

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

McGill Property Group, LLC :
30575 Bainbridge Road, Suite 100 :
Solon, Ohio 44139 :

and :

Garfield Land Development, LLC :
30575 Bainbridge Road, Suite 100 :
Solon, Ohio 44139 :

and :

GHLFP, LLC :
30575 Bainbridge Road, Suite 100 :
Solon, Ohio 44139 :

Respondents :

Director's Interim Final
Findings and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to McGill Property Group, LLC ("MPG", formerly Heritage Development Company, LLC), Garfield Land Development, LLC ("Garfield"), and GHLFP, LLC ("GHLFP") (collectively, "Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Sections 3734.02(G), 3734.02(H), 3734.13(A) and 3745.01 and Ohio Administrative Code ("OAC") Rules 3745-27-03(B) and 3745-27-13.

II. PARTIES

These Orders shall apply to and be binding upon Respondents and their successors in interest liable under Ohio law. No changes in ownership of the Respondents or of the R&B Development Landfill or of the Matousek Landfill (collectively referred to as the "Facilities") shall in any way alter the Respondents' obligations under these Orders.

III. DEFINITIONS

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.

IV. FINDINGS

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

1. The Facilities are two closed municipal solid waste disposal landfills located north and south of the intersection of Antenucci Boulevard and Transportation Boulevard in Garfield Heights, Cuyahoga County, Ohio.
2. Respondents Garfield and GHLFP are the "owner[s]" and/or "operator[s]" of portions of the Facilities as those terms are defined in OAC Rule 3745-27-01(O)(7) and (5), respectively.
3. Respondent MPG is an "operator" of the portions of the Facilities owned by Respondents Garfield and GHLFP as that term is defined in OAC Rule 3745-27-01(O)(5).
4. Respondents are "persons" as that term is defined in ORC Section 3734.01(G) and OAC Rule 3745-27-01(P)(3).
5. On December 3, 2003, Ohio EPA issued an authorization pursuant OAC Rule 3745-27-13 to Peter J. Limited, a prior owner and/or operator of the Facilities, to conduct solid waste excavation, relocation, and consolidation at the Facilities in accordance with the terms and conditions of the authorization.
6. On or about February 2, 2004, Respondent MPG, commenced waste excavation, relocation, and consolidation activities at the R&B Development Landfill.
7. On March 23, 2004, Ohio EPA received a telephone call from Sam Cannata, a property owner adjacent to the R&B Development Landfill, indicating that a portion of the slope of the R&B Development Landfill Northeast Mound ("Mound"), permanent

parcel number 542-27-003, which is owned by GHLFP, had failed and had damaged the eastern portion of his parking lot. Sam Cannata and David Snider own a commercial office complex known as the Southside Corporate Center, which is located at 5595 Transportation Boulevard, Garfield Heights, Ohio 44125.

8. OAC Rule 3745-27-13(J) states “[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 unless such activities will not result in violation of applicable laws and regulations administered by the director, will not create a nuisance, and will not adversely affect the public safety or health or the environment.
9. Condition Number 1 of the December 3, 2003, authorization states “[a]ll activities undertaken shall not create a nuisance and shall not adversely affect public safety or health or the environment.”
10. The slope failure constitutes a nuisance and adversely affects public safety and further violates OAC Rule 3745-27-13(J) and Condition Number 1 of the December 3, 2003 authorization.
11. On May 25, 2004, Ohio EPA issued Emergency Final Findings and Orders (“Emergency Orders”), pursuant to ORC Section 3734.13(B), to Respondents MPG and Garfield, requiring, in part, that they stabilize the Mound within one hundred twenty (120) days after the effective date of the Emergency Orders.
12. Respondents failed to stabilize the Mound within 120 days after the effective date of the Emergency Orders.
13. In correspondence dated September 28, 2004, Ohio EPA notified Respondents that the Emergency Orders had expired on September 22, 2004, and that the failure to stabilize the Mound within 120 days constituted a violation of the Emergency Orders.
14. ORC Section 3734.11(A) states that “[n]o person shall violate any section of this chapter, any rule adopted under it, or any order issued under section 3734.13 of the Revised Code.”
15. ORC Section 3734.13(A) states that “[t]he director of environmental protection may issue, modify, suspend, or revoke enforcement orders in accordance with Chapter 3745. of the Revised Code to a holder of a registration certificate, permit, or license issued by the director or a board of health under this chapter, or to another person, directing the holder or person to abate a violation, or to prevent any threatened violation, of any section of this chapter other than sections 3734.90 to 3734.9013 [3734.90.13] of the Revised Code, a rule adopted thereunder, or a term or condition

of a permit, license, or variance issued thereunder within a specified, reasonable time.”

16. On October 5, 2004, Ohio EPA received a document titled City View Center, Northeast Mound (NEM) Slope Stability, Garfield Heights, Ohio, September 24, 2004, Revised October 5, 2004 (“October 5, 2004 Plan”) from David V. Lewin Corporation on behalf of Respondents. Respondents represented to Ohio EPA that they desired to stabilize the Mound through the installation of a stone and geogrid reinforced embankment that will provide resistance to the sliding mass. Respondents proposed to undertake the reconstruction activities in the following steps:

- Step 1: excavate the soil cap down to a predetermined location;
- Step 2: install temporary leachate drains to dewater the Mound at an elevation above 910 feet mean sea level (“MSL”) and lower straws when leachate level slows;
- Step 3: remove temporary leachate drains and continue to excavate soil cover from the top down to approximately 910 feet MSL.
- Step 4: excavate dewatering pits in the Mound below an elevation of 890 feet MSL; and
- Step 5: continue top down excavation of soil cover to shale bedrock.

Steps 6 through 9 detailed the specific actions to be taken to reconstruct the Mound slope with the installation of a stone and geogrid reinforced berm.

17. On October 29, 2004, Ohio EPA issued Interim Director's Final Findings and Orders to Respondents requiring the performance of work similar to steps 1 through 4 of the October 5, 2004 Plan described above.
18. Respondents have indicated to Ohio EPA that they no longer desire to perform steps 6 through 9 as described in the October 5, 2004 Plan, but instead desire to completely remove and relocate solid waste and soil from the property owned by Sam Cannata and David Snider.
19. On November 16, 2004, Ohio EPA received a document entitled Northeast Mound Repair Plan, R & B Development Landfill, for the City View Center, Garfield Heights, Cuyahoga County, Ohio, November 16, 2004. On November 22, 2004, December 2, 2004, December 15, 2004, December 23, 2004, January 6, 2005, and February 7, 2005, and February 9, 2005, Ohio EPA received revisions to the document dated November 19, 2004, December 2, 2004, December 14, 2004, December 23, 2004, January 5, 2005 and February 4, 2005, and February 8, 2005. The document and subsequent revisions, attached hereto and incorporated herein as Appendix A, were

prepared by David V. Lewin Corporation and submitted by McCabe Corporation on behalf of Respondent GHLFP.

20. Appendix A details the specific activities associated with the removal and relocation of solid waste and soil from the property owned by Sam Cannata and David Snider and repair of the Mound slope failure.
21. On February 7, 2005, Ohio EPA received a written request for an exemption under ORC 3734.02(G) for the temporary stockpiling and relocation of waste to be excavated from the Mound and subsequently placed above the vertical limits of waste placement on portions of the Facilities owned by Respondents Garfield and GHLFP. Respondents' request for an exemption was contained within a plan sheet referred to as the, Compliance Grading Plan, attached hereto and incorporated herein as Appendix B.
22. On February 7, 2005, Ohio EPA received a written request for an exemption under ORC 3734.02(G) for the relocation of solid waste to be excavated from a portion of the former Matousek Landfill and subsequently placed above the vertical limits of waste placement on that portion of the Facilities owned by Respondent Garfield known as the Block C property. Respondents' request for an exemption was contained within a plan sheet referred to as the Block C Compliance Grading Plan, attached hereto and incorporated herein as Appendix C.
23. In conjunction with the repair of the Mound slope failure, Respondents desire to temporarily stockpile and then permanently relocate solid waste and soil excavated from the Mound onto portions of the Facilities which are owned by one or more of the Respondents and which are in areas above the vertical limits of waste placement for the Facilities, as detailed in Appendix B.
24. In conjunction with the development of the City View Center project, Respondents desire to relocate solid waste and soil excavated from a portion of the former Matousek Landfill onto that portion of the Facilities which are owned by Respondent Garfield known as the Block C property and placed above the vertical limits of waste placement for the Facilities, as detailed in Appendix C. Respondents requested authorization to conduct soil relocation activities for the City View Center project in an application submitted to Ohio EPA under ORC Section 3734.02(H) and OAC Rule 3734-27-13.
25. OAC Rule 3745-27-02 and ORC Sections 3734.02(C) and 3734.05(A)(2) prohibit the modification of a solid waste facility without first obtaining a permit to install issued by the Director.

26. ORC Section 3734.02(G) and OAC Rule 3745-27-03(B) provide that the Director may exempt any person generating, collecting, storing, treating, disposing of, or transporting solid wastes, including scrap tires, from any requirement of ORC Chapter 3734., or any rules adopted thereunder if granting the exemption is unlikely to adversely affect the public or safety or the environment.
27. Upon review of the information supplied in Appendices B, C and D, I have determined that placing solid waste from the Mound in areas which are owned by one or more of the Respondents and which are above the vertical limits of solid waste placement at the Facilities as detailed in Appendices B and D, and placing solid waste excavated from the former Matousek Landfill in the area known as the Block C property which is owned by Respondent Garfield and which is above the vertical limits of waste placement at the Facilities as detailed in Appendix C, is unlikely to adversely affect the public health or safety or the environment provided all the terms and conditions of these Orders are complied with.

V. ORDERS

1. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), Respondents are hereby exempted from the requirement to obtain a modification for the R&B Development Landfill and the Matousek Landfill under ORC Sections 3734.02(C) and 3734.05(A)(2) and OAC Rule 37345-27-02, to allow Respondents to place solid waste above the vertical limits of solid waste placement at the R&B Development Landfill and Matousek Landfill as set forth in these Orders, including the Appendices B, C and D attached hereto; provided however, Respondents comply with all terms and conditions of these Orders. The Director may revoke this exemption if Respondents violate, or are likely to violate, any applicable law, if the continued implementation of the work provided for in Appendices A, B, C or D causes or may cause a threat to human health or safety or the environment, or if Respondents fail to comply with any term or condition of these Orders.
2. Upon the effective date of these Orders, Respondents shall perform waste stabilization and relocation activities at the Facilities in accordance with Appendices A, B, C and D, attached hereto and incorporated herein. Respondents shall conduct all activities in strict accordance with these Orders, including Appendices A, B, C and D. Respondents shall not deviate from these Orders, including Appendices A, B, C and D, without prior written authorization from Ohio EPA. Any activities other than those identified in Appendices A, B, C and D, and any other future activities to repair the Mound slope failure at the Facilities, will require additional written authorization from Ohio EPA.

3. To the extent that the 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. Ohio EPA may, as it deems appropriate, assist Respondents in obtaining access.
4. While undertaking the activities detailed in Appendix A, Respondents shall inspect the crest of the Mound for the formation of cracks and slippage of weak materials into the construction area. At a minimum, Respondents shall conduct and document inspections two times per day, once in the morning and once in the evening. Respondents shall remove any soil and/or waste materials that have slipped from the Mound until the weak materials cease to move and cracks no longer form.
5. Respondents shall perform all activities under these Orders in a manner that prevents migration of leachate, explosive gas, or toxic gas from the areas of the Facilities affected by the work required under these Orders.
6. Respondents shall perform all activities under these Orders in a manner that does not create a nuisance and or adversely affect the public safety or health or the environment.
7. Respondents shall maintain daily field records documenting dates, times, and specific locations of all activities occurring at the Facilities pursuant to these Orders.
8. Upon the effective date of these Orders, Respondents shall cause all liquids, semi-solids, industrial wastes, and other wastes regulated by ORC Chapter 6111. that are removed during intrusive activities to be collected and securely stored until these materials are properly characterized and disposed in accordance with all applicable state laws and regulations.
9. Prior to removal of any non-liquid waste or contaminated soil from the Facilities, Respondents shall submit copies of sample analysis results, the treatment or disposal method selected, and a letter of acceptance from the treatment or disposal facility to Ohio EPA, NEDO.
10. For the purposes of erosion control during all phases of construction at the Facilities, Respondents shall use best management practices and standards as specified in the Ohio Department of Natural Resources manual titled Rainwater and Land Development.

11. Respondents shall not use waste material, including but not limited to construction and demolition debris, solid or hazardous waste, to backfill the excavated areas in the event that excavation occurs outside the limits of waste placement at the Facilities.
12. Prior to the completion of solid waste removal from the Mound and/or relocation of solid waste from the Matousek Landfill, Respondents shall ensure that any areas from where solid waste is not actively being removed shall be covered with at least 6" of soil or Topcoat™ applied at a minimum thickness of 80 Mil. Any exposed solid waste areas that have not actively received solid waste within the last 24 hours will also be covered with at least 6" of soil or Topcoat™ applied at a minimum thickness of 80 Mil. All active exposed solid waste areas will be covered at the end of the working day with either 6" of soil, a geotextile material (tarp) or Topcoat™.
13. Upon completion of solid waste removal from the Mound and/or relocation of solid waste from the Matousek Landfill, Respondents shall ensure that a minimum thickness of 80 Mil Topcoat™ (or a 12" soil cover) is maintained on the Mound and the temporary stockpile and on areas of the Facilities where solid waste is permanently relocated under these Orders.
14. Respondents shall re-establish the final cover system for any portions of the Facilities where the cap is removed as a result of activities under these Orders no later than September 1, 2005, in accordance with the following specifications:
 - A. Material specifications:
 - 1). 100% of the material particles shall pass a 10" screen, with no more than two (2) particles from a 50 cubic foot sample retained on a 6" screen;
 - 2). Not less than 95% of the material particles shall pass a 3" screen;
 - 3). Not less than 70% of the material particles shall pass the #10 sieve;
 - 4). The material that passes the #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.
 - B. Construction specifications:

- 1). The materials 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).
- 2). The material shall be compacted using loose lifts, no greater than eight (8) inches thick prior to compaction.

C. Testing specifications:

- 1). The suitability of 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, except as noted below.
 - a. Sieve and hydrometer testing (ASTM D-422) for particle size gradation; and
 - b. Moisture/density relationship using either Standard Proctor (ASTM D-698) or Modified Proctor (ASTM D-1557) method.
 - c. A moisture content range shall be determined for each soil type to achieve maximum allowable permeability pursuant to Order No. 14(C)(4) of these Orders. Tests shall be performed on representative soil samples at least once for every 10,000 cubic yards of material intended for use.
- 2). Prior to testing, the samples shall be screened to remove any particles larger than three (3) inches. Written results of this testing shall be submitted to Ohio EPA, NEDO not later than seven (7) days prior to its intended use in cap construction.
- 3). 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 (5) 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 must be determined on an individual basis with concurrence from Ohio EPA.

- 4). 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, ASTM D-3385: SDRI) 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:
 - a. For field permeability tests (ASTM D-6391, ASTM D-5093, ASTM D-3385), the maximum allowable permeability is 1×10^{-5} cm/sec.
 - b. For laboratory permeability tests (ASTM D-5084 or USACE EM-110: Shelby tubes, soil blocks), the maximum allowable permeability is 1×10^{-6} cm/sec. If Method EM-110 is used, samples shall be tested a minimum of 95% saturation.
 - 5). Any penetrations into the cap layer resulting from either compaction or permeability testing shall be repaired using bentonite or a bentonite/soil mixture.
15. Waste excavated from the Mound shall be removed for appropriate off-site treatment, storage and disposal, or temporarily stored and relocated on property which is owned by one of more Respondents and which is within the waste limits established by the Compliance Grading Plan, attached hereto as Appendix B, in the following manner:
- A. Temporary storage of waste: Solid waste may be temporarily stored within the limits of waste placement established for temporary storage of solid waste in Appendix A. Temporarily stored solid waste shall be covered and leachate and surface water controls shall be clearly delineated on daily logs. Except as authorized by these Orders, wastes shall not be temporarily stored or stockpiled on the Mound.
 - B. Waste relocation: Excavated solid waste shall be permanently relocated to areas authorized under Appendix B. In no event shall solid waste be placed at any elevation lower than the existing waste elevations at any given location or outside of the existing horizontal limits of waste placement. Except as authorized by these Orders, wastes shall not be relocated onto the Mound. Respondents shall reconfigure the Mound in accordance with Appendix B and such that the top contours have positive drainage, as reflected in Topography Map #38, attached hereto and incorporated herein as Appendix D. Under no circumstances shall the Mound's final elevations exceed existing elevations, except in the area of the failure and in areas immediately adjacent thereto.

- C. Waste removal for off-site disposal: Any waste removed or required to be removed from the Facilities shall be sent off site for treatment or disposal at a licensed and/or permitted facility in accordance with ORC Chapter 3734. and the regulations promulgated thereunder.
16. Waste excavated from the Matousek Landfill shall be removed for appropriate off-site treatment, storage and disposal, or permanently relocated on property which is owned by Respondent Garfield known as the Block C property and which is within the waste limits established by the Block C Compliance Grading Plan, attached hereto as Appendix C, in the following manner:
- A. Waste relocation: Excavated solid waste shall be permanently relocated to areas authorized under Appendix C. In no event shall solid waste be placed at any elevation lower than the existing waste elevations at any given location or outside of the existing horizontal limits of waste placement.
- B. Waste removal for off-site disposal: Any waste removed or required to be removed from the Facilities shall be sent off site for treatment or disposal at a licensed and/or permitted facility in accordance with ORC Chapter 3734. and the regulations promulgated thereunder.
17. Respondents shall stabilize the Mound and complete the permanent relocation of all wastes removed from the Mound and from the Matousek Landfill to areas authorized under these Orders by September 1, 2005, except as otherwise required by Ohio EPA.
18. Not later than sixty (60) days after completing the activities set forth in Appendices A, B and D, Respondents shall submit to Ohio EPA a certification report that contains the information required by OAC Rule 3745-27-13(H)(10)(a) and (b).
19. Not later than sixty (60) days after completing the activities set forth in Appendix C, Respondents shall submit to Ohio EPA a certification report that contains the information required by OAC Rule 3745-27-13(H)(10)(a) and (b).

VI. TERMINATION

Respondents' obligations under these Orders shall terminate 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. 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 outstanding obligations and seek termination as described above.

The certification shall contain the following attestation: "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 a responsible official of the Respondents. For purposes of these Orders, a responsible official is a principal executive officer of at least the level of vice president.

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. 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 or corporation, not a party to these Orders, for any liability arising from, or related to Respondents and/or the Facilities.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. 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

2110 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.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents each reserve all rights, privileges, defenses and causes of action, except as specifically waived in Section XIII. of these Orders.

XII. INDEMNIFICATION

Respondents agree to indemnify, save, and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to, any acts or omissions of Respondents and/or Ohio EPA, its officers, employees, agents, representatives, or assigns, arising from or related to the Facilities and/or the Work required under these Orders. Ohio EPA agrees to provide notice to the Respondents within thirty (30) days after receipt of any claim which may be the subject of indemnity as provided in this Section, and to cooperate with Respondents in the defense of any such claim or action against Ohio EPA. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by Respondents in carrying out the activities pursuant to these Orders.

XIII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, Respondents consent to the issuance of these Orders and agree to comply with these Orders.

The Respondents hereby waive the right to appeal the issuance, terms and service of these Orders, and the Respondents hereby waive 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 Respondents agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, the Respondents retain the right to intervene and participate in such appeal. In such an event, the Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

XIV. EFFECTIVE DATE

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

XV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

McGill Property Group , LLC

Signature

Date

Garfield Land Development Company, LLC

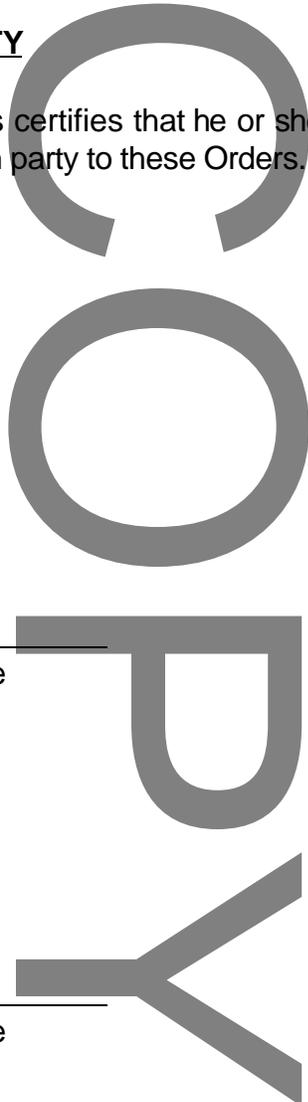
Signature

Date

GHLFP, LLC

Signature

Date



IT IS SO ORDERED:

Ohio Environmental Protection Agency

Joseph P. Koncelik, Director

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