

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Heritage Development Company                   :     Director's Emergency Final Findings  
P.O. Box 8020   :     and Orders  
Chagrin Blvd.   :  
Moreland Hills, Ohio 44022                     :

and

Garfield Land Development LLC  
34555 Chagrin Blvd.  
Moreland, Hills, Ohio 44022

Respondents

FILE

**I. JURISDICTION**

These Director's Emergency Final Findings and Orders ("Orders") are issued to Heritage Development Company and Garfield Land Development LLC ("Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Section 3734.13(B).

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondents and successors in interest liable under Ohio law. No change in ownership of the Respondents or R&B Development Landfill ("the Facility") will in any way alter Respondents' responsibilities under these Orders. Respondents shall provide a copy of these Orders to all contractors, subcontractors, laboratories and consultants retained to conduct any portion of the work performed pursuant to these Orders. Respondents shall ensure that all contractors, subcontractors, laboratories and consultants retained to perform the work pursuant to these Orders also comply with the applicable provisions of these Orders. Respondents' obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

**III. DEFINITIONS**

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3734. and the rules promulgated thereunder.

#### **IV. FINDINGS OF FACT**

The Director of Ohio EPA has determined the following findings:

1. The R&B Development Landfill ("Facility") is a closed municipal solid waste disposal facility, which is located south of the intersection of Antenucci Blvd. and Transportation Blvd., in Garfield Heights, Cuyahoga County, Ohio.
2. Respondent Garfield Land Development LLC is the "owner" of the Facility as that term is defined in Ohio Administrative Code ("OAC") Rule 3745-27-01(O)(7).
3. ORC Section 3734.02(H) provides in part that "[n]o person shall engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility, or a solid waste facility, was operated without prior authorization from the director, who shall establish a procedure for granting such authorization by rules adopted in accordance with Chapter 119. of the Revised Code."
4. OAC Rule 3745-27-13(A) states in part that "[n]o person shall, without authorization from the director, engage in filling, grading, excavation, building, drilling, or mining on land where a hazardous waste facility or solid waste facility was operated. Any person proposing to engage in these activities on land where a hazardous waste facility or solid waste facility was operated shall comply with the requirements of this rule."
5. On December 12, 2003, the Director of Ohio EPA granted authorization under OAC Rule 3745-27-13 to Peter J. Limited, a prior owner and/or operator of the Facility, to conduct solid waste relocation and consolidation at the Facility in accordance with the terms and conditions of the authorization.
6. On March 23, 2004, Ohio EPA received a telephone call from Sam Cannata, a property owner adjacent to the Facility, indicating that the slope of the Facility had failed and had damaged the eastern edge of his parking lot. Messrs. Cannata and David Snider own a commercial office complex know as the Southside Corporate Center, which is located at 5595 Transportation Blvd., Garfield Heights, Ohio 44125, and have as one of their tenants Garfield Heights Primary Care, which provides medical services to a number of patients on a daily basis.
7. Respondent Heritage Development Company was conducting waste relocation and consolidation activities at the Facility when the western slope of the Northeast Mound ("Mound") of the Facility failed.
8. Neither Respondent Heritage Development Company nor Respondent Garfield Land Development Company LLC applied to the Director for authorization under OAC rule 3745-27-13 to engage in waste relocation and consolidation activities at the Facility.

9. To the extent Respondents desired to conduct waste relocation and consolidation activities at the Facility under the Director's OAC Rule 3745-27-13 authorization issued to Peter J. Limited on December 3, 2003, Respondents failed to conduct activities at the Facility in accordance with that authorization.
10. On March 29, 2004, Ohio EPA conducted an inspection of the Mound and observed the following;
  - a. The slopes appeared to be greater than the contour approved in the December 3, 2003, OAC Rule 3734-27-13 authorization which was 2.5:1, and in portions of the mound, slopes appeared to be greater than 2:1.
  - b. The Mound consists of relocated solid wastes and soil materials. Soil materials failed, bulging at the toe-of-slope, into the adjacent parking lot, damaging the eastern side of the parking lot.
  - c. An inclinometer was installed at the toe of the failed slope to monitor potential additional movement. To install the inclinometer, a cut was made into a section of the failed area thus removing a portion of soil.
  - d. An area of soil was placed above the most significant portion of the failure in the middle of the slope. This soil was structured in such a way that it had the potential to absorb all/most of the surface water drainage from the slope above it. Rain storms were pending which could cause additional failure in this area due to the area of additional soil.
  - e. The current southwestern corner of the Mound had a cascading slump failure in progress. The material was slumping into a surface water/leachate pond. Due to its weakened state, this area may continue to slump down the slope.
  - f. Additional slump failures were observed on the northeastern corner of the Mound. Due to the weakened state of these failure locations, slumping may continue to occur, if not repaired.
11. On March 30, 2004, Ohio EPA conducted an additional inspection of the Mound and observed that although Respondent Heritage Development Company had reduced some of the steepness of the upper portions of the failed slope in one area, the area of significant failure and the slope above it were left relatively untouched. Ohio EPA recommended that surface water ponding on the slope above the failed area should be prevented to reduce the saturation of the slope soils and that the inclinometer should be watched very closely for anything indicative of a another, potentially larger failure occurring. Also, Ohio EPA highly recommended that Heritage Development Company apprise the neighboring building owner, and business employees, of the current situation and any activities to be performed on the slope.

12. On April 1, 2004, Ohio EPA notified Respondent Garfield Development Company LLC that the slope failure appeared to have occurred as a direct result of Respondents' failure to comply with OAC Rule 3745-27-13 (J) and (K) and the conditions of the December 3, 2003 authorization.
13. On May 18, 2004, Ohio EPA conducted an inspection of the Mound and observed numerous cracks at the top of the Mound indicative of a deep-seated slope failure. Ohio EPA orally notified Respondents of the results of this inspection in a telephone message on May 19, 2004, and in conference calls on May 20, 2004 and May 21, 2004.
14. The condition of the slope has continued to deteriorate. Ohio EPA believes that a major slope failure in the immediate future is a very real possibility. The failing Mound has already extended approximately ten (10) to fifteen (15) feet into the adjoining parking lot.
15. A major slope failure could potentially harm individuals in the area, including patients and visitors to the Garfield Heights Primary Care facility and visitors and employees of the other businesses located in the Southside Corporate Center. In addition, a major slope failure may result in the exposure of putrescent waste, which may attract vermin and potential disease vectors, and may induce internal fires.
16. ORC Section 3734.13(B) provides in part that "[i]f the director determines that an emergency exists requiring immediate action to protect the public health or safety or the environment, he may issue an order without notice or hearing, reciting the existence of the emergency and requiring that such action be taken as necessary to meet the emergency. The order shall take effect immediately. Any person to whom the order is directed shall comply immediately...."
17. Respondents are "persons" as that term is defined in ORC Section 3734.01(G) and OAC Rule 3745-27-01(P)(3).
18. Based upon the foregoing, the Director of Ohio EPA has determined that conditions at the Facility pose an emergency requiring immediate action to protect public health or safety or the environment.

## **V. ORDERS**

Respondents shall implement the following activities in compliance with the following schedule:

1. Within two (2) days after the effective date of these Orders, Respondents shall:

- a. post a sign in the area where the Facility slope failed warning the public of the danger of unstable soil and waste material. The sign shall be of tri-fold design and be legible from all angles of the parking lot which adjoins the Facility on the western side;
  - b. erect a temporary fence or other means of preventing public access to all areas which may be impacted by future Facility slope failures.
2. Within one hundred twenty days (120) days after the effective date of these Orders, Respondents shall stabilize the Mound. Stabilization shall be achieved when the Mound shows no movement.
3. Beginning immediately upon the effective date of these Orders and continuing until the Mound has been stabilized, Respondents shall perform the following activities:
  - a. Respondents shall install inclinometers placed approximately 10 feet into bedrock at the toe of the slope of the Mound and at such a spacing as to best represent the entire length of the failure area in order to monitor stabilization efforts.
  - b. Respondents shall achieve stabilization through one or more of the following:
    - 1.) The relocation of solid waste and soil materials to other areas at the Facility as approved by Ohio EPA in writing prior to the relocation of any solid waste or soil materials to such areas;
    - 2.) The relocation of solid waste to a licensed solid waste disposal facility;
    - 3.) The buttressing of the toe of the western slope of the Mound with soil or concrete; and /or
    - 4.) The construction of a retaining wall which has been approved by Ohio EPA in writing prior to the construction of the retaining wall.
  - c. If relocation of solid waste at the Facility is performed pursuant to these Orders and excavation and/or grading activities are suspended for more than twenty-four (24) hours, Respondents shall cover all areas of exposed solid waste in the Mound and/or other areas of solid waste relocation with either six inches of soil or some form of impermeable material to prevent surface water infiltration.
4. Beginning immediately upon the effective date of these Orders and continuing until termination, Respondents shall cover the cracks on the western slope of the Mound with an impermeable substance such as Posi-shell or plastic sheeting or other like material, or repair the cracks by grading the slope of the Mound. The slope shall be maintained by covering and repairing all subsequent cracks for the duration of these Orders.

5. To the extent that the Facility or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondents, Respondents shall use their best efforts to secure from such persons access for Respondents and Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondents shall be provided to Ohio EPA upon request. If any access required to implement these Orders is not obtained within seven (7) days of the effective date of these Orders, or within seven (7) days of the date Ohio EPA notifies Respondents in writing that additional access beyond that previously secured is necessary, Respondents shall promptly notify Ohio EPA in writing of the steps Respondents have taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondents in obtaining access.

#### **VI. TERMINATION**

Respondents' obligations under these Orders shall terminate one hundred and twenty (120) days after the effective date of these Orders or when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have performed all obligations under these Orders and the Chief of Ohio EPA's Division of Solid and Infectious Waste Management acknowledges, in writing, the termination of these Orders, whichever occurs sooner. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondents of the obligations that have not been performed, in which case Respondents shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation from Respondents: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondents to Ohio EPA and shall be signed by Respondents.

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#### **VII. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondents.

#### **VIII. NOTICE**

All documents required to be submitted by Respondents pursuant to these Orders shall be addressed to:

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

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

### **IX. RESERVATION OF RIGHTS**

Ohio EPA reserves the right to seek legal and equitable relief to enforce the terms and conditions of these Orders, including penalties against Respondents for noncompliance with these Orders. Ohio EPA reserves the right to take any action and pursue any claim against Respondents and any other potentially liable parties, including but not limited to, any administrative, civil or criminal enforcement action or claim, pursuant to any available legal authority, as a result of past, present or future violations of state or federal laws or regulations, as a result of the common law and/or as a result of events or conditions arising from or related to the Facility.

Ohio EPA specifically reserves the right to require Respondents to remove and/or relocate solid waste and other materials at the Facility and/or other areas, including but not limited to solid waste and other materials placed at the Facility and/or other areas pursuant to these Orders, as a result of past, present or future violations of state or federal laws or regulations, as a result of the common law and/or as a result of events or conditions arising from or related to the Facility.

### **X. EFFECTIVE DATE**

The effective date of the Orders is the date these Orders are entered into the Ohio EPA Director's Journal.

**IT IS SO ORDERED:**

**Ohio Environmental Protection Agency**

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Christopher Jones, Director