



**Environmental
Protection Agency**

Ted Strickland, Governor
Lee Fisher, Lt. Governor
Chris Korleski, Director

CERTIFIED MAIL

March 29, 2010

Mr. Jeffrey J. Robinson
Mr. Michael A. Story
Mass Realty LLC
2250 Seymour Avenue
Cincinnati, Ohio 45212

**RE: NOTICE OF VIOLATIONS
Mass Realty LLC, 614 Shepherd Drive, Lockland, Hamilton County**

Dear Mr. Robinson/Mr. Story:

Mass Realty LLC has failed to conduct quarterly ground-water sampling events scheduled for September and December, 2002, March, June, September, and December, 2003, March, June, September, and December, 2004, March, June, September, and December, 2005, March, June, September, and December, 2006, March, June, September, and December, 2007, March, June, September, and December, 2008, and March, June, September, and December, 2009, at the above referenced site. Failure to conduct quarterly ground-water sampling, according to Section VI of the February 12, 2001 Director's Final Findings & Orders (DFFOs), places Mass Realty LLC in violation of the DFFOs. Mass Realty LLC will remain in violation of the DFFOs until quarterly ground-water sampling is resumed. Please note that the next quarterly ground-water sampling event is due to be performed by Mass Realty LLC in March, 2010.

Additionally, Ohio EPA has not received quarterly progress reports since July, 2002, as required by the DFFOs. According to Section X of the DFFOs, quarterly progress reports are due by the tenth day of the month following the reporting period. Quarterly progress reports were due by the tenth day of the month in October, 2002, January, April, July, and October, 2003, January, April, July, and October, 2004, January, April, July, and October, 2005, January, April, July, and October, 2006, January, April, July, and October, 2007, January, April, July, and October, 2008, January, April, July, and October, 2009, and January, 2010. Failure to submit the progress reports places Mass Realty LLC in violation of Section X of the DFFOs. Mass Realty LLC will remain in violation of the DFFOs until all the above-mentioned past due quarterly progress reports

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are received by Ohio EPA. Please note that the next quarterly progress report is due to be submitted to Ohio EPA by April 10, 2010.

A review of our records indicates that Mass Realty LLC has yet to make full payment of the response costs associated with the DFFOs for this site. Per these DFFOs, Mass Realty LLC was to pay \$1,000 per month, beginning March 12, 2001, until the balance of response costs incurred previous to the effective date of the DFFOs and totaling \$34,296.50, was paid in full. To date, three payments of \$1,000 each was received by your letter dated September 29, 2004, and one payment of \$500 was received by your letter dated May 7, 2007. Therefore, \$30,796.50 remains past due.

In addition, per the DFFOs, Mass Realty LLC was to have paid all response costs incurred after the effective date of the DFFOs on an annual basis. An invoice for 2001 year response costs totaling \$1,803.03 was sent to Mass Realty LLC on May 2, 2002, an invoice for 2002 year response costs totaling \$4,743.77 was sent to Mass Realty LLC on April 15, 2003, an invoice for 2003 year response costs totaling \$10,168.15 was sent to Mass Realty LLC on April 9, 2004, an invoice for 2004 year response costs totaling \$10,062.78 was sent to Mass Realty LLC on April 8, 2005, an invoice for 2005 year response costs totaling \$4,970.79 was sent to Mass Realty LLC on February 27, 2006, an invoice for 2006 year response costs totaling \$15,300.55 was sent to Mass Realty LLC on April 6, 2007, an invoice for 2007 year response costs totaling \$16,583.60 was sent to Mass Realty LLC on January 14, 2008, and an invoice for 2008 year response costs totaling \$22,892.42 was sent to Mass Realty LLC on April 3, 2009. To date, payment of these costs has not been received.

The failure to remit payment of response costs is a violation of Section XVII (Reimbursement of Costs) of the DFFOs, for both the monthly payment and the annual payment provisions. Mass Realty LLC will remain in violation of the DFFOs until Ohio EPA's receipt of the response costs identified above, totaling \$117,321.59 to date.

On May 11, 2004, Ohio EPA staff collected samples from the ground-water monitoring wells at the above referenced site which Mass Realty is required to sample quarterly according to the DFFOs. The analytical results from this sampling event (provided to you with Ohio EPA's letter dated June 23, 2004, and to your technical consultants Mr. Michael T. Saul of The Payne Firm in early October, 2004 upon his request, and John Diamante of Tencon in September, 2006 upon his request) indicate that site-related contaminants in ground water exceed the interim action ground-water compliance (IAGWC) standards specified by the DFFOs. On January 30, 2008, Ohio EPA staff collected samples from the ground-water monitoring wells at the above referenced site which Mass Realty is required to sample quarterly according to the DFFOs. The analytical results from this sampling event (provided to your legal counsel Mr. Christopher H. Hurlburt at a deposition regarding Mass Realty on March 5, 2008

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indicate that site-related contaminants in ground water exceed the interim action ground-water compliance (IAGWC) standards specified by the DFFOs. According to the DFFOs, Mass Realty was required to resample the ground water monitoring wells as specified in the DFFOs within one week of your receipt of the sampling results from Ohio EPA's May 11, 2004 and January 30, 2008 sampling events. If Mass Realty's resampling results confirmed that IAGWC standards had been exceeded, Mass Realty was to have resumed operation of the ground water gradient control (GWGC) system according to the DFFOs. To date, Ohio EPA has not been provided with the results of these required sampling events, or notified whether the sampling events occurred or if the GWGC system was restarted. Further, on March 23, 2010, Ohio EPA staff conducted an inspection of the GWGC system and observed that it was not operational. Therefore, based on the results of Ohio EPA's May 11, 2004 and January 30, 2008 sampling events, and the March 23, 2010 inspection, and as indicated in Ohio EPA's letters to you dated December 7, 2004, Jun 17, 2005, May 4, 2006, and January 4, 2008, Ohio EPA now reiterates the requirement that Mass Realty LLC immediately resume operation of the GWGC system, and resume quarterly ground water monitoring and quarterly ground water level measurements pursuant to Paragraph 14 of the DFFOs.

In accordance with Section XI (Reservation of Rights) of the DFFOs, Ohio EPA specifically reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of the DFFOs. If you have any questions or concerns, please contact me at (937) 285-6064 or at joe.smindak@epa.state.oh.us.

Sincerely,



Joseph M. Smindak
Senior Site Coordinator
Division of Emergency and Remedial Response

cc: John Cayton, Ohio Attorney General's Office
Mark Rickrich, Ohio EPA, DERR, CO
Mark Navarre, Ohio EPA, Legal, CO
Jim Bonk, Ohio EPA, DEFA

JR/ca