

OHIO E.P.A.

SEP 29 2009

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ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Donald A. Shapiro, Receiver
c/o Foresite Realty Partners, LLC
6400 Shafer Court, Suite 475
Rosemont, Illinois 60018

Respondent

Director's Final
Findings and Orders

1. JURISDICTION

These Director's Final Findings and Orders ("Orders") are hereby issued to Donald A. Shapiro ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Sections 3745.01, 3734.02(G) and (H), and 3734.13(B), Ohio Administrative Code ("OAC") Rule 3745-27-03(B), OAC Rule 3745-27-12(1), and OAC Rule 3745-27-13.

II. PARTIES BOUND

These Orders shall apply to and be binding upon the Respondent solely in his capacity as receiver appointed by the U.S. District Court on February 23, 2009, and on succeeding receivers appointed over the City View Center by the U.S. District Court. Respondent agrees to make any immediate successor receiver or any immediate successor-in-interest to the property owned by City View Center, LLC (aka the City View Center shopping center of Garfield Heights) aware of the March 18, 2005 Director's Final Findings and Orders, the December 2, 2008 Judicial Consent Order, and this authorization. Respondent agrees to provide a copy of this authorization to his immediate succeeding receiver if any.

III. DEFINITION

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapter 3734 and the rules promulgated thereunder. Unless otherwise stated, all OAC citations shall refer to rules in effect on the date of these Orders.

IV. FINDINGS

The Director of Ohio EPA ("Director") has determined the following findings:

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By:  Date: 9.29.09

1. On December 2, 2008, the Ohio Attorney General filed a Judicial Consent Order in the Cuyahoga County Court of Common Pleas ("Judicial Consent Order"). The Judicial Consent Order required Defendants John McGill, McGill Property Group, L.L.C., Garfield Land Development, LLC, and GHLFP, LLC ("Defendants McGill") to design and install active gas extraction systems at the City View Center shopping center and on the Northeast Mound ("NEM"), (collectively referred to as "the Site"), and to prepare a detailed operation and maintenance plan for each system.
2. Paragraph 24 of the Judicial Consent Order requires the gas extraction systems operate, at a minimum, to keep the Site in compliance with OAC Rule 3745-27-13 Authorizations and OAC Rule 3745-27-12, and to prevent landfill gas peak levels from exceeding 25% of the lower explosive limit ("LEL") in all underground structures at the Site and to prevent landfill gas from migrating off-site from the NEM.
3. Defendants McGill have failed to comply with almost all aspects of the Judicial Consent Order, including the requirements to install, operate and maintain the explosive gas extraction systems at the Site.
4. On February 23, 2009, the United States District Court for the Northern District of Ohio appointed Respondent as Receiver over the property described in Exhibit A to that order ("Property") at the City View Center shopping center located in Garfield Heights, Cuyahoga County, Ohio.
5. On April 13, 2009, Ohio EPA approved plans for the explosive gas extraction systems.
6. On August 10, 2009, Ohio EPA received a design plan submittal titled "Proposal for Installation for a Landfill Gas Control System, City View Center, Garfield Heights, Ohio." SCS Engineers submitted the design plan on behalf of Respondent.
7. On September 15, 2009, Ohio EPA received an e-mail titled "CVC Documents" which included final plan drawings, specifications and proposal (all dated September 2, 2009) for installation of the active gas extraction system plan as previously submitted on April 13, 2009, August 10, 2009 and August 13, 2009.

REQUEST FOR RULE 13 AUTHORIZATION

8. On August 28, 2009, Ohio EPA received a letter titled "Foresite Realty - City View Center" from Richard T. Sargeant of Eastman and Smith, Ltd on behalf of Donald A. Shapiro, Receiver. The letter requested an OAC Rule 3745-27-13 authorization to complete the work as submitted in the August 13, 2009 design plan and plan sheets as submitted on August 10, 2009.

9. On September 15, 2009, Ohio EPA received a copy of an access license from John McGill, owner of portions of the R&B Development and Matousek Landfills to the north and south of the City View Center shopping center, giving Respondent and his contactor authorization to conduct the requested work on his property,
10. Ohio EPA has reviewed the explosive gas extraction systems design dated September 2, 2009, and it appears to meet the intent of the Judicial Consent Order.
11. The disposal of solid waste, generated during the installation of the explosive gas extraction systems, from the R&B Development Landfill to the Matousek Landfill can be performed without creating a nuisance or harming human health or the environment, and in compliance with other applicable laws, provided it is performed in accordance with the Orders specified below.
12. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), the Director, by order, may exempt any person generating, collecting, storing, treating, disposing of, or transporting solid wastes in such quantities or under such circumstances that, in the determination of the Director, are unlikely to adversely affect the public health.

ERAC APPEAL

13. On May 1, 2009, Respondent filed a Notice of Appeal ("appeal") before the Environmental Review Appeals Commission ("ERAC") regarding the reasonableness and lawfulness of the Director's April 2, 2009 correspondence authorizing removal and transfer of \$685,000 from the Garfield Trust to the Environmental Remediation Fund (ERAC Case # 486339). On August 10, 2009, the State of Ohio Controlling Board authorized the Ohio EPA to make a one-time payment of \$620,000 from the fund established under ORC Section 3734.281 to the Garfield Trust Fund in order to settle the ERAC appeal.

V. ORDERS

1. Pursuant to ORC Section 3734.02(H) and OAC Rule 3745-27-13 Respondent and its contractor, Stearns, Conrad and Schmidt Consulting Engineers, Inc. ("SCS" or "Respondent's contractor"), are authorized to implement the final design plans dated September 2, 2009, under the following conditions:
 - a. Respondent's contractor shall construct the explosive gas extraction system components and associated work in compliance with the specifications included in the explosive gas extraction system plan dated August 13, 2009 and September 2 2009. Respondent's contractor may not deviate from these plans unless otherwise authorized by Ohio EPA in writing. (Attached as Appendix A).
 - b. Respondent's contractor shall receive prior written approval for any alteration to the plans dated September 2, 2009, before

implementing any such alterations.

- c. Upon request, Ohio EPA will authorize the Trustee of the Garfield Trust Fund, which was established pursuant to Director's Final Findings and Orders issued on March 18, 2005, to provide reimbursement from the Garfield Trust Fund to SCS for work authorized herein if performed in accordance with these Orders and the conditions set forth in a letter from Pamela S. Allen, Chief of Ohio EPA's Division of Solid and Infectious Waste Management, to Respondent dated July 30, 2009 (Attached as Appendix B). As set forth in Ohio EPA's July 30, 2009, correspondence, Ohio EPA will only reimburse up to \$962,903.22 from the Garfield Trust Fund for the design, installation, and operation and maintenance of the explosive gas extraction systems at the Site. Expenses incurred for the work authorized herein for the design, installation, and operation and maintenance of the explosive gas extraction systems or other activities at the Site *over* \$962,903.22 will not be eligible for reimbursement by the Garfield Trust..
- d. At least *seven* (7) days prior to waste relocation, Respondent's contractor must notify Ohio EPA, in writing, of the final location of the relocated waste accompanied by a plan drawing depicting the chosen location.
- e. Respondent's contractor shall *cover* all exposed waste, including the relocated waste, by the end of each working day.
- f. Respondent's contractor shall prioritize and commence installation of the gas extraction systems at the NEM as soon as practicable after the *effective* date of these Orders and shall make every effort to complete this work within sixty (60) days after the *effective* date of these Orders unless otherwise provided by Ohio EPA.
- g. Respondent's contractor shall submit to Ohio EPA certification reports for concurrence for the work authorized herein as follows:
 - 1.) Respondent's contractor may submit a certification report to Ohio EPA for concurrence for discrete segments of the work which are authorized herein as those segments are completed;
 - 2.) Not later than thirty (30) days after final completion of all the work authorized herein, Respondent's contractor shall submit a certification report to Ohio EPA for concurrence for all work for which a certification report has not already been submitted to Ohio EPA; and
 - 3.) Respondent' contractor shall use its best efforts to obtain Ohio EPA's concurrence on all certification reports for the work authorized herein not later than one (1) year after the effective date of these Orders unless otherwise provided by Ohio EPA.

2. As it pertains to Order No. 1 of this authorization, pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(8), Respondent is hereby exempted from the following:
 - a. ORC Sections 3734.02(C), 3734.05(A)(I), and 3734.05(A)(2), and OAC Chapters 3745-27 and 3745-37 to obtain a permit and license to establish and operate a solid waste facility for the activities specified in the August 26, 2009 request and this authorization.
 - b. ORC Section 3734.57(A) to collect and remit the state disposal fee on R&B Development Landfill solid waste that may be disposed of within the Matousek Landfill in accordance with the August 26, 2009, request and this authorization.
 - c. ORC Section 3734.57(E) to collect and remit the district solid waste disposal fee levied pursuant to ORC Section 3734.57(B) on R&B Development Landfill solid waste that may be disposed of within the Matousek Landfill in accordance with the August 26, 2009, request and this authorization. The Director expressly makes the findings required by R.C. 3734.57(D)(8).
 - d. ORC Section 3734.573(F) to collect and remit the district solid waste generation fee levied pursuant to ORC Section 3734.573(A) on R&B Development Landfill solid waste that may be disposed of within the Matousek Landfill in accordance with the August 26, 2009, request and this authorization.
 - e. OAC Rule 3745-27-13(H)(6) to dispose of all excavated waste offsite at a licensed solid waste facility or remain within the existing horizontal and vertical limits of waste placement in accordance with the August 26, 2009, request and this authorization.
 - f. OAC Rule 3745-27-13(E) to submit information for this request for OAC Rule 3745-27-1.3 authorization.
 - g. OAC Rule 3745-27-13(1) to remit notarized signatures of affirmation.

DISMISSAL OF APPEAL

3. Execution of this authorization by both parties will act as a settlement of ERAC Case # 486339 and a motion to dismiss Respondent's appeal of ERAC Case # 486339. Either the Respondent or the Director may file this authorization with ERAC.

VI. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, corporation or entity, not a party to these Orders, from any liability arising from, or related to, the Site.

VII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these orders shall be taken in accordance with the requirements of all applicable federal, state, and local laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any statutes or regulations applicable to Respondent or the Site other than those expressly waived or exempted herein.

VIII. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges, and causes of action, except as specifically waived in Section IX. WAIVER.

IX. WAIVER

Respondent agrees to comply with these Orders.

Respondent hereby waives the right to appeal the issuance, terms and service of these Orders, and Respondent hereby waives any and all rights they may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and the Respondent agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court Respondent retains the right to intervene and participate in such appeal. In such an event, the Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

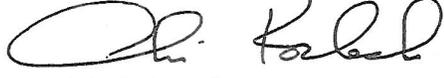
IT IS SO AGREED

Donald A. Shapiro
Receiver


Signature

IT IS SO ORDERED AND AGREED

Ohio Environmental Protection Agency

A handwritten signature in black ink, appearing to read "Chris Korleski", written in a cursive style.

Chris Korleski, Director