered by the Ohio EPA that requires the Parties Bound to devise a remedy to abate a violation of this Order, the March 18, 2005 Orders, and/or Ohio environmental laws (i.e. an Ohio EPA order requiring a solution to be devised to address off-site gas migration at or above 100% LEL);

"Northeast Mound" means the mound of soil-covered waste located on the northeast corner of the R&B Development Landfill adjacent to the building off of the Facilities known as Southside Corporate Center, Ltd.;

"Northeast Mound Underdrains" means the underdrains located at the southwestern and western toes of the Northeast Mound;

"Ohio EPA" means the Ohio Environmental Protection Agency;

"Parties Bound" means the parties bound in accordance with Section IV. of this Order;

"Plaintiff" means the State of Ohio, by and through the Attorney General of Ohio;

"Post-Construction Care Activities" means the operation and maintenance of the Facilities and any Additional Work;

"Post-Construction Care Period" means the period of time ending 30 years after Ohio EPA concurs with Defendants McGill's certification reports certifying that all Engineered Components required under this Order (excluding Additional Work) are installed in accordance with the plans approved by the Ohio EPA;

"Specific Additional Work" means Additional Work ordered by the Ohio EPA that requires the Parties Bound to implement a specific remedy to abate a violation of this Order, the March 18, 2005 Orders, and/or Ohio environmental laws (i.e. an order requiring the expansion and/or improvement of an active extraction system to address off-site gas migration at or above 100% LEL);

"Southside Corporate Center, Ltd." means the building and property located directly adjacent to the Northeast Mound and off of the Facility boundaries (a/k/a the Snider-Cannata building);

"Successor(s)-In-Interest" means 1) any person or entity who assumes any ownership and/or control of a portion of the Facilities and/or 2) anyone who acquires an ownership interest in McGill Property Group, LLC, GLD, GHLFP, LLC or CVC;

"Transferee(s)" mean person or entity who receives a "Conveyance of Interest" in the Facilities;

"Unforeseen Harmful Environmental Conditions" means conditions at or originating from the City View Center Facilities and/or Landfills that, when discovered by Ohio EPA, were previously unknown to Ohio EPA, were not anticipated, were materially different, have changed in nature, and/or have increased in threat to human health, safety, or the environment. Such conditions may include, but are not limited to, the improper construction or alteration of

Engineered Components; the uncontrolled on-site or off-site migration of explosive Landfill gas; or the improper management of off-site migration of leachate;

"Western Slope" means the slope located along the entire western side of the Facilities;

"Western Slope Leachate System" means the permanent leachate collection system to be installed, in accordance with this Order, along the toe of the Western Slope.

II. JURISDICTION AND VENUE

3. The Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapters 3734 and 6111 and the rules adopted thereunder. The Complaint states a claim upon which relief can be granted. This court has jurisdiction over the parties. Venue is proper in this Court. This Court has continuing exclusive jurisdiction over all future actions contemplated by this Order.

4. Except where the challenge of an Ohio EPA action is specifically prohibited by this Order, in accordance with this Court's continuing jurisdiction, the parties shall, after first attempting to resolve matters amongst themselves, move this Court to resolve matters involving the interpretation of this Order, the enforcement and/or challenge of Additional Work ordered by the Ohio EPA under this Order, charges in contempt alleging the violation of this Order or the March 18, 2005 Orders, and any matters in which this Court would naturally have continuing jurisdiction. Any challenge related to any Specific Additional Work ordered by Ohio EPA shall be brought before this Court through a motion within 60 days receipt of such Specific Additional Work or such a challenge is waived. All such motions to this Court shall include, at a minimum, a statement identifying the disputed matter(s) and a statement of the actions taken by the moving

party to resolve the disputed matter(s) with the Parties Bound. The Parties Bound reserve any rights they have to appeal any order of this Court.

III. AGREEMENT TO APPEAR BEFORE THIS COURT

5. Defendant John McGill consents to jurisdiction of the Court over his person, regardless of the state or country in which he may be located or resides, in the event that the Court issues a contempt order or other order to him. In such event, John McGill shall not object and shall cooperate fully in arranging to appear before this Court according to any directive or order from this Court.

IV. PARTIES BOUND AND THEIR DUTIES UNDER THIS CONSENT ORDER

6. The provisions of this Order shall apply to and be binding upon Plaintiff, Defendants McGill and CVC; the agents, affiliates, members, heirs, executors, beneficiaries, shareholders, officers, directors, employees, assigns, Successors-In-Interest, and/or Transferees of Defendants McGill and CVC; and any Injunctive Relief Personnel.

7. Except as provided in Section XXIX, all provisions of this Order shall be construed such that Defendants McGill (and not CVC) are required to perform all of the requirements of this Order and to pay stipulated penalties for any and all violations of the requirements of this Order regardless of whether the requirements and/or violations are associated with the Facilities owned by Defendants McGill, owned by CVC, or owned by any Transferee or Successor-In-Interest of either, in accordance with the March 18, 2005 Orders, Section II, Parties Bound. No change in ownership of the Facilities or corporate ownership of

Defendants McGill shall alter or relieve Defendants McGill of their requirements or rights under this Order.

8. The Engineered Components required to be installed on the Facilities pursuant to this Order will be installed by the Defendants McGill on the Facilities owned by CVC and Defendants McGill. The Defendants McGill (throughout the entire Facilities) and CVC (on the Facilities purchased by CVC from Defendants McGill) shall operate and maintain all new and existing Landfill leachate and Landfill gas Engineered Components at the Facilities, in accordance with this Order; any relevant provisions of R.C. Chapters 6111 and 3734, Ohio Admin. Code 3745-27-12, any relevant provision of the March 18, 2005 Orders (Orders No. 5(A)(1), 5(A)(2), 5(A)(5), 5(A)(6), 5(A)(9), 5(D)(1)(a), and 5(D)(1)(b) where relevant to operation and maintenance of leachate and gas systems); and any other applicable operation and maintenance provisions concerning leachate and gas of the March 18, 2005 Orders, and/or Ohio laws. Nothing in this Order shall affect, impair, alter or abridge the rights, obligations, duties, claims and defenses as between the Defendants McGill and CVC, including all claims and defenses associated with the Cross-Claims between Defendants McGill and CVC in this action.

9. Any requirements of CVC under this Order shall be construed as limited and pertaining only to the Facilities acquired by CVC from Defendants McGill (e.g., CVC has no duty to perform any Northeast Mound-related activities required under this Order). CVC's obligations under this Order shall be relieved in whole or in part in the event that CVC sells all or a portion of the Facilities it owns to a Successor-In-Interest that: 1) signs an agreement with the Ohio EPA to assume all of CVC's duties under this Consent Order for the portions of the Facilities sold; 2) 180 days before purchase, submits to a background check that verifies that such Successor-In-Interest is financially and/or otherwise capable of carrying out the requirements it

assumes; and 3) meets any other requirements under law needed to assume ownership of the Facilities owned by CVC.

V. NOTIFICATION OF CONSENT ORDER

10. Within 30 days of the effective date of this Order, Defendants McGill and CVC are ordered and enjoined to provide a copy of this Order to their respective agents, officers, and/or employees who have the responsibility and/or authority to participate in such Defendant's compliance with this Order;

11. At any future time that Defendants McGill and/or CVC acquire or assign new agents, officers, and/or employees who have the responsibility and/or authority to participate in such Defendant's compliance with this Order, Defendants McGill and/or CVC shall, immediately upon acquisition or assignment, provide a copy of this Order to their respective agents, officers, and/or employees.

12. Before any Conveyance-In-Interest, assignment, or succession-in-interest, Defendants McGill and/or CVC shall provide a copy of this Order to their respective prospective Transferee, prospective assign, and/or prospective Successor-In-Interest.

13. Before any contracts are made to perform work contemplated under this Order, Defendants McGill and CVC, respectively, shall provide a copy of this Order to their prospective contractor to be retained by that Defendant to perform work contemplated under this Order.

14. Within 30 days of this Order being provided to any persons and/or entities in accordance this Section of this Order, Defendants McGill and CVC shall provide written notification to the Ohio EPA identifying the persons and/or entities to whom this Order was

provided, the date this Order was provided to such persons and/or entities, and the mailing and phone contact information for such persons and/or entities.

VI. SATISFACTION OF LAWSUIT

15. Except as otherwise provided in Section VIII (Reservation of Rights) of this Order, compliance with the terms of this Order shall constitute full satisfaction of any civil liability of the Parties Bound, for the claims alleged in Plaintiff's Complaint and for all civil penalties associated with any violations with which such Parties Bound have been cited by Ohio EPA, before the effective date of this Order, in connection with the development, ownership, and operation and maintenance of the Facilities. This Order shall also act as a final settlement of the appeals before the Ohio Environmental Review Appeals Commission listed as Case Nos. 185900 – 185902, 186152, 186165, and 186177. Defendants McGill shall dismiss these appeals, with prejudice, within 15 days after the effective date of this Order.

VII. COVENANT NOT TO SUE

16. Upon the effective date of this Order, the Defendants McGill and CVC and their Successors-In-Interest and Transferees hereby covenant not to sue or take any judicial, administrative, civil, or other legal or equitable action against the State of Ohio, its agents, attorneys, and employees (including, but not limited to, the Director of Ohio EPA) with respect to any matter pertaining or related to the Facilities, the March 18, 2005 Orders, and/or the provisions outlined in this Order that occurred on or before the effective date of this Order. This section shall not be construed to prevent the Parties Bound from motioning this Court in accordance with Section II. of this Order.

VIII. RESERVATION OF RIGHTS

17. Nothing in this Order, including the imposition of stipulated or civil penalties, shall limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint or to seek relief for any violations that occur after the entry of this Order, including but not limited to:

a. Relief against the Parties Bound through a contempt action or otherwise for violations of this Order or for violations caused in the implementation of this Order;

b. Relief against the Parties Bound or any other person or entity, under R.C. Section 3745.12 and/or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9601, *et seq.* and/or R.C. §§ 3734.20 through 3734.27 to: (1) recover natural resource damages and/or (2) order the performance of, and/or recover costs for any oversight, removal, remedial or corrective activities not conducted pursuant to the terms of this Order; and/or

c. Relief against the Parties Bound or any other person or entity to eliminate or mitigate conditions at the Facilities and/or Landfills that may present a threat to the public health or the environment.

18. Nothing in this Order, including the imposition of stipulated or civil penalties, shall limit the authority of the State of Ohio to seek relief for Unforeseen Harmful Environmental Conditions.

19. Entering into this Order, this Order itself, or the taking of any action in accordance with it does not constitute an admission by Defendants McGill or CVC of any factual or legal matters or opinions or any liability whatsoever. Defendants McGill and CVC do not

admit liability under Ohio law or any other applicable law, rule or regulation for any purpose or admit any issues of fact or law, any wrongdoing, or any responsibility with regard to the Landfills and/or Facilities. Defendants McGill and CVC do not admit, and reserve their rights to contest or legally challenge, jurisdiction and venue with regard to activities not required or contemplated by this Order. Except as expressly exempted in this Order, nothing herein absolves Defendants McGill or CVC from their respective duty to comply with this Order and the March 18, 2005 Orders, and except where expressly agreed in this Order, CVC retains all rights and defenses to contest any liability or responsibility under the March 18, 2005 Orders.

20. Except as set forth in Section VII. (Covenant Not To Sue) of this Order and this paragraph, Defendants McGill and CVC reserve and do not waive any rights, defenses or claims that they may legally raise in any future action, nor do Defendants McGill or CVC waive any claim, cross-claims or defenses among themselves or against any other party. However, Defendants McGill and CVC shall not assert against the State, and may not maintain any defense or claim against the State based upon a statute of limitations or the principles of waiver, laches, res judicata, collateral estoppel, claim preclusion, issue preclusion, claim splitting or other defense based upon the contention that the claims brought by the State in a subsequent action were or should have been brought in the instant action.

21. Except as outlined in Section VII. (Covenant Not To Sue), Defendants McGill and CVC reserve all rights that they may have against any other person under all federal, state, local, and common law.

22. The State of Ohio reserves all rights that it may have against any persons and/or entities other than Defendants McGill and CVC, including, but not limited to the City of Garfield

Heights for the claims raised by the Complaint in this case, for matters arising in the implementation of this Order, or for other matters related to the Facilites. Further, the State of Ohio reserves its rights to seek any injunctive relief from CVC that the State of Ohio has required of Defendants McGill under this Order, in the event that Defendants McGill fail to perform under this Order. In any subsequent action to compel CVC to perform upon the failure of Defendants McGill to comply with this Order, said failure may be established by factual and circumstantial evidence presented by the Plaintiff, and shall not require a previous judgment of contempt or order by this or any other Court or administrative body.

IX. ADDITIONAL WORK

23. Under this Order, Ohio EPA may order the Defendants McGill to perform Specific Additional Work or Non-Specific Additional Work to be performed at the Facilities to address Unforeseen Harmful Environmental Conditions, to address conditions that may present an imminent threat to the public health or welfare, or the environment, or order Specific Additional Work for access to or the submission of documents and/or certified reports related to the Facilities. The Ohio EPA also reserves its right to issue Additional Work to the Defendants McGill under the March 18, 2005 Orders. Ohio EPA reserves its rights to order CVC to perform Additional Work under the March 18, 2005 Orders and CVC reserves its right to contest such Additional Work as expressed in Paragraph 19 of this Order. CVC does not consent to being ordered to perform Additional Work under this Order. Except as stated in the preceding Section and in paragraph 24, the Parties Bound may challenge any ordered Additional Work in accordance with Section II. of this Order.

24. Any and all Landfill gas extraction systems installed at the Facilities shall operate, at a minimum, to keep the Facilities in compliance with the Ohio Adm. Code 3745-27-13 Authorizations, to keep the Facilities in compliance with Ohio Adm. Code 3745-27-12, and to prevent Landfill peak gas levels from reaching 25% LEL or greater in all underground structures at the Facilities ("Gas Performance Standards"). If the Landfill gas extraction systems fail to keep the Facilities in compliance with the Gas Performance Standards, Ohio EPA may order Defendants McGill to perform up to $300,000.00 (Three Hundred Thousand Dollars) of Specific Additional Work ("Specific Automatic Additional Work") to improve and/or expand the Landfill gas extraction systems, which cannot be challenged by the Parties Bound. Additionally, the requirement for additional financial assurance from Defendants McGill for the Specific Automatic Additional Work shall not be challenged, unless such additional financial assurance is exempted by this Order. Solely as provided by Section II. of this Order, the Defendants McGill may challenge any Specific Additional Work ordered to improve and/or expand the Landfill gas extraction systems, when the cumulative cost of the Specific Automatic Additional Work is greater than $300,000.00 (Three Hundred Thousand Dollars). If Defendants McGill do not challenge or do not successfully challenge Specific Additional Work cumulatively greater than $300,000.00 (Three Hundred Thousand Dollars), Defendants McGill are responsible for the performance and cost of such Specific Additional Work.

25. Defendants McGill may, on the grounds of inability to pay, file a motion to obtain an extension date for compliance with any Specific Automatic Additional Work from this Court. Such motion shall not prevent Ohio EPA from proceeding with the Specific Automatic Additional Work in lieu of Defendants McGill. In such event, Defendants McGill shall be required to reimburse any financial assurance upon which Ohio EPA draws and/or otherwise

reimburse the cost of the Specific Automatic Additional Work at a date determined by this Court. This paragraph shall not be construed to allow for the challenge of other provisions of this Order on the grounds of inability to pay.

26. Even absent any order by Ohio EPA to Defendants McGill to perform Specific Additional Work to address the failures of the Landfill gas extraction systems, in the event that the Gas Performance Standards are not met at the Facilities, Defendants McGill are required by this Order to devise plans and perform their own Additional Work to improve and/or expand the Landfill gas extraction systems to bring the Facilities in compliance with the Gas Performance Standards. Any such Additional Work plans shall be provided to the Ohio EPA in advance of performing such Additional Work, shall inform Ohio EPA of the time such Additional Work will commence, and shall be subject to all required approvals from Ohio EPA. Nothing in this Order shall be (i) construed to require CVC to operate and maintain any Landfill gas systems, in the event that CVC, or its Successors-In-Interest, or Transferees cease all retail activities at the Facilities that cause humans other than regulatory agency representatives, Injunctive Relief Personnel or emergency responders to be present on CVC's Facilities or (ii) construed as a waiver by Defendants McGill of any reservation of rights they may have to challenge whether Defendants McGill are obligated to continue operation and maintenance of any Landfill gas systems in the event that all retail activities cease at the Facilities that cause humans other than regulatory agency representatives, Injunctive Relief Personnel or emergency responders to be present at the Facilities.

X. GENERAL INJUNCTIVE RELIEF

27. Defendants McGill agree to and are permanently enjoined and ordered to comply with the provisions of R.C. Chapters 3734 and 6111, the rules promulgated thereunder, and all existing orders, authorizations, and Ohio EPA approved plans related to the Facilities, and all the requirements set forth in this Order as they respectively pertain to Defendants McGill. CVC agrees to and is permanently enjoined and ordered to comply with the provisions of R.C. Chapters 3734 and 6111, the rules promulgated thereunder, and the December 28, 2006 Director's Final Findings and Orders, and all the requirements set forth in this Order as they respectively pertain to CVC.

XI. PERSONNEL RETAINED TO PERFORM INJUNCTIVE RELIEF

28. Defendants McGill and CVC agree to retain qualified Injunctive Relief Personnel and to cease using any Injunctive Relief Personnel that perform Closure and Post-Construction Care Activities negligently. At least five business days before the performance of any Closure or Post-Construction Care Activities, Defendants McGill and/or CVC shall provide the Ohio EPA with written notice of all Injunctive Relief Personnel retained by Defendants McGill and/or CVC to perform such Closure and Post-Construction Care Activities. The written notice shall include the qualifications of the Injunctive Relief Personnel that are specific to the Closure and Post-Construction Care Activities to be performed by the Injunctive Relief Personnel. CVC shall comply with this paragraph with respect to Injunctive Relief Personnel that CVC is obliged by this Order to engage for operations and maintenance as described in paragraph 8.

XII. SPECIFIC INJUNCTIVE RELIEF WORK AND COMPLIANCE REQUIREMENTS

Work Requirements Related to the Northeast Mound

29. Until Defendants McGill are informed otherwise by Ohio EPA in writing, Defendants McGill shall monitor 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 shall submit to Ohio EPA monthly monitoring reports by the 15th day of each month for the preceding month's monitoring. Defendants McGill shall record levels of gas migration in percent volume and percent LEL and shall submit such monitoring results in the monthly monitoring reports.

30. Defendants McGill shall abandon, in place, permanent gas monitoring probes 1 through 4 located on the property boundary between the Northeast Mound and the Southside Corporate Center, Ltd. Within 30 days of the effective date of this Order, Defendants McGill shall install 4 new functional permanent gas monitoring probes, installed in substantially the same locations as the abandoned probes, in accordance with Ohio Adm. Code 3745-27-12 and the R&B Development Landfill Explosive Gas Monitoring Plan. If Defendants McGill or Ohio EPA discover gas monitoring results at 100% LEL at additional locations along the Northeast Mound Property boundaries, Defendants McGill shall install additional permanent gas monitoring probes at those locations as well, to the extent Ohio EPA decides such probes are needed to determine if gas from the Northeast Mound is being managed properly in accordance with Ohio Adm. Code 3745-27-12, the R&B Development Landfill Explosive Gas Monitoring Plan, the March 18, 2005 Orders, or this Order.

31. Within 30 days of the effective date of this Order, Defendants McGill shall submit to Ohio EPA a plan for the design and installation of the NEM Gas System. Within 60 days of the Ohio EPA's approval of the submitted plan, Defendants McGill shall commence installation of the NEM Gas System. Within 45 days of commencing installation, Defendants McGill shall complete installation of the NEM Gas System. In accordance with Section XIII. of this Order, the Ohio EPA shall draw up to Two Hundred and Fifty Thousand Dollars ($250,000.00) from the Garfield Trust Account to pay to SCS Engineers or to any other qualified Injunctive Relief Personnel of Defendants McGill for the cost of installing the NEM Gas System, including any QA/QC documentation, supervision and certification. Any costs that surpass the sum of $250,000.00 shall be paid by Defendants McGill. Any portion of the $250,000.00 mentioned in this paragraph that is not disbursed for the installation of the NEM Gas System shall go towards the Defendant McGill's civil penalty, as provided in Section XIII. and XX. of this Order.

32. Within 30 days of the effective date of this Order, Defendants McGill shall submit, to Ohio EPA for approval, detailed plans and schedules for the operation, maintenance, and monitoring of the NEM Gas System. Upon completion of installation of the NEM Gas System, Defendants McGill shall commence with the operation, maintenance and monitoring of the NEM Gas System as approved by Ohio EPA. Defendants McGill shall provide yearly reports to Ohio EPA (due January 31st of each year for the prior calendar year) detailing the repairs completed on the NEM Gas System throughout the year and the total cost for operation, maintenance and monitoring of the system throughout the year.

33. Within 15 days of the installation of the NEM Gas System, Defendants McGill shall submit to Ohio EPA for approval a slope stability semi-annual monitoring plan for the

western slope of the Northeast Mound. Within 15 days of the Ohio EPA's approval of the plan, Defendants McGill shall commence implementation of such plan.

34. Defendants McGill shall follow the injunctive relief provisions of this Section of this Order entitled **"Cap Maintenance"** to address erosion at the Northeast Mound.

35. Defendants McGill shall follow the injunctive relief provisions of this Section of this Order entitled **"Work Requirements Addressing Leachate Management"** to address leachate outbreaks at the Northeast Mound.

Work Requirements Addressing Leachate Management

36. Within 5 days of the effective date of this Order, Defendants McGill and CVC shall begin monthly visual inspection(s) of the Facilities for leachate outbreaks. By the 10th day of each month for the preceding month's inspection(s), Defendants McGill and CVC shall submit, in an inspection report, the date, time, and location of all outbreaks identified and the work undertaken to correct the leachate outbreaks and submit those reports to Ohio EPA and the Cuyahoga County Board of Health. Defendants McGill and CVC shall continue under the requirements of this provision until such time that Ohio EPA expressly determines in writing that leachate outbreaks and off-site migration of leachate at the Facilities have been permanently addressed.

37. All leachate outbreaks identified by Defendants McGill, CVC, Ohio EPA, or Cuyahoga County Board of Health at the Facilities shall be repaired by Defendants McGill-and/or CVC within 7 business days of becoming aware of the leachate outbreaks.

38. Within 45 days of the effective date of this Order, Defendants McGill shall submit to Ohio EPA plans to construct the Western Slope Leachate System. The plan shall include the connection of the 42-inch storm sewer pipe that daylights on the Western Slope to the Western

Slope Leachate System. Within 30 days of receiving approval of the plan from the Ohio EPA, Defendants McGill shall request from the NEORSD a Permit to Install to allow the Western Slope Leachate System to discharge into the NEORSD sewer system. By October 31, 2009, Defendants McGill shall complete the Western Slope Leachate System in accordance with the Ohio EPA approved plan.

39. Within 60 days of the effective date of this Order, Defendants McGill shall submit a plan to the Ohio EPA and the NEORSD for the Ohio EPA's and NEORSD's approval to connect the Northeast Mound Underdrains to the NEORSD sewer system.

40. Within 60 days of obtaining the required Ohio EPA and NEORSD approvals, Defendants McGill shall complete the connection of the Northeast Mound Underdrains to the NEORSD sewer system and shall remove the gravel-filled trench at the northwest toe of the Northeast Mound. The trench shall be backfilled with a material suitable to prevent off-site leachate migration into the Southside Corporate Center, Ltd. storm water catch basin.

41. Within 30 days of the effective date of this Order, Defendants McGill shall video (camera and record) the interior of the two 54" storm sewers discharging to the Western Slope to determine if any repairs are needed to the sewers. Within 30 days of Defendants McGill videoing the two 54" storm sewers, Defendants McGill shall provide to Ohio EPA a copy of the video and a written analysis of the results of the video. Within 120 days of the effective date of this Consent Order, Defendants McGill shall repair the interior of either or both of the 54" storm sewer pipes at the Facilities, in the event the video film shows repairs are required. Within 30 days of Defendants McGill performing repairs on the 54" sewers, Defendants McGill shall provide to Ohio EPA a written report of the repairs made.

42. Defendants McGill and CVC shall continue to implement the Leachate Management Contingency Plan ("LMCP") for the Facilities, as approved by Ohio EPA pursuant to the March 18, 2005 Orders, during and after the implementation of any or all of the provisions of this Section of this Order, entitled "**Work Requirements Addressing Leachate Management.**"

Work Requirements to Address Construction Site Storm Water

43. Upon the effective date of this Order, Defendants McGill shall begin submitting copies of the storm water inspection reports for the Facilities to the Division of Surface Water at the Ohio EPA Northeast District Office and the Cuyahoga Soil & Water Conservation District as required by Section H.2.(c) of the March 18, 2005 Orders, and continue to submit such reports until such time as the Storm Water Construction General Permit for the entire Facilities is terminated.

44. Within 30 days of the effective date of this Order, Defendants McGill shall temporarily, and within 180 days permanently, stabilize all on-site and off-site borrow areas disturbed during construction of the Facilities. As required by Storm Water Construction General Permit (OHC-00002) Permit No. 3GC00458*AG, the area(s) shall be permanently stabilized per specifications contained in Section 7.10 Permanent Seeding of Rainwater and Land Development, Ohio's Standards for Storm Water Management, Land Development and Urban Stream Protection (Ohio Department of Natural Resources, 2006).

Work Requirements for Future Construction of Buildings

45. Prior to performing the work allowed under the March 18, 2005 Orders for any future buildings or buildings without FML or spray applied membrane that are under construction at the Facilities, Defendants McGill shall submit construction drawings showing

the use of a spray-applied membrane instead of a FML. Defendants McGill shall submit revised construction drawings showing details and specifications of a spray-applied membrane a minimum of 14 days prior to installation. No such work on future buildings or continuation of work on buildings started but yet to have installed a FML or spray applied membrane shall commence or recommence until Ohio EPA approves, in writing, the revised construction drawings.

Work Requirements Related to the Constructed Cap

46. Within 30 days of the effective date of this Order, Defendants McGill shall apply a soil layer with a minimum thickness of six inches and of sufficient fertility to support dense vegetation on areas currently not paved or where building construction has not commenced. These areas shall also be graded to prevent the ponding of water on the surface and shall be seeded to establish a dense vegetative cover. Dense vegetation shall be maintained until construction commences on such areas.

47. Within 30 days of the effective date of this Order, Defendants McGill shall submit a detailed plan and implementation schedule for sealing all underground structures such as catch basins, storm and sanitary sewers, manholes, and utility vaults using the method of sealing employed on the CVC-owned Facilities by Marra Constructors, Inc. or as approved by Ohio EPA. Within 30 days of the Ohio EPA's approval of the detailed plan and implementation schedule, Defendants McGill shall commence to seal all underground structures as approved. Defendants McGill shall complete the work within 90 days of commencing to seal the underground structures .

48. Within 30 days of the effective date of this Order, Defendants McGill shall submit a detailed design plan and an installation schedule for the Main Facility Gas System, in

conjunction with the required submittals for the NEM Gas System. Within 30 days of the Ohio EPA's approval of the detailed design plan and implementation schedule, Defendants McGill shall commence with the installation of the Main Facility Gas System as approved. Within 60 days of commencing with the installation of the Main Facility Gas System, Defendants McGill shall complete the installation. In accordance with Section XIII. of this Order, Ohio EPA shall draw up to Fifteen Thousand Dollars ($15,000.00) from the Garfield Trust Account to pay to SCS Engineers or any other qualified Injunctive Relief Personnel of Defendants McGill to prepare the detailed design plans for the Main Facility Gas System and shall draw up to Two Hundred and Fifty Thousand Dollars ($250,000.00) to pay to any such qualified Injunctive Relief Personnel for the installation, QA/QC documentation, supervision and certification of the Main Facility Gas System. Any costs above the sums of $15,000.00 and $250,000.00 stated in this paragraph shall be paid by Defendants McGill.

49. Within 30 days of the date the Ohio EPA approves the plans for the Main Facility Gas System, Defendants McGill and CVC shall submit, to Ohio EPA for approval, detailed plans and schedules for the operation, maintenance, and monitoring of the Main Facility Gas System. Upon completed installation of the Main Facility Gas System, Defendants McGill and CVC shall commence the operation, maintenance and monitoring of the Main Facility Gas System as approved by Ohio EPA. Defendants McGill and CVC shall provide yearly reports (due January 31st of each year for the previous calendar 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.

50. Upon the effective date of this Order and before the installation of the Main Facility Gas System and the sealing of the underground structures, Defendants McGill and CVC

shall monitor daily all underground structures (i.e. catch basins, manholes and vaults) for methane gas, unless otherwise approved by Ohio EPA, and 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 shall 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 shall 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.

51. After installation of the Main Facility Gas System and the sealing of the underground structures, Defendants McGill and CVC shall monitor all underground structures (i.e. catch basins, manholes and vaults) at the Facilities at a minimum of once per week, unless otherwise approved by Ohio EPA, and submit a monthly written report of the findings to Ohio EPA. The new action level for the underground structures shall be increased to 25% LEL peak reading. If methane gas is detected at or above the action level of 25% LEL peak reading during any monitoring event, Defendants McGill and CVC shall immediately cordon off the area with a 10 foot perimeter and insert a blower to remove the build-up of methane gas. After the blower is installed, the blower shall remain in place until the structure has been sealed or until other appropriate permanent actions (i.e. expansion of the Main Facility Gas System or installation of passive vents) have been taken to reduce the gas below action levels. Each finding at or above action level shall 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.

52. Within 30 days of the effective date of this Order, Defendants McGill shall retain qualified Injunctive Relief Personnel to determine if there is any volatile organic compound ("VOC") vapor intrusion from the Landfills into any occupied buildings at or above any Ohio law and/or federal law action levels, and report the finding to Ohio EPA within 10 days of completing such work. If Defendants McGill determine that certain VOC vapors exist in the occupied buildings at or above action levels, within 90 days of the effective date of this Order, Defendants McGill shall determine the origin of such VOC vapors and report the findings to Ohio EPA and/or any other applicable regulatory body within 10 days of making such determination. Defendants McGill shall take all appropriate actions to mitigate the threat of the VOC vapors to the City View Center patrons. CVC shall allow access to Defendants McGill onto the Facilities owned by CVC to perform the work in this paragraph.

Update of Explosive Gas Monitoring Plans for the Landfills

53. Within 60 days of the effective date of this Order, Defendants McGill and CVC shall submit the updated explosive gas monitoring plans for the R&B Development and Matousek Landfills to the Ohio EPA.

Resolution of Excess Solid Waste from the City View Center

54. Within 180 days of the effective date of this Order, Defendants McGill shall regrade and cap the solid waste at the Facilities that is above grades currently approved in the March 18, 2005 Orders. The cap shall be installed in accordance with the March 18, 2005 Orders. Within 30 days of the completion of the regrading and capping, Defendants McGill shall submit a cap certification report to Ohio EPA documenting the work, in accordance with the March 18, 2005 Orders.

Cap Repair

55. Within 75 days of the effective date of this Order, Defendants McGill shall identify and repair existing damage to the Landfills' cap systems, resulting from intrusive cap investigations and areas where straws were removed. The cap shall be installed and/or repaired, in accordance with the March 18, 2005 Orders. Within 30 days thereafter, Defendants McGill shall submit a cap certification report to Ohio EPA documenting the work, in accordance with the March 18, 2005 Orders.

56. Within 30 days of the effective date of this Order, Defendants McGill and CVC shall submit a report to the Ohio EPA identifying all existing erosion at the Facilities, repair all such erosion within 30 days of the effective date of this Order, and within 45 days of the effective of this Order submit a report to the Ohio EPA identifying the repairs that were performed.

57. Upon the effective date of this Order, Defendants McGill and CVC shall inspect the Facility on a monthly basis for damage to the cap and pavement and shall repair all such damage, and submit copies of the preceding month's inspection reports to Ohio EPA no later than the 15th day of each month. The reports shall identify areas of concern and give detailed descriptions of the actions taken to repair all such areas of concern.

Financial Assurance

58. Not later than May 1, 2009, Defendants McGill shall fund a $700,000.00 (Seven-Hundred-Thousand Dollars) financial assurance mechanism (the "McGill Financial Assurance Fund(s)") in the form of cash in a trust fund, letter of credit or surety bond in accordance with Ohio Adm. Code Rules 3745-27-15, 3745-27-16 and 3745-27-17 (but modified to allow the financial assurance to be drawn by Ohio EPA to pay for civil and stipulated penalties). The McGill Financial Assurance Fund(s) can be used by Ohio EPA for any Closure and Post-

Construction Care Activities, including maintenance of any Landfill gas extraction systems, and to pay for any civil or stipulated penalties as provided in this Order.

59. Defendants McGill and CVC are, now and in the future, exempted from providing financial assurance for the Main Facility Gas System. However, Defendants McGill and CVC shall be responsible to operate and maintain the Main Facility Gas System from the effective date of this Order until the end of the Post-Construction Care Period. Defendants McGill and CVC acknowledge that Ohio EPA may proceed to exercise all rights and authorities it may have to cease operations at the City View Center retail complex should Defendants McGill and/or CVC fail to operate and maintain the Main Facility Gas System as required by this Order; provided, however, that the McGill Defendants and/or CVC retain all rights and defenses to contest any such action by Ohio EPA. CVC's exemption will be voided by this Court if CVC fails to operate and maintain the Main Facility Gas System on its Facilities. Additionally, subject to the response time allowed in Section XXIX. of this Order, Defendants McGill's exemption will be voided by this Court if Defendants McGill fail to maintain and operate the Main Facility Gas System on the entire Facilities. This exemption does not extend to any current or future Successors-In-Interest or Transferees (other than CVC as stated herein).

60. Within 30 days of the Ohio EPA's approval of the plans for the NEM Gas System, Defendants McGill shall submit to Ohio EPA a financial assurance cost estimate that contains an itemized written estimate of the cost of Post-Construction Care Activities for the NEM Gas System. If inadequate or deficient, Ohio EPA may require revisions to the cost estimate. Defendants McGill shall revise the cost estimate and resubmit it to Ohio EPA for approval within 15 business days of receipt of Ohio EPA's notification of deficiencies. Within 30 days of the Ohio EPA's approval of the written cost estimate, but not required before September 1, 2009,

Defendants McGill shall increase the amount of the McGill Financial Assurance Fund(s) to account for the cost of Post Construction Care Activities for the NEM Gas System.

61. Within 30 days of being informed by Ohio EPA in writing that Additional Work is required for the Facilities, and subject to the provisions of Section IX, Additional Work, of this Order, Defendants McGill shall submit to Ohio EPA a financial assurance cost estimate that contains an itemized written estimate of the cost of Post-Construction Care Activities for the Additional Work. Ohio EPA may require revisions to the cost estimate. Defendants McGill shall revise the cost estimate and resubmit it to Ohio EPA for approval within 15 business days of receipt of Ohio EPA's notification of deficiencies. Not later than 30 days after Ohio EPA's approval of the written cost estimate, but not required before September 1, 2009, Defendants McGill shall increase the amount of financial assurance established for the Facilities to account for the cost of Post Construction Care Activities for the Additional Work.

62. Financial assurance amounts for the Facilities shall be based upon the cost of a third party to perform the required work in actual dollars, and shall not be based upon the present value of the required work. Financial assurance amounts for the Facilities shall be updated annually by the Defendants McGill in accordance with OAC Rule 3745-27-15(D) and 3745-27-16(D). Defendants McGill shall comply with the provisions of OAC Rules 3745-27-15 through 3745-27-17, notwithstanding any argument that such rules are not legally applicable to the Defendants McGill's activities at the Facilities.

63. Compliance with the provisions of this Section shall constitute compliance with the provisions of Paragraph 5.C. of Section V. of the Director's March 18, 2005, Final Findings and Orders.

Certification Reports

64. Within 60 days of the effective date of this Order, Defendants McGill shall submit certification reports not previously submitted to the Ohio EPA for all Landfill gas related Engineered Components constructed on the Facilities prior to the effective date of this Order. Defendants McGill are not required to provide certification reports for cap construction completed prior to the effective date of this Order. For all other Engineered Components constructed prior to the effective date of this Order, Defendants McGill shall provide certification reports and/or a list of Engineered Components that cannot be certified. Defendants McGill shall provide a written justification explaining why any Engineered Components cannot be certified and provide a list all persons or entities that can certify the Engineered Components. For all Engineered Components constructed after the effective date of this Order, Defendants McGill and/or CVC-shall submit certification reports within 60 days after construction of such Engineered Components, but no later than 30 days before any building is occupied containing any such Engineered Components.

65. One year after construction of the Main Facility Gas System and the NEM Gas System, Defendants McGill and CVC shall submit a certification report stating whether these Landfill gas extraction systems were operational, functional and performing as intended through the one year period. If Additional Work is needed throughout the year period to improve the operation, function, and/or performance of the Main Facility Gas System and/or the NEM Gas System, then such a certification report shall be submitted one year from the date of the last Additional Work performed on such system(s). Thereafter, Defendants McGill and CVC shall certify annually (due January 31st of each year for the previous calendar year) to Ohio EPA the

proper operation, proper maintenance, and proper function of the Main Facility Gas System and/or the NEM Gas System until the end of the Post-Construction Care Period.

66. All certification reports shall be certified by persons who have witnessed the construction of the Engineered Components being certified and/or who have actual personal knowledge of that which is being certified.

Confirmation of Conveyance of Title

67. For all current and future leases, Defendants McGill and CVC shall provide to Ohio EPA all conveyance of title information required under paragraphs 13 and 14 of Section 7 of the March 18, 2005 Orders. The Parties Bound agree that the deed notices paragraph in the March 18, 2005 Orders applies to leases executed on or after the effective date of this Order.

Land Use Self-Reporting Requirement

68. Within 15 days of the effective date of this Order, Defendants McGill shall provide to Ohio EPA all land use self-reporting information required under paragraph 12 of Section 7 of the March 18, 2005 Orders.

Proof of Filing Environmental Covenant

69. Within 15 days of the effective date of this Order, Defendants McGill shall provide to Ohio EPA and the City of Garfield Heights a written report verify the filing of the Environmental Covenant in accordance with Paragraph 11 of Section 7 of the March 18, 2005 Orders and Paragraph 6 of the Environmental Covenant.

XIII. RELEASE OF GARFIELD TRUST ACCOUNT

70. As provided in this Order, Ohio EPA shall disburse up to Five Hundred Fifteen Thousand Dollars ($515,000.00) from the Garfield Trust Account directly to SCS Engineers, any other qualified Injunctive Relief Personnel of Defendants McGill, or to any other third party (in the event Defendants McGill fail to timely or otherwise properly perform) for the design and installation of the NEM Gas System and the Main Facility Gas System, upon certification and concurrence that the work was performed in accordance with the plans approved by the Ohio EPA. The Director of the Ohio EPA is under no requirement to disburse funds from the Garfield Trust Account to SCS Engineers or any other party if the work is not performed in accordance with the Ohio EPA approved plans.

71. Upon the Director's request, the balance of the Garfield Trust Account which is not spent on the disbursements described above in this Section shall be released by the Trustee of the Garfield Trust Account to Ohio EPA in the form of an official check made payable to "Treasurer, State of Ohio" for deposit in the account established under R.C. Section 3734.281 as partial satisfaction of Defendants McGill's civil penalty requirement as set forth in Section XX. of this Order. Within 15 days of the effective date of this Order, in accordance with Section 16 of the Trust Agreement for the Garfield Trust Account, Defendants McGill and the Director agree to amend the Trust Agreement and submit such amendment to the Trustee to allow the Director to disburse funds from the Garfield Trust Account for payment of civil and stipulated penalties and for the installation of the NEM Gas System and Main Facility Gas System, as provided in this Order.

XIV. DRAWING UPON FINANCIAL ASSURANCE

72. Ohio EPA may draw upon any financial assurance provided for the Facilities for any activity related to the Facilities. Unless addressing an imminent threat to health and safety or to the environment, Ohio EPA shall first allow the Parties Bound to conduct such activities in accordance with the timelines in this Order, the March 18, 2005 Orders, or any Additional Work Orders before drawing on financial assurance to conduct Facility activities.

XV. DISBURSEMENT OF FINANCIAL ASSURANCE

73. Ohio EPA has the authority to disburse any portion of financial assurance for the Facilities to U.S. EPA, the City of Garfield Heights, or any other party for any Closure or Post-Construction Care Activities. Unless addressing an imminent threat to health and safety or to the environment, Ohio EPA shall first allow the Parties Bound to conduct Closure or Post-Construction Care Activities in accordance with the timelines in this Order, the March 18, 2005 Orders, or any Additional Work Orders before disbursing financial assurance to other parties to conduct Facility activities.

XVI. CONTINUATION OF CONSTRUCTION AT CITY VIEW CENTER FACILITIES

74. Upon Defendants McGill's completion of the injunctive relief required in paragraphs 45-49 of this Consent Order and if Defendants McGill are in compliance or come into compliance with the other provisions of this Consent Order at the time that such work is completed (or anytime thereafter), Defendants McGill may resume construction of Dollar Tree and Retail N at the Facilities. Such construction may only commence upon express written notice

from Ohio EPA. Additionally, after Defendants McGill have complied with this Section, Ohio EPA will review all submitted Ohio Adm. Code 3745-27-13 alteration requests to allow for the construction on the Chick-Fil-A and BW3 parcels at the Facilities.

XVII. SUBMITTAL OF DOCUMENTS

75. Except for financial documents that shall be submitted to Ohio EPA as specified in the Ohio Adm. Code rules, all documents, including but not limited to detailed plans, reports, authorizations, permits and certifications, required to be submitted to Ohio EPA pursuant to this Order, shall be submitted to the following address:

Ohio Environmental Protection Agency
Northeast District Office
Division of Solid and Infectious Waste Management
2110 East Aurora Road
Twinsburg, Ohio 44087-1969
Attn: Supervisor, DSIWM

or

Ohio Environmental Protection Agency
Northeast District Office
Division of Surface Water
2110 East Aurora Road
Twinsburg, Ohio 44087-1969
Attn: Supervisor, DSIWM;

and

Cuyahoga County General Health District
Solid Waste Supervisor
5550 Venture Drive
Parma, OH 44130

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

76. Defendants McGill agree that all documents submitted to the following persons:

John R. McGill
McGill Property Group, LLC
125 W. Indiantown Road
Suite 102
Jupiter, Florida 33458

and/or

Dale Markowitz, Esq.
Thrasher, Dinsmore & Dolan
100 7th Avenue, Suite 150
Chardon, OH 44024-1079

shall be deemed as submitted to all Defendants McGill, unless hereafter otherwise specified in writing by Defendants McGill.

77. CVC agrees that all documents submitted to the following person:

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

shall be deemed as submitted to CVC, unless hereafter otherwise specified in writing by CVC.

XVIII. REVIEW OF SUBMITTALS

78. Ohio EPA may review any work plan, report, or other item required to be submitted by the Defendants McGill pursuant to this Order in accordance with this Section. Upon review, Ohio EPA may in its sole discretion:

a. approve the submission in whole or in part;

b. approve the submission upon specified conditions;

c. modify the submission;

d. disapprove the submission in whole or in part, notifying the Parties Bound of deficiencies; or

e. any combination of the above.

The results of Ohio EPA's review shall be in writing and provided to the Parties Bound.

79. Subject to Sections II. and IX. of this Order, in the event of approval as is, approval upon condition, or approval as modified of any submission by the Ohio EPA, the Parties Bound shall proceed to take any action required by the submission as approved, conditionally approved, or approved as modified by Ohio EPA.

80. Subject to Sections II. and IX. of this Order, in the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies the Parties Bound in writing of the deficiencies, the Parties Bound shall within 14 days, or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and submit the revised submission to Ohio EPA for approval. The revised submission shall incorporate all of the changes, additions, and/or deletions not materially different as those specified by Ohio EPA in its notice of disapproval, except as provided in Section IX. (Specific Automatic Additional Work language). Revised submissions shall be accompanied by a letter indicating how and where each of Ohio EPA's comments was incorporated into the submission. Any other changes made to the submission by Parties Bound shall also be identified in the letter.

81. Subject to Sections II. and IX. of this Order, if the Parties Bound fail to submit a revised submission incorporating all changes, additions, and/or deletions within 14 days, or such period of time as specified by Ohio EPA in writing, the Parties Bound shall be considered in breach and/or violation of this Order. If the Parties Bound are in breach and/or violation of this Order, Ohio EPA retains the right to move to terminate this Order as to the party in breach, perform any additional investigation, conduct any work to address conditions at the Facilities

and/or enforce the terms of this Order, and the Parties Bound retain their rights and defenses to contest such action.

XIX. ACCESS

82. At all times, Ohio EPA's agents, officers, employees, and any person acting in concert, privity and/or participation with Ohio EPA's agents, officers, and/or employees on matters related to this Order (including, but not limited to, the U.S. EPA, Defendants McGill (for CVC property), CVC (for Defendants McGill Property), any Successor-In-Interest, and/or any other party) shall have access to the City View Center Facilities to conduct monitoring, perform oversight and/or to perform Closure and Post-Construction Care Activities required by this Order. This access shall be binding upon the Parties Bound to this Order.

XX. CIVIL PENALTY: DEFENDANTS McGILL

83. Defendants McGill are ordered and enjoined 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). Upon amendment of the Trust Agreement in accordance with paragraph 71, 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. As described in Section XII. and Section XIII. of this Order, the remaining civil penalty amount of $515,000.00 can be further reduced in the event that the money reserved in the Garfield Trust Account for installation of the Main Facility Gas System and NEM Gas System is not completely disbursed for such projects.

84. In the event Defendants McGill fail to timely pay a 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.

85. 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. Ohio EPA is authorized to draw upon any current or future financial assurance to pay the stipulated civil penalty without the need to bring a contempt action. Defendants McGill can only challenge such a draw on the grounds that the civil penalty was timely paid and only upon filing a motion solely on such grounds with the Court and such motion being granted by this Court.

XXI. STIPULATED PENALTIES

86. Except as provided in Section XX., in the event that the State of Ohio brings a contempt action before this Court for violations of this Order by Defendants McGill and/or CVC

and the Court finds Defendants McGill and/or CVC in contempt, Defendants McGill and/or CVC shall pay stipulated penalties of $1,000 (One Thousand Dollars) per day per violation. Ohio EPA is authorized to draw upon any current or future financial assurance to pay any stipulated penalty ordered by the Court. Defendants McGill and CVC shall only be responsible for stipulated penalties for violations of provisions of this Order which are the obligations of such party to perform.

87. In the event Ohio EPA draws upon any financial assurance for the payment of Court-ordered stipulated penalties, 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.

XXII. CIVIL AND STIPULATED PENALTY PAYMENTS

88. Civil and stipulated penalty payments shall be sent through Martha Sexton, Paralegal, or her successor at the Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. Payments shall be in the form of a certified check, payable to the order of the "Treasurer, State of Ohio."

XXIII. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

89. All activities undertaken by Defendants McGill pursuant to this Order shall be undertaken in accordance with the requirements of all applicable federal and state and local laws, rules and regulations, permits, orders, and authorizations. For work on the Facilities, Defendants McGill shall obtain all permits, approvals and/or authorizations necessary under applicable

federal, state or local laws and shall submit timely applications and requests for any such permits and approvals. Where such laws, authorizations and/or orders appear to conflict with the other requirements of this Order, Defendants McGill are ordered and enjoined to immediately notify Ohio EPA of the potential conflict. This Order is not a permit issued pursuant to any federal or state or local law or rule. Nothing in this Order relieves Defendants McGill from following any self-implementing requirement in any statute or rule while preparation and review of any application for a permit or other authorization is ongoing, nor thereafter.

XXIV. RETENTION OF JURISDICTION

90. This Court will retain jurisdiction of this action for the purpose of enforcing this Order and making any order or decree which it deems appropriate to carry this Order.

XXV. COSTS

91. Defendants McGill are hereby ordered to pay all the court costs of this action.

XXVI. EFFECTIVE DATE

92. This Order shall become effective upon the date of its entry by the Court.

XXVII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT ENTRY BY CLERK

93. Upon signing of this Order by the Court, the clerk is directed to enter it upon the journal. Within 3 days of entering the judgment upon the journal, the clerk is directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner

prescribed by Rule 5(b) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XXVIII. AUTHORITY TO ENTER INTO THIS CONSENT ORDER

94. Each signatory for a corporation represents and warrants that he/she has been duly authorized to sign this document and, by signing, so binds the corporation to all the terms and conditions of this Order.

XXIX. ADDRESSING SUCCESSOR-IN-INTEREST FACILITIES REQUIREMENTS

95. In the event a Successor-In-Interest of the Facilities fails to timely perform any operation and maintenance activities at the Facilities, such as leachate management, erosion control, monitoring of Engineered Components, and operation and maintenance of the active gas extraction systems on the Facilities, the Ohio EPA shall issue the Notice of Violation to Defendants McGill and the Successor-In-Interest. So long as the Defendants McGill or the Successor-In-Interest have come into compliance within sixty (60) days after receipt of such Notice of Violation, Defendants McGill shall not be deemed to be in violation of this Consent Order, subject to civil penalties or stipulated penalties, or in contempt of this Order. Nothing contained herein should be deemed to waive, release, discharge or otherwise deny Defendants McGill the right to proceed against the then owners of the non-owned property at the Facilities for any work performed or monitoring or investigation engaged in, or other performance in response to a notice from the Ohio EPA, that were or are the requirement, in whole or in part, of such other owner of any portion of the City View Center Facilities. In addition, nothing herein shall relieve Defendants McGill of their responsibilities to pay stipulated penalties pursuant to Section XXI. for violations of provisions of this Order Defendants McGill are obligated to perform.

XXX. POTENTIAL FORCE MAJEURE

96. If any event occurs which causes or may cause a delay in achieving compliance with any of the requirements of this Order, including the failure to receive any state or local permit or authorization required to achieve compliance with this Order, Defendants McGill shall notify the Ohio EPA in writing within ten (10) days of the event or failure, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Defendants McGill to prevent or minimize the delay and the timetable by which such measures will be implemented. Defendants McGill will adopt all reasonable measures to avoid or minimize any such delay.

97. In any action by the Plaintiff to enforce any of the provisions of this Order, Defendants McGill may raise that they are entitled to a defense that their conduct was caused by reasons entirely beyond their control such as, by way of example and not limitation, acts of God, strikes, unusually severe weather conditions, lack of necessary equipment or materials to perform work, acts of war or civil disturbances, terrorism or acts or omissions of a governmental or regulatory agency. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendants McGill and the Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced by the Plaintiff. At that time, Defendants McGill will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendants McGill. Unanticipated or increased costs associated with the implementation of any action required by this Order shall not constitute circumstances entirely beyond the control of

Defendants McGill or serve as a basis for an extension of time under this Order. Failure by Defendants McGill to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant's right to request an extension of its requirements under this Order based on such incident. An extension of one date based on a particular incident does not mean that Defendants McGill qualify for an extension of a subsequent date or dates. Defendants McGill must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Order with a Potential Force Majeure Clause does not constitute a waiver by Defendants McGill of any rights or defenses they may have under applicable law.

SIGNED:

JUDGE _____
KENNETH R. CALLAHAN
CUYAHOGA COUNTY
COURT OF COMMON PLEAS

NANCY H. ROGERS
ATTORNEY GENERAL OF OHIO

By: _____
Robert Eubanks (0073386)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
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MCGILL PROPERTY GROUP, LLC,
GLD, GHLFP, LLC, and JOHN MCGILL

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Attorney for Plaintiff
State of Ohio

CITY VIEW CENTER, LLC

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Attorney for Defendant
City View Center, LLC

By: _____
An authorized representative of
City View Center, LLC

Attorney for Defendants McGill

By: _____
An Authorized Representative of
McGill Property Group, LLC
Garfield Land Development, LLC, and
GHLFP, LLC

By: _____
John McGill (Individually)

KLEIN

By: _____
An Authorized Representative of
McGill Property Group, LLC
Garfield Land Development, LLC, and
GHLFP, LLC

By: _____
John McGill (Individually)

CITY VIEW CENTER, LLC

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City View Center, LLC

By: _____ MEMBER
An authorized representative of
City View Center, LLC
11-24-08

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GERALD E. FUERST, CLERK
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