

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

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

:
:
:

Director's Final Findings
and Orders

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

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to McGill Property Group, LLC ("McGill"), 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 3734.13(A), 6111.03 and 3745.01, and Ohio Administrative Code ("OAC") Rule 3745-27-12(I).

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondents and their successors in interest liable under Ohio law. No change in ownership of the Respondents or of the portion of the R&B Development Landfill owned by Respondents will in any way alter Respondents' responsibilities 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 has determined the following findings:

1. The R&B Development Landfill and the Matousek Landfill are adjacent closed municipal solid waste disposal facilities, which are located south of the intersection of Antenucci Blvd. and Transportation Blvd., in Garfield Heights, Cuyahoga County, Ohio (the "Facilities").
2. Respondents are "person[s]" as that term is defined in ORC Section 3734.01(G) and Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).
3. Respondents 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.
4. On March 1, 2005, Ohio EPA issued Interim Final Findings and Orders ("March 1, 2005 Orders") to Respondents to stabilize the Western slope of the northeast mound ("Western Slope of the Mound") on the R & B Development Landfill and to conduct limited waste relocation activities at the Facilities in accordance with Appendices A, B, C and D of those Orders.
5. On March 18, 2005, Ohio EPA issued Final Findings and Orders ("March 18, 2005 Orders") to Respondents. The March 18, 2005 Orders authorized Respondents to conduct construction activities to complete the City View Center. The March 18, 2005 Orders also required Respondents to execute and fund a financial assurance instrument for final closure of those portions of the Facilities owned and operated by Respondents.

Failure to Stabilize the Western Slope of the Mound

6. Order 2 of the March 1, 2005 Orders states, in part, "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."
7. Appendix A, Step 8 of the March 1, 2005 Orders states, in part, "The stability of the slope shall be analyzed using the field verified location of the bedrock ledge. This analysis should be submitted to OEPA the following day. It is understood that this submittal will be provided to OEPA following their provisional authorization to

- proceed. This authorization is conditional upon the David V. Lewin Corp. providing the stability analysis during construction.”
8. Appendix A, Step 9 of the March 1, 2005 Orders states, in part, “Following construction, inclinometers should be installed on the western face of the mound to confirm the stabilization of the slope. The inclinometers shall be anchored into sound bedrock at the toe of the slope of the mound and at such spacing as to best represent the entire length of the previous failure area in order to monitor stabilization efforts.”
 9. Order 14C.2 of the March 1, 2005 Orders states, in part, “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 it’s intended use in cap construction.”
 10. Order 17 of the March 1, 2005 Orders states, “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.”
 11. Order 18 of the March 1, 2005 Orders states, “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).”
 12. In violation of the March 1, 2005 Orders, Respondents failed to comply with Order 2, Appendix A, Step 8, Appendix A, Step 9, Order 14C.2, Order 17 and Order 18. By notices of violation (“NOVs”) dated September 9, 2005 and December 6, 2005, Ohio EPA informed Respondents of these violations.
 13. In correspondence to Ohio EPA dated September 27, 2005, Respondents stated, “[d]uring a recent meeting with a Lewin¹ representative, Ohio EPA requested that two (2) additional inclinometers be installed approximately one-third to one-half way up the slope of the NEM[.] [U]pon further reflection, Lewin has expressed certain concerns to Respondents regarding the install [*sic*] of the additional inclinometers in locations requested by the agency. Simply stated, Lewin is concerned that any disturbance to the mound, i.e. cutting a midslope bench or adding water during drilling, could possibly cause an instability on the NEM[.]”
 14. In a memorandum to Respondents dated October 21, 2005, Respondents’ geotechnical consultant recommended against installation of additional

¹David V. Lewin Corp. (“Lewin”), Respondents’ geotechnical consultant

inclinometers on the Western Slope of the Mound because “[a]ttempted inclinometer well installation would:

- disturb the mound due to the vibration of heavy equipment cutting a roadway and a bench for drill rig access and replacing the cut;
 - allow for infiltration of rainwater across the length of the fresh cut slope;
 - obliterate the stand of grass on the slope;
 - introduce thousand of gallons of water required for drilling; and,
 - compromise the stability of the slope.”
15. In an interoffice memorandum dated February 22, 2006, Ohio EPA's slope stability expert concluded, after reviewing cross-sectional and inclinometer data from information dated January 6, 2006, and February 3, 2006, that the Western Slope of the Mound has failed, with the possibility of additional areas of movement, and recommended that the Western Slope of the Mound be stabilized or removed as soon as possible.
16. In another interoffice memorandum dated April 11, 2006, Ohio EPA's slope stability expert again concluded, after reviewing additional inclinometer data from information dated March 31, 2006, that “[t]he inclinometer data shows that the mound is still moving along one or more surfaces in the same trend as the previous readings, therefore, it appears that the mound is still failing....In summary, it is still recommended that the mound be stabilized or removed as soon as possible.”

Leachate and Storm Water Violations at the Mound

17. On August 5, 2005 and August 15, 2005, Ohio EPA inspected the City View Center construction site. Ohio EPA personnel observed leachate discharging from the northwest corner of the Mound and flowing off-site into a storm water catch basin in the adjacent Snider-Cannata parking lot.
18. By NOV dated August 18, 2005, Ohio EPA informed Respondents of violations associated with the migration of leachate from the Mound to the Snider-Cannata property:
- a. ORC Section 6111.04 - causing pollution of waters of the state;
 - b. March 1, 2005 Orders, Order 5 - failure to perform all activities under these Orders in a manner to prevent migration of leachate, explosive gas, or toxic gas from areas of the facilities affected by work required under these Orders;

- c. March 18, 2005 Orders, Order A.1) - failure to comply with all terms and conditions of the R & B Development Landfill December 3, 2003 OAC Rule 3745-27-13 Authorization;
 - d. March 18, 2005 Orders, Order A.5) - failure to conduct all on-site activities in compliance with all applicable state and federal laws and regulations pertaining to environmental protection, including, but not limited to, the control of leachate;
 - e. March 18, 2005 Orders, Order A.9) - failure to collect and securely store all liquids, semi-solids, industrial wastes and other wastes regulated by ORC Chapter 6111., including leachate, that are removed during intrusive activities, until these materials are properly characterized and disposed in accordance with ORC Chapter 6111. and the regulations promulgated thereunder;
 - f. December 3, 2003 OAC Rule 3745-27-13 R & B Development Landfill Authorization, Condition 2 - failure to conduct all onsite activities in compliance with all applicable state and federal laws and regulations pertaining to environmental protection, including, but not limited to, the control of leachate;
 - g. December 3, 2003 OAC Rule 3745-27-13 R & B Development Landfill Authorization, Condition 11 - failure to collect and securely store all liquids, semi-solids, industrial wastes and other wastes regulated by ORC Chapter 6111., including leachate, that are removed during intrusive activities, until these materials are properly characterized and disposed in accordance with ORC Chapter 6111.; and
 - h. December 3, 2003 OAC Rule 3745-27-13 R & B Development Landfill Authorization, Condition 22 - failure to repair leachate outbreaks encountered while conducting activities at the landfill.
19. On July 12, 2005, the Cuyahoga County Board of Health ("CCBH") observed a leachate outbreak on the western slope of the Mound.
 20. By NOV dated August 30, 2005, CCBH informed Respondents of violations associated with the leachate outbreak on the western slope of the Mound:
 - a. March 18, 2005 Orders, Order A.1);
 - b. March 18, 2005 Orders, Order A.5);

- c. March 18, 2005 Orders, Order A.9);
 - d. March 18, 2005 Orders, Appendix Q - failure to implement the *Leachate Management Contingency Plan*, which specifically states how leachate outbreaks will be addressed and monitored;
 - e. OAC Rule 3745-27-13(H)(6) - failure to store any liquid wastes released during the authorized activities in accordance with ORC 3734. until characterized, treated, and disposed;
 - f. December 3, 2003 OAC Rule 3745-27-13 R & B Development Landfill Authorization, Condition 2;
 - g. December 3, 2003 OAC Rule 3745-27-13 R & B Development Landfill Authorization, Condition 11; and
 - h. December 3, 2003 OAC Rule 3745-27-13 R & B Development Landfill Authorization, Condition 22.
21. On August 15, 2005 and August 24, 2005, Ohio EPA observed leachate discharging from the Mound into the Snider-Cannata storm water catch basin.
 22. On August 26, 2005, Ohio EPA observed a trench-cut commencing in the area of the previously observed leachate outbreaks on the Mound and leading directly to the storm water catch basin located in the Snider-Cannata parking lot.
 23. On August 27, 2005, Ohio EPA observed that the trench had been backfilled and also observed leachate entering the storm water catch basin (located in the Snider-Cannata parking lot) via an inlet within the basin.
 24. On September 1, 2005, Ohio EPA field investigators confirmed that a drainage tile had been installed in the area of the previous leachate outbreaks on the Mound. This tile drained into the storm water catch basin located in the Snider-Cannata parking lot. Ohio EPA later confirmed that this storm drain discharged into the Cuyahoga River.
 25. By NOV dated September 9, 2005, Ohio EPA informed Respondents of violations associated with the migration of leachate from the Mound to the storm water catch basin on the Snider-Cannata property:
 - a. ORC Section 6111.04;
 - b. March 1, 2005 Orders, Order 5; and
 - c. March 1, 2005 Orders, Order 8 - failure to collect and securely store all liquids, semi-solids, industrials wastes and other wastes regulated by ORC

Chapter 6111., that are removed during intrusive activities to be until these materials are properly characterized and disposed of in accordance with all applicable state laws and regulations.

26. By letter date October 7, 2005, Respondents' consultant informed Ohio EPA that the upstream end of the drainage tile had been capped on August 30, 2005, and on September 30, 2005, a section of the tile had been removed from the trench.
27. On September 8, 2005, September 21, 2005, September 29, 2005, October 13, 2005, and November 14, 2005, Ohio EPA observed leachate entering the storm water catch basin in the Snider-Cannata parking lot. Although the drainage tile has been capped, Ohio EPA believes that the gravel-filled trench provides a preferential pathway for the migration of leachate from the Mound into the basin.
28. By NOV dated December 6, 2005, Ohio EPA informed Respondents of violations associated with the migration of leachate from the Mound to the Snider-Cannata property:
 - a. ORC Section 6111.04; and
 - b. March 1, 2005 Orders, Order 5.
29. On March 29, 2006, Ohio EPA again observed leachate migrating from the Mound to the Snider-Cannata storm water catch basin.

Explosive Gas Monitoring Violations at the Mound

30. On May 26, 2005, Ohio EPA approved the explosive gas monitoring plan ("EGMP") for the R & B Development Landfill. The EGMP required Respondents to install two permanent monitors, GP-1 and GP-2, between the Mound and the Snider-Cannata parking lot.
31. By NOV dated December 6, 2005, Ohio EPA informed Respondents of violations associated with elevated landfill gas readings recorded by CCBH in the Snider-Cannata parking lot and in close proximity to the Southside Corporate Center building. CCBH recorded readings of 40% LEL at punch bar ("PB") location # 5 on March 17, 2005; 10% gas at PB location # 6 on May 19, 2005; 20% gas at PB location #7 on October 18, 2005; and 26% gas next to the building on October 23, 2005. CCBH's monitoring results indicate migration of explosive gas from the Mound in violation of:
 - a. March 1, 2005 Orders, Order 5; and
 - b. EGMP, Condition 5 - failure to install permanent monitors GP-1 and GP-2 not later than forty-five days after the locations became accessible.

In the same correspondence, Ohio EPA requested that Respondents submit a plan identifying what actions had been taken, or were to be taken, to abate the migration of explosive gas.

32. In correspondence dated December 22, 2005, Respondents requested to change the location and number of the permanent monitors installed between the Mound and the Snider-Cannata property.
33. On January 12, 2006, Ohio EPA received a submittal titled *Request to Install Additional Permanent Methane Monitors Along the Cannata Parking Lot and Northeast Mound Boundary*. The submittal included additional permanent monitors GP-3 and GP-4.
34. On February 7, 2006, Ohio EPA approved the January 12, 2006 submittal.
35. To date, Respondents have not yet installed permanent methane monitors GP-1, GP-2, GP-3, and GP-4.
36. Pursuant to OAC Rule 3745-27-12(I), "Upon the director's finding that explosive gas formation and migration threaten human health, safety or the environment, he may order the person identified in paragraph (A) of this rule to perform such measures to abate or minimize the formation or migration of explosive gas."

V. ORDERS

Respondents shall achieve compliance with ORC Chapter 3734. and the rules promulgated thereunder according to the following compliance schedule:

Stabilization of the Western Slope of the Mound

1. Within thirty (30) days after the effective date of these Orders, Respondents shall submit detail plans to Ohio EPA for review and approval. The detail plans shall include, at a minimum, discussion and representation of:
 - a. the volume of waste excavation necessary to achieve stabilization within the failure plane area on the Western Slope of the Mound;
 - b. the method(s) Respondents will use to stabilize the Western Slope of Mound;
 - c. slope stability analysis and final contour topographic map;
 - d. capping procedures after stabilization;

- e. the number and spacing of inclinometers to be installed on the Western slope of the Mound to best monitor stability after closure;
 - f. method(s) utilized during stabilization to protect the ancillary engineering structure existing at the toe of the Western Slope of the Mound;
 - g. method(s) utilized to grout the trench and inlet pipe at the toe of the Western Slope of the Mound to eliminate the preferential pathway to the storm water catch basin on the Snider-Cannata property;
 - h. location and environmental controls for all stockpiled materials; and
 - i. updated financial assurance estimates for closure that include all activities pursuant to these Orders.
2. Should Ohio EPA provide comments to Respondents regarding the detail plans submitted in accordance with Order No. 1 of these Orders, Respondents shall, within fourteen days of receipt of those comments, incorporate changes in the detail plans consistent with Ohio EPA's comments and resubmit the detail plans to Ohio EPA for review and approval. Ohio EPA may modify the detail plans as necessary for approval.
 3. Within thirty (30) days after approval by Ohio EPA of the detail plans required by Order No. 1 of these Orders, Respondents shall begin activities to stabilize the western slope of the Mound in accordance with the approved detail plans.
 4. While undertaking the activities in the approved detail plans, Respondents shall inspect the Western Slope 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 and repair settlement cracks in accordance with Appendix A of the March 1, 2005 Orders.
 5. Within ninety (90) days after beginning activities to stabilize the Western Slope of the Mound, in accordance with the approved detail plans, Respondents shall complete activities to stabilize the Western Slope of the Mound and install inclinometers in accordance with the number and spacing contained in the approved detail plans.
 6. Upon completion of activities to stabilize the Western Slope of the Mound, Respondents shall begin monitoring the inclinometers for a minimum of one year. Respondents shall monitor weekly for the first three months; bi-weekly for the following three months; and monthly for the remaining six months. Respondents shall submit monitoring results to Ohio EPA within seven (7) days after each monitoring occurrence.
 7. Within thirty (30) days after completion of activities to stabilize the Western Slope of the Mound, Respondents shall submit to Ohio EPA a certification report to certify that stabilization was conducted in accordance with the approved detail plans.

8. After completion of activities to stabilize the Western Slope of the Mound, Respondents shall conduct weekly inspections of the Western Slope of the Mound for at least one calendar year and repair settlement cracks in accordance with Appendix A of the March 1, 2005 Orders.
9. Three hundred and sixty-five (365) days after completion of activities to stabilize the Western Slope of the Mound, Respondents shall submit to Ohio EPA a certification report to certify the stability of the Western Slope of the Mound.
10. Prior to any removal of non-liquid waste or contaminated soil from the Mound, Respondents shall submit copies of sample analysis results to Ohio EPA.
11. All solid waste excavated and not reconsolidated within the Western Slope of the Mound shall be promptly taken to a licensed and permitted solid waste disposal facility. Respondents shall provide a copy of all disposal receipts for the solid waste removed from the Mound to Ohio EPA within seven (7) days after disposal.
12. Respondents shall comply with the March 1, 2005 and the March 18, 2005 Orders, as they pertain to activities conducted to stabilize the Western Slope of the Mound, for daily cover, weekly cover, prevention of the migration of leachate and explosive gas, erosion control, and storm water run-on and run-off.

Engineering Controls for Prevention of Explosive Gas Migration from the Mound

13. Upon the effective date of these Orders, Respondents shall install permanent methane monitors GP-1 through GP-4 pursuant to OAC Rule 3745-27-12 and the alteration to the EGMP alteration approved on February 7, 2006.
14. Within thirty (30) days after the effective date of these Orders, Respondents shall submit detail plans to Ohio EPA specifying the number, location, and method of installation of passive vents on the entire Mound to prevent off-site migration of explosive gas.
15. Should Ohio EPA provide comments to Respondents regarding the detail plans submitted in accordance with Order No. 14 of these Orders, Respondents shall, within fourteen days of receipt of those comments, incorporate changes in the detail plans consistent with Ohio EPA's comments and resubmit the detail plans to Ohio EPA for review and approval. Ohio EPA may modify the detail plans as necessary for approval.
16. Within one hundred and twenty (120) days after plan approval, Respondents shall complete installation of passive vents on the entire Mound in accordance with the approved detail plans.

17. Within thirty (30) days after completion of installation of passive vents on the entire Mound, Respondents shall submit a certification report that the vents were installed in accordance with the approved detail plans.

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 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 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 or the Facility.

VIII. NOTICE

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

Ohio Environmental Protection Agency
Northeast District Office
Division of Solid and Infectious Waste Management
1110 E. Aurora Road
Twinsburg, Ohio 44087-1969
Attn: Unit Supervisor, DSIWM

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

IX. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondents for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondents to perform additional activities pursuant to ORC Chapters 3734. and 6111. or any other applicable law in the future. Nothing herein shall restrict the right of Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondents. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

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

Joseph P. Koncelik, Director

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