



State of Ohio Environmental Protection Agency

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Columbus, Ohio 43216-1049

Mr. Sam P. Cannata  
Vista Way Partners, LLC  
5595 Transportation Blvd., Suite 100  
Garfield Heights, Ohio 44125

**Re: R&B Development Landfill, Cuyahoga County  
Ohio Administrative Code (OAC) Rule 3745-27-13 Authorization**

Dear Mr. Cannata:

On April 14, 2006, the Ohio Environmental Protection Agency (Ohio EPA), Division of Solid and Infectious Waste Management (DSIWM), Northeast District Office (NEDO) received a request titled *Rule 13 Application Submittal for Building Construction* from McCabe Engineering, on behalf of Vista Way Partners, LLC, pursuant to Ohio Administrative Code (OAC) Rule 3745-27-13, to engage in filling, grading, excavating, building, drilling, or mining activities at the closed R&B Development Landfill (Facility) located in Garfield Heights, Cuyahoga County, Ohio. Revisions to the request were received on May 23, 2006.

OAC Rule 3745-27-13 requires authorization from the Director of Ohio EPA (Director) before engaging in filling, grading, excavating, building, drilling, or mining on land where a solid waste facility was operated. Specifically, Vista Way Partners, LLC requested authorization to construct parking lots, buildings, passive and active explosive gas extraction systems, and an explosive gas monitoring system, and to install support piles and utilities over the Facility.

Based upon a review of the request, I have determined, pursuant to OAC Rule 3745-27-13, that the proposed activities will not result in a violation of applicable laws or regulations, will not create a nuisance, and are unlikely to adversely affect public safety or health or the environment. Therefore, Vista Way Partners, LLC is hereby authorized to perform the activities outlined in this letter in accordance with the submitted and approved plans, specifications, and information.

As part of this authorization, Vista Way Partners, LLC is subject to the following conditions:

**CONDITIONS**

1. This approval grants authorization to perform activities at the Facility in accordance with the request titled *Rule 13 Application Submittal for Building Construction*, received April 14, 2006, and with revisions received on May 23, 2006, only. All activities shall be conducted

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in strict accordance with the plans, specifications, and other information submitted as part of this request. There may be no deviation from the approved plans without prior written authorization from Ohio EPA. Any future activities at the Facility may require additional Ohio EPA approval.

2. All activities undertaken shall not create a nuisance and shall not adversely affect public safety or health or the environment.
3. All on-site activities shall be accomplished in compliance with all applicable state and federal laws and regulations pertaining to environmental protection, including, but not limited to, the control of air pollution, leachate, surface water run-on and runoff, and protection of ground water.
4. Vista Way Partners, LLC shall submit to Ohio EPA, NEDO, the Cuyahoga County Board of Health, and the Cleveland Department of Public Health and Welfare, Division of the Environment, Bureau of Air Pollution Control a construction schedule prior to commencing any activities authorized by this approval.
5. Should any solid waste be encountered while conducting the activities authorized by this approval, Vista Way Partners, LLC shall submit weekly progress reports to Ohio EPA, NEDO. The reports shall provide a detailed description of activities undertaken during the week, including, but not limited to, the following:
  - a. The volume and type of waste excavated.
  - b. The location(s) within the existing horizontal and vertical limits of waste placement from which any excavated waste was removed.
  - c. The volume and type of waste removed from the Facility for off-site disposal, including all associated analytical data.
  - d. The volume of clean fill placed within the horizontal limits of waste placement.
  - e. Any engineering components utilized in construction.
  - f. Actions taken to address leachate outbreaks (including the amount of leachate removed and any analytical data), odors, dust, suspected hazardous waste, fires, and surface water management.
  - g. Daily explosive gas monitoring locations and results.
  - h. Complaints received about dust or odors.
6. Not later than 60 days after completing the activities authorized by this approval for each building, Vista Way Partners, LLC shall submit to Ohio EPA, NEDO a separate certification report for each building in accordance with OAC Rule 3745-27-13(H)(10).

7. If Ohio EPA, the Cuyahoga County Board of Health, or the Cleveland Department of Public Health and Welfare, Division of the Environment, Bureau of Air Pollution Control determines that odors or dust are causing a nuisance, Vista Way Partners, LLC shall take all necessary steps to address the nuisance including, but not limited to, the application of dust suppressants, soil cover, odor masking agents, and/or odor neutralizing agents.
8. Vista Way Partners, LLC shall perform daily monitoring for explosive gas migration along explosive gas migration pathways while activities authorized by this approval are conducted, and shall continue monitoring in accordance with this condition until the approved gas monitoring plan for the Facility has been updated and implemented.
9. Explosive gas monitoring activities shall be modified and/or updated, as necessary, to account for changing conditions at the Facility.
10. All solid waste and/or hazardous wastes to be removed from the Facility shall be containerized and securely stored until these materials are properly characterized and disposed in accordance with Ohio Revised Code (ORC) Chapter 3734 and the regulations promulgated thereunder.
11. All liquids, semi-solids, industrial wastes, and other wastes regulated by ORC Chapter 6111 removed during intrusive activities shall be containerized and securely stored until these materials are properly characterized and disposed in accordance with ORC Chapter 6111 and the regulations promulgated thereunder.
12. Prior to any removal of waste or contaminated soil from the property, Vista Way Partners, LLC shall submit copies of sample analysis results, the treatment or disposal method selected, and a copy of a letter of acceptance from the treatment or disposal facility to Ohio EPA, NEDO pursuant to OAC Rule 3745-27-13(H)(4).
13. For the purposes of erosion control during all phases of excavation and grading at the Facility, Vista Way Partners, LLC shall use best management practices and standards as specified in the Ohio Department of Natural Resources manual titled *Rainwater and Land Development*.
14. In accordance with OAC Rule 3745-27-13(H)(6), replacement of excavated waste shall only occur within previously existing horizontal and vertical limits of waste placement.
15. A six-inch layer of soil cover or a layer of Topcoat shall be applied to any areas where waste is exposed and where excavation, grading, or filling activities are suspended for more than 12 hours.

16. A 12-inch layer of intermediate soil cover shall be applied to any areas where excavation, grading, or filling activities are suspended for more than seven days. The intermediate cover shall be stabilized in accordance with best management practices and standards.
17. Any portions of the landfill where the cap is removed by activities authorized by this approval shall have a final cap, a minimum of 24 inches thick, re-established in accordance with the following specifications:
  - a. Material specifications: The following material specifications shall apply to the material intended for use in cap construction. A representative sample of the material shall be evaluated at a frequency not less than once for every 3,000 cubic yards.
    - i. 100% of the material particles shall pass a ten-inch screen, with no more than two particles from a 50-cubic-foot sample retained on a six-inch screen.
    - ii. At least 95% of the material, by weight, shall pass a three-inch screen.
    - iii. At least 70% of the material, by weight, shall pass the Number 10 sieve.
    - iv. The material that passes the Number 10 sieve (sand, silt, and clay fractions) shall be classified using the USDA textural classification chart as loam, sandy loam, silty loam, clay loam, silty clay, or sandy clay, or an acceptable alternative soil type with concurrence from Ohio EPA.
  - b. Construction Specifications:
    - i. The material shall be compacted to at least 95% of the maximum Standard Proctor Density (ASTM D-698) or 90% of the maximum Modified Proctor Density (ASTM D-1557).
    - ii. The material shall be compacted using loose lifts no greater than twelve inches thick prior to compaction.
    - iii. The final soil cover shall be stabilized in accordance with best management practices and standards until a dense vegetative cover has been established.
  - c. Testing Specifications:
    - i. The suitability of the soils shall be determined prior to their intended use in cap construction. The following tests shall be performed on representative soil samples at least once for every 3,000 cubic yards of material intended for use.

1. Sieve and hydrometer testing (ASTM D-422) for particle size gradation.
2. Moisture/density relationship using either Standard Proctor (ASTM D-698) or Modified Proctor (ASTM D-1557) method.

Prior to testing, the samples shall be screened to remove any particles larger than three inches. Written results of this testing shall be submitted to Ohio EPA, NEDO not later than seven days prior to its intended use in cap construction.

- ii. During construction of the cap, compaction shall be monitored to ensure that the proper specifications are met. This can be accomplished by a number of methods, including nuclear densimeter (ASTM D-2922), sand cone (ASTM D-1556), and rubber balloon (ASTM D-2167). The nuclear densimeter test, if used, shall be performed at least five times per acre per lift. The sand cone or rubber balloon methods shall be performed at least three times per acre per lift. The sampling rate for other methods shall be determined on an individual basis with concurrence from Ohio EPA.
  - iii. Upon completion of construction, the permeability of the cap shall be determined through either field permeability testing (ASTM D-6391: Boutwell two-stage permeameter, ASTM D-5093: SDR1) or through laboratory testing of cap samples brought to the lab for analysis (ASTM D-5084: Shelby tubes, soil blocks). The permeability requirements for each type of permeability determination are as follows:
    1. For field permeability tests (ASTM D-6391, ASTM D-5093), the required permeability of the cap is  $1 \times 10^{-5}$  cm/sec.
    2. For laboratory permeability tests (ASTM D-5084: Shelby tubes, soil blocks), the required permeability of the cap is  $1 \times 10^{-6}$  cm/sec.
  - iv. Any penetrations into the cap layer resulting from either density testing or permeability testing shall be repaired using bentonite or an acceptable bentonite/soil mixture.
18. Vista Way Partners, LLC shall repair all leachate outbreaks existing at the Facility or encountered while conducting activities authorized by this approval.
19. Not later than 30 days after the effective date of this approval, Vista Way Partners, LLC shall execute and fund a financial assurance instrument in the amount of \$50,000.00. This

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financial assurance instrument shall be prepared, executed, and funded in a form acceptable to Ohio EPA and shall guarantee that all conditions of this approval shall be met and performed to the satisfaction of Ohio EPA. This financial assurance instrument shall be in force until all of the activities authorized by this approval have been completed. The financial assurance instrument shall be updated annually in accordance with OAC Rule 3745-27-15(D).

20. Not later than 30 days after the effective date of this approval, Vista Way Partners, LLC shall submit to Ohio EPA an executed and funded financial assurance instrument in the form of surety bond or a letter of credit in the amount of at least \$192,600 for post-construction care to maintain and operate constructed components at the Facility. A surety bond shall meet the requirements of OAC Rule 3745-27-15(G) or 3745-27-15(H) and the requirements of OAC Rule 3745-27-17(B) or 3745-27-17(C). A letter of credit shall meet the requirements of OAC Rule 3745-27-15(I) and OAC Rule 3745-27-17(D). The financial assurance instrument shall be maintained for 30 years after the date of submission of the last certification report submitted in accordance with Condition Number 6 for the completion of construction activities undertaken by Vista Way Partners, LLC. The financial assurance instrument shall be updated annually in accordance with OAC Rule 3745-27-16(D).
21. This approval does not authorize Vista Way Partners, LLC to accept hazardous, solid, or liquid waste for disposal or for construction purposes at the Facility.
22. In accordance with OAC Rule 3745-27-13(M), this authorization shall terminate three years after its effective date if Vista Way Partners, LLC has not begun the activities authorized herein.
23. Nothing in this letter shall be construed to authorize any waiver from any requirements of any applicable federal or state laws or regulations. This authorization shall not be interpreted to release Vista Way Partners, LLC, Snider-Cannata Interests, or others from responsibility under ORC Chapters 3704, 3714, 3734, or 6111; under the Federal Clean Water Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, or the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable requirements for remedying conditions resulting from any release of contaminants to the environment.

### **END OF CONDITIONS**

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission (Commission) pursuant to ORC Section 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which

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the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. A copy of the appeal must be served on the Director within three (3) days after filing with the Commission. An appeal may be filed with the Commission at the following address:

Environmental Review Appeals Commission  
309 South Fourth Street, Room 222  
Columbus, Ohio 43215

If you have any questions regarding this authorization, please contact Karen Naples of Ohio EPA, NEDO at (330) 963-1244.

Sincerely,

Joseph P. Koncelik  
Director

JPK/KN/JS/sw

cc: Scott Hester, DSIWM, CO  
Dane Tussel, Cuyahoga County Board of Health  
David Hearne, Cleveland Air Pollution Control  
Kenneth Nehls, McCabe Engineering