**BEFORE THE**
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

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|---|---|---|
| McGill Property Group, LLC<br>30575 Bainbridge Road, Suite 100<br>Solon, Ohio 44139 | :<br>:<br>: | 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

and

C. J. Natale, Inc.
10000 Aurora Hudson Road, Suite B
Hudson, Ohio 44236

Respondents

and

The City of Garfield Heights
5407 Turney Road
Garfield Heights, Ohio 44125

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## PREAMBLE

It is agreed by the parties hereto as follows:

## I. JURISDICTION

1. 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"), GHLFP, LLC ("GHLFP"), and C. J. Natale, Inc., ("Natale") (collectively, "Respondents") and to the City of Garfield Heights ("Garfield Heights") 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), 6111.03, and 3745.01 and Ohio Administrative Code ("OAC") Rules 3745-27-03(B) and 3745-27-13.

## II. PARTIES BOUND

2. These Orders shall apply to and be binding upon Respondents, Garfield Heights and their successors in interest liable under Ohio law. No change in ownership of the Respondents or of the R&B Development Landfill ("R&B Facility") or of the Matousek Landfill ("Matousek Facility") will in any way alter Respondents' or Garfield Heights' 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' and Garfield Heights' obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA. Except for the Operation and Maintenance requirements contained in Section V.5.D of these Orders, Garfield Heights has no other obligations under these Orders.

## III. DEFINITIONS

3. Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapters 3734. and 6111. and the rules promulgated thereunder. Whenever the terms listed below are used in these Orders or in any appendices, attached hereto and incorporated herein, the following definitions shall apply:

   A. "Facilities" shall mean that portion of the R&B Development Landfill and the Matousek Landfill, located north and south of the intersection of Antennucci Blvd. and Transportation Blvd., in Garfield Heights, Cuyahoga County, Ohio, as designated in the map attached to these Orders as Appendix A, and includes parcel numbers 542-16-001, 542-16-003, 543-04-001, 542-27-003 and a portion of parcel number 543–07-001, which is owned by Respondent GHLFP.

   B. "Work" shall mean all activities Respondents and/or Garfield Heights are required and/or are authorized to perform under these Orders.

## IV. FINDINGS OF FACT

4. The Director of Ohio EPA has determined the following findings:

A. Division of Solid and Infectious Waste Management Findings

1). The R&B Development Landfill and the Matousek Landfill are two closed municipal solid waste disposal facilities, which are located north and south of the intersection of Antenucci Blvd. and Transportation Blvd., in Garfield Heights, Cuyahoga County, Ohio.

2). Respondents Garfield, GHLFP and MPG 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). Respondents are "persons" as that term is defined in ORC Section 3734.01(G) and OAC Rule 3745-27-01(P)(3).

4). The scope of the Work required under these Orders is confined to the portions of the Facilities currently owned by Respondents Garfield and GHLFP and currently under development by Respondent MPG for the future construction of the City View Center, a 128-acre commercial redevelopment project consisting of a proposed retail shopping center, associated parking areas, on-site utilities, as well as a 1.5 mile extension of Transportation Boulevard, a new road (Vista Way), and associated public utilities.

5). On December 3, 2003, the Director of Ohio EPA issued two authorizations under 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 authorizations.

6). On or about February 2, 2004, Respondent MPG commenced waste excavation, relocation, and consolidation activities at the Facilities.

7). On February 9, 2004, Ohio EPA's Northeast District Office, Division of Solid and Infectious Waste Management ("NEDO-DSIWM") received notice that Peter J. Limited had transferred ownership of portions of the Facilities to Respondent Garfield.

8). 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."

9). 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."

10). In violation of ORC Section 3734.02(H) and OAC Rule 3745-27-13(A), Respondents MPG, Garfield, and GHLFP failed to apply to the Director for authorization under OAC Rule 3745-27-13 prior to engaging in waste relocation and consolidation activities at the Facilities.

11). ORC Section 3734.42(F)(1) states, in part, "[w]henever there is a change in ownership of any off-site solid waste facility...the prospective owner shall file a disclosure statement with the attorney general and the director at least one hundred eighty days prior to the proposed change in ownership."

12). In violation of ORC Section 3734.42(F)(1), Respondents Garfield and GHLFP failed to file a disclosure statement with the attorney general and the director at least one hundred eighty days prior to the proposed change in ownership of the applicable portions of the Facilities from Peter J. Limited to Respondents.

13). 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, known as the Northeast Mound (hereinafter "Mound"), had failed and had damaged the eastern edge 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 Blvd., Garfield Heights, Ohio 44125.

14). On March 29, 2004, Ohio EPA conducted an inspection of the western

slope of the Mound of the R&B Development Landfill and observed the following:

a. The slopes appeared to be greater than the 2.5:1 contour approved in the December 3, 2003, OAC Rule 3734-27-13[1] authorization, 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, bulged at the toe-of-slope, and damaged the eastern side of the adjacent parking lot of the Southside Corporate Center.

c. Respondents installed an inclinometer 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.

15). 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 activity will not result in violation of applicable laws and regulations administered by the director, will not create a nuisance, and will not

[1]Unless otherwise stated, the December 3, 2003 authorization is for the R & B Facility.

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adversely affect the public safety or health or the environment.

16). OAC Rule 3745-27-13(K) states "Ohio EPA may ask for additional information or impose special terms and conditions upon any person engaging in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated as is appropriate or necessary to ensure compliance with all applicable laws and regulations administered by the director, and to ensure protection of public health and safety and the environment."

17). Condition No. 1 of the December 3, 2003, authorization issued to Peter J. Limited states "[a]ll activities undertaken shall not create a nuisance and shall not adversely affect public safety or health or the environment."

18). Condition No. 23 of the December 3, 2003, authorization issued to Peter J. Limited states, in part, "[w]ithin 30 days of the effective date of this authorization, Peter J. Limited shall execute and fund a financial assurance instrument in the amount of $500,000.00...."

19). Condition No. 24 of the December 3, 2003, authorization issued to Peter J. Limited states "[t]his authorization provides approval for Peter J. Limited to conduct only those activities listed in the request submitted on August 5, 2003, and the subsequent revision. Peter J. Limited shall conduct no other filling, grading, excavating, building, drilling or mining without prior approval from Ohio EPA."

20). In a notice of violation (NOV) letter dated April 1, 2004, Ohio EPA informed Respondent Garfield that the Mound height and slope contours were not constructed in accordance with the final grade elevations and slope contours approved in the December 3, 2003, authorization issued to Peter J. Limited and may have caused or contributed to the slope failure. The slope failure had resulted in a nuisance and had adversely affected public safety, and violated OAC Rule 3745-27-13(J) and (K) and Conditions No. 1 and 24 of the December 3, 2003, authorization issued to Peter J. Limited.

21). To the extent Respondents desired to conduct waste relocation and consolidation activities at the R&B Development Landfill 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 R&B Development Landfill Facility in accordance with that

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authorization, specifically, with regard to the final grade elevations and slope contours of the Mound.

22). On May 25, 2004, the Director of Ohio EPA issued Emergency Final Findings and Orders ("May 25, 2004 Orders") to Respondents MPG and Garfield.

a. Within two (2) days after the effective date of the May 25, 2004 Orders, Order No. 1 required Respondents MPG and Garfield to:

(1) post a sign in the area where the R&B Development Landfill 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 R&B Development Landfill on the western side;

(2) erect a temporary fence or other means of preventing public access to all areas which may be impacted by future R&B Development Landfill slope failures.

b. Within one hundred twenty days (120) days after the effective date of the May 25, 2004 Orders, Order No. 2 required Respondents MPG and Garfield to stabilize the Mound, with stabilization to be achieved when the Mound shows no movement.

c. Beginning immediately upon the effective date of the May 25, 2004 Orders and continuing until the Mound has been stabilized, Order 3(a) required Respondents to 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.

d. Beginning immediately upon the effective date of the May 25, 2004 Orders and continuing until termination, Order No. 4 required Respondents MPG and Garfield to 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. Order No. 4 also required Respondents MPG and Garfield to maintain the

slope by covering and repairing all subsequent cracks for the duration of the Orders.

23). On May 26, 2004, Ohio EPA conducted an inspection of the R&B Development Landfill to check the status of the failing slope of the Mound and observed several pieces of equipment were being used on the slopes to seal the cracks. Two bulldozers were spreading soil brought in from another on-site location. Wet soil was being dumped at the top of the slope and pushed down to the cracks in violation of Order No. 4 of the May 25, 2004 Orders. Ohio EPA informed Respondents MPG and Garfield of this violation in a NOV letter dated June 10, 2004.

24). In an NOV letter dated May 28, 2004, Ohio EPA again informed Respondent Garfield that the Mound height and slope contours were not constructed in accordance with the final grade elevations and slope contours approved in the December 3, 2003, authorization issued to Peter J. Limited and may have caused or contributed to the slope failure. The slope failure had resulted in a nuisance and had adversely affected public safety, and violated OAC Rule 3745-27-13(J) and (K) and Conditions No. 1 and 24 of the December 3, 2003, authorization issued to Peter J. Limited. Ohio EPA also informed Respondent Garfield that financial assurance had not been funded, in violation of Condition No. 23 of the December 3, 2003, authorization issued to Peter J. Limited.

25). On June 3, 2004, Ohio EPA conducted an inspection of the R&B Development Landfill to check the status of the failing slope of the Mound and observed that warning signs were posted as required by Order No. 1a of the May 25, 2004 Orders. Order No. 1a required the signs to be posted by May 27, 2004; however, Ohio EPA discovered that the signs were not posted until May 28, 2004. In an NOV letter dated June 10, 2004, Ohio EPA informed Respondents MPG and Garfield that failure to timely post the signs was a violation of the May 25, 2004 Orders.

26). On September 22, 2004, the May 25, 2004 Orders expired.

27). In violation of the May 25, 2004 Orders, Respondents MPG, Garfield, and GHLFP failed to stabilize the Mound within one hundred twenty (120) days after the effective date of the Orders.

28). ORC Section 6111.04 states, in part, "[n]o person shall cause pollution or place or cause to be placed any sewage, industrial waste, or other wastes in a location where they cause pollution of any waters of the state, and any such action is hereby declared to be a public nuisance, except in such cases where the director of environmental protection has issued a valid and unexpired permit, or renewal thereof, as provided in sections 6111.01 to 6111.08 of the Revised Code, or an application for renewal is pending."

29). Condition No. 2 of the December 3, 2003, authorization issued to Peter J. Limited states, in part, "[a]ll on-site activities shall be accompanied 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 run-off and protection of ground water."

30). Condition No. 22 of the December 3, 2003, authorization issued to Peter J. Limited states in part, "Peter J. Limited shall repair all areas of leachate outbreaks existing at the landfill or encountered while conducting activities authorized through this approval."

31). On August 24, 2004, Ohio EPA visited the R&B Development Landfill to monitor progress of the activities being conducted to stabilize the failed slope of the Mound and observed leachate discharging from the toe of the failed slope of the Mound. This leachate was flowing down the Snider-Cannata parking lot and into a storm water drain located at the northeastern corner of the lot. This discharge is in violation of ORC Section 6111.04 and Conditions 2 and 22 of the December 3, 2003, authorization issued to Peter J. Limited. In an NOV letter dated September 28, 2004, Ohio EPA informed Respondents MPG, Garfield, and GHLFP of these violations. In the same correspondence, Ohio EPA notified Respondents that the Orders had expired on September 22, 2004, and Respondents' failure to stabilize the R&B Development Landfill's failed slope within 120 days was a violation of the Orders.

32). Condition No. 4 of December 3, 2003, authorization issued to Peter J. Limited states in part, "Peter J. Limited shall submit weekly reports to Ohio EPA...while conducting the activities authorized through this approval. The reports shall provide a detailed description of the activities undertaken during the week including, but not limited to ...daily explosive gas monitoring locations and results."

33). In an NOV dated August 25, 2004, Ohio EPA informed Respondents MPG and Garfield that in violation of Condition 4 of the December 3, 2003, authorization issued to Peter J. Limited, Respondents MPG and Garfield failed to timely submit to Ohio EPA detailed descriptions of daily explosive gas monitoring locations and data from at least February 21, 2004 through early August 2004.

34). Ohio EPA received some of the data on August 10, 2004. However, Respondents MPG, Garfield, and GHLFP failed to submit all data for all monitoring points.

35). In an NOV letter to Respondents MPG, Garfield, and GHFLP dated October 26, 2004, Ohio EPA summarized violations of ORC Chapters 3734. and 6111., OAC Rule 3745-27-13, conditions of the December 3, 2003, authorization issued to Peter J. Limited for the R&B Development Landfill, and the May 25, 2004 Orders:

a. ORC Chapter 6111. In violation of ORC Section 6111.04, Respondents allowed leachate to migrate off-site and enter waters of the state.

b. ORC Section 3734.42(F)(1). In violation of ORC Section 3734.42(F)(1), Respondents failed to file a disclosure statement with the attorney general and the director at least one hundred eighty days prior to the proposed change in ownership of the applicable portions of the R&B Development Landfill.

c. ORC Section 3734.02(H). In violation of ORC Section 3734.02(H), Respondents engaged in filling, grading, and excavating on land where a solid waste facility, was operated without prior authorization from the director.

d. OAC Rule 3745-27-13.

(1) In violation of OAC Rule 3745-27-13(A), Respondents engaged in filling, grading, and excavating on land where a solid waste facility, was operated without prior authorization from the director.

(2) In violation of OAC Rule 3745-27-13(E)(8), Respondents failed to provide a detailed description to Ohio EPA of

the manner by which the proposed filling, grading, excavating, building, drilling, or mining will be accomplished.

(3) In violation of OAC Rule 3745-27-13(E)(9), Respondents failed to submit to Ohio EPA a detailed description of the manner in which the integrity of the waste placement or the ancillary structures will be preserved where the filling, grading, excavating, building, drilling, or mining activities will occur in areas within three hundred feet of the limits of waste placement.

(4) In violation of OAC Rule 3745-27-13(E)(11), Respondents failed to submit to Ohio EPA, a detailed description of a notation or update to any prior recorded notation to be placed on the deed to the property to notify in perpetuity any potential purchaser of the property that the land has been used as a hazardous waste facility or solid waste facility. The notation shall describe the impacted acreage, including the known location, depth, volume, and nature of waste disturbed at the site, if waste was still to remain on the property.

(5) In violation of OAC Rule 3745-27-13(H)(6), Respondents excavated solid waste and replaced the excavated waste outside of previously existing horizontal and vertical limits of waste placement.

e. Condition No. 1 of the December 3, 2003 OAC Rule 3745-27-13 authorization. In violation of Condition 1, Respondents conducted activities the R&B Development Landfill that have created nuisances and have adversely affected public safety, health, and the environment.

f. Condition No. 2. In violation of Condition 2, Respondents have failed to accomplish all on-site activities in compliance with all applicable laws and regulations with regard to leachate management, surface water run-on and run-off, and protection of ground water.

g. Condition No. 4. In violation of Condition 4, Respondents failed

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to provide required weekly progress reports with detailed descriptions of specific activities. Specifically, weekly reports failed to provide information on installation of engineered components (construction of a berm and on temporary and permanent leachate collection systems); failed to provide information on implementation of a contingency plan for leachate, odors, dust, and surface water management; failed to provide weekly data collected consistently for all explosive gas monitoring locations identified in the approved explosive gas monitoring plan; failed to indicate presence or absence of dust and odor complaints; failed to reflect areas where excavation, grading or filling activities had been suspended for more than twenty-four hours; and failed to reflect areas where excavation, grading or filling activities had been suspended for more than seven days.

h. Condition No. 5. In violation of Condition 5, Respondents failed to timely submit the certification report within 60 days of the December 3, 2003, authorization as required. A certification report was submitted and received by Ohio EPA on March 3, 2004.

I. Condition No. 8. In violation of Condition 8, Respondents failed to conduct daily monitoring of explosive gas migration along all pathways.

j. Condition No. 11: In violation of Condition 11, Respondents have failed to manage leachate in accordance with ORC Chapter 6111. as documented by DSIWM and DSW NOV letters.

k. Condition No. 12. In violation of Condition 12, Respondents failed to submit a copy of a letter of acceptance from a disposal facility to Ohio EPA prior to removal of construction and demolition debris (C&DD) for disposal at a C&DD disposal facility in Cuyahoga County.

l. Condition No. 14. In violation of Condition 14, Respondents have failed to utilize best management practices ("BMPs") for erosion control for excavation and grading as documented by DSW NOV letters.

m. Condition No. 15. In violation of Condition 15, Respondents have failed to cover areas, where work is suspended for more than 24 hours, with the required six inch soil layer application. Ohio EPA acknowledges Respondents have used an alternate daily cover material since June 2004. However, Respondents have done so without submitting a written request and obtaining written approval from Ohio EPA.

n. Condition No. 16. In violation of Condition 16, Respondents have failed to cover areas, where work is suspended for more than seven days, with the required twelve-inch soil layer application. Ohio EPA acknowledges Respondents' use of an alternate daily cover material since June 2004, but Respondents have done so without submitting a written request and obtaining written approval from Ohio EPA.

o. Condition No. 22. In violation of Condition 22, Respondents have failed to repair leachate outbreaks.

p. Condition No. 23: In violation of Condition 23, Respondents failed to submit a financial assurance instrument within thirty days after the effective date of the December 3, 2003, OAC Rule 3745-27-13 authorization issued to Peter J. Limited.

q. Condition No. 24: In violation of Condition 24, Respondents have exceeded final grade elevations approved in the December 3, 2003, OAC Rule 3745-27-13 authorization issued to Peter J. Limited. Respondents have constructed landfill components not included in the December 3, 2003, OAC Rule 3745-27-13 authorization issued to Peter J. Limited, including, but not limited to, a soil berm and temporary and permanent leachate control structures.

r. Condition No. 28. In violation of Condition 28, Respondents failed to comply with ORC Chapters 3734., 6111., OAC Rule 3745-27-13, the OAC Rule 3745-27-13 authorization issued to Peter J. Limited, and the May 25, 2004 Orders.

s. May 25, 2004 Orders:

(1) Order No. 1. In violation of Order 1, Respondents failed

to timely post a tri-fold warning sign near the slope failure.

(2) Order No. 2. In violation of Order 2, Respondents failed to stabilize the failed slope within one hundred twenty (120) days after the effective date of the May 25, 2004 Orders.

(3) Order 3(a). In violation of Order 3(a), Respondents failed to 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. Respondents did install a total of three inclinometers along the top of the failure slope, with one additional inclinometer installed along the face of the failure.

(4) In violation of Order 4, Respondents failed to immediately cover cracks that developed in the western slope of the Mound. Periodic inspections of the western slope of the Mound by Ohio EPA throughout May, June, July, August and September 2004, have indicated that while attempts have been made to cover and/or repair cracks that have developed on the western slope, adequate grading has not occurred to fill these cracks at all times.

36). In an NOV letter to Respondents MPG, Garfield, and GHFLP dated October 29, 2004, Ohio EPA summarized violations of ORC Chapters 6111., 3734., OAC Rule 3745-27-13, and conditions of the December 3, 2003, authorization issued to Peter J. Limited regarding the Matousek Landfill:

a. ORC Chapter 6111. In violation of ORC Section 6111.04, Respondents failed to comply with the facility's NPDES permit.

b. ORC Section 3734.42(F)(1). In violation of ORC Section 3734.42(F)(1), Respondents failed to file a disclosure statement with the attorney general and the director at least one hundred eighty days prior to the proposed change in ownership of the applicable portions of the Matousek Landfill.

c. ORC Section 3734.02(H). In violation of ORC Section 3734.02(H), Respondents engaged in filling, grading, and excavating on land where a solid waste facility, was operated without prior authorization from the director.

d. OAC Rule 3745-27-13.

(1) In violation of OAC Rule 3745-27-13(A), Respondents engaged in filling, grading, and excavating on land where a solid waste facility, was operated without prior authorization from the director.

(2) In violation of OAC Rule 3745-27-13(E)(8), Respondents failed to provide a detailed description to Ohio EPA of the manner by which the proposed filling, grading, excavating, building, drilling, or mining will be accomplished.

(3) In violation of OAC Rule 3745-27-13(E)(9), Respondents failed to submit to Ohio EPA a detailed description of the manner in which the integrity of the waste placement or the ancillary structures will be preserved where the filling, grading, excavating, building, drilling, or mining activities will occur in areas within three hundred feet of the limits of waste placement.

(4) In violation of OAC Rule 3745-27-13(E)(11), Respondents failed to submit to Ohio EPA, a detailed description of a notation or update to any prior recorded notation to be placed on the deed to the property to notify in perpetuity any potential purchaser of the property that the land has been used as a hazardous waste facility or solid waste facility. The notation shall describe the impacted acreage, including the known location, depth, volume, and nature of waste disturbed at the site, if waste was still to remain on the property.

(5) In violation of OAC Rule 3745-27-13(H)(6), Respondents failed to store or manage leachate in accordance with ORC Chapters 3734., 6111., and the Matousek Landfill's NPDES permit.

e. Condition No. 2: In violation of Condition 2, Respondents have failed to accomplish all on-site activities in compliance with all applicable laws and regulations with regard to leachate, surface water run-on and run-off, and protection of ground water.

f. Condition No. 4: In violation of Condition 4, Respondents failed to provide required weekly progress reports with detailed descriptions of specific activities. Specifically, weekly reports

failed to provide information on installation of engineered components (construction of a berm and on a temporary and permanent leachate collection systems); failed to provide information on implementation of contingency plan for leachate, odors, dust, and surface water management; failed to provide weekly data collected consistently for all explosive gas monitoring locations identified in the approved explosive gas monitoring plan; failed to indicate presence or absence of dust and odor complaints; failed to reflect areas where excavation, grading or filling activities had been suspended for more than twenty-four hours; and failed to reflect areas where excavation, grading or filling activities had been suspended for more than seven days.

g. Condition No. 5: In violation of Condition 5, Respondents failed to timely submit the certification report within 60 days of the December 3, 2003, authorization as required. A certification report was submitted and received by Ohio EPA on March 3, 2004.

h. Condition No. 11: In violation of Condition 11, Ohio EPA has observed leachate management violations as documented by DSW NOV letters.

I. Condition No. 14: In violation of Condition 14, Respondents have failed to utilize best management practices ("BMPs") for erosion control for excavation and grading as documented by DSW NOV letters.

j. Condition No. 22: In violation of Condition 22, Respondents failed to submit a financial assurance instrument within thirty days

after the effective date of the December 3, 2003, OAC Rule 3745-27-13 authorization issued to Peter J. Limited.

k Condition No. 23: In violation of Condition 23, Respondents exceeded final grade elevations approved in the December 3, 2003, OAC Rule 3745-27-13 authorization issued to Peter J. Limited.

l. Condition No. 27: In violation of Condition 27, Respondents failed to comply with ORC Chapters 3734., 6111., OAC Rule 3745-27-13, and the OAC Rule 3745-27-13 authorization issued to Peter J. Limited.

37). On August 24, 2004, Ohio EPA conducted an inspection of the R&B Development Landfill's failed slope and observed leachate discharging from the toe of the slope and flowing to a storm water drain in the Snider-Cannata parking lot. In an NOV letter dated September 28, 2004, Ohio EPA informed Respondents MPG, Garfield, and GHLFP that the leachate discharge is a violation of ORC Section 6111.04 because Respondents do not have an Ohio national pollutant discharge elimination system ("NPDES") permit to discharge leachate directly from the R&B Development Landfill into waters of the State. In the same correspondence, Ohio EPA also informed Respondents that failure to prevent leachate from migrating off the R & B Development Landfill and failure to repair leachate outbreaks are violations of Conditions No. 2 and 22, respectively, of the OAC Rule 3745-27-13 authorization issued to Peter J. Limited on December 3, 2003.

38). On November 15, 2004, Ohio EPA conducted an inspection of the R&B Development Landfill and the Matousek Landfill. During the inspection, Ohio EPA observed leachate outbreaks and leachate discharges leaving the R&B Development Landfill and the Matousek Landfill properties. In NOV letters dated November 29, 2004 and December 1, 2004, Ohio EPA informed Respondents MPG, Garfield and GHLFP that the leachate discharges constitute violations of ORC Section 6111.04 because Respondents do not have an Ohio national pollutant discharge elimination system ("NPDES") permit to discharge leachate directly from the R&B Development Landfill and the Matousek Landfill into waters of the State. In the same correspondence, Ohio EPA also informed Respondents that failure to prevent leachate from migrating off the Facilities and failure to repair leachate outbreaks are violations of

the OAC Rule 3745-27-13 authorizations issued to Peter J. Limited on December 3, 2003.

39). On December 18, 2003, Ohio EPA issued authorization to Peter J. Limited approving an explosive gas monitoring plan for the R&B Development Landfill. The explosive gas monitoring plan approval required the gas plan to be implemented no later than December 18, 2004. By letter dated December 17, 2004, Respondents MPG, Garfield and GHLFP submitted a document titled R&B Development Landfill, Cuyahoga County, City View Center Explosive Gas Monitoring Plan, April 2002, Revised December 2004 to Ohio EPA. In an NOV letter dated December 23, 2004, Ohio EPA notified Respondents of various violations of the gas plan in question and the December 18, 2003, approval.

40). On February 24, 2004, Ohio EPA received a document titled Rule 13 Application Submittal for the R&B Development Landfill, Garfield Heights, Cuyahoga County, Ohio, April 2004. Revisions to the document dated May 2004, July 2004, December 2004, February 2005, and March 2005 were received on May 28, 2004, July 19, 2004, December 10-23, 2004, February 25, 2005, and March 8, 2005, respectively. The document and revisions requested authorization pursuant to OAC Rule 3745-27-13 and an exemption under ORC 3734.02(G) for construction activities proposed over the R&B Development Landfill.

41). On February 24, 2004, Ohio EPA received a document titled Rule 13 Application Submittal for the Matousek Landfill, Garfield Heights, Cuyahoga County, Ohio, April 2004. Revisions to the document dated May 2004, July 2004, December 2004, February 2005, and March 2005 were received on May 28, 2004, July 19, 2004, December 10-23, 2004, February 25, 2005, and March 8, 2005, respectively. The document and revisions submitted requested authorization pursuant to OAC Rule 3745-27-13 and an exemption under ORC 3734.02(G) for construction activities proposed over the Matousek Landfill.

42). On September 24, 2004, Ohio EPA received a request and document titled City Center, Northeast Mound (NEM) Slope Stability, Garfield Heights, Ohio September 24, 2004, Revised October 5, 2004. The document proposes a remedy to stabilize the R&B Development Landfill's failed slope.

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43). On October 29, 2004, the Director issued Director's Interim Final Findings and Orders to Respondents Garfield, GHLFP and MPG to perform certain interim measures to achieve long-term stability of the failed Mound. The Director also issued to Respondents Director's Interim Final Findings and Orders on March 1, 2005, which required that Respondents perform additional measures to achieve the long-term stability of the failed Mound.

44). Respondents and their structural engineers, Richard L. Bowen + Associates, Inc., and geotechnical engineers, David V. Lewin Corp., certified in correspondence dated December 8, 2004, and December 9, 2004, attached hereto and incorporated herein as Appendix B, that the installation of the foundational pilings as described in Appendices C, D, E and F of these Orders, attached hereto and incorporated herein, will remain stable and sufficient to protect engineered components from any planned development of the Facilities as long as the Facilities are properly maintained and repaired.

45). Respondents have represented to Ohio EPA that because of the stability of the foundational pilings, no adverse impact to engineered components at the Facilities, including but not limited to the planned explosive gas monitoring and collection system, will likely occur as long as the Facilities are properly maintained and repaired.

46). The Director finds that the issuance to Respondents of an authorization under ORC section 3734.02(H) and OAC Rule 3745-27-13 to perform the activities described in Appendices C, D, E, and F of these Orders at the Facilities is unlikely to adversely affect the public health or safety or the environment; provided however, Respondents strictly comply with all terms and conditions of these Orders and the Appendices attached hereto and incorporated herein.

47). The Director finds that the issuance to Respondents of an exemption under ORC Section 3734.02(G) and OAC Rule 3745-27-03(B) from the requirements of OAC 3745-27-13(H)(6) and ORC Sections 3734.02(C) and 3734.05(A)(2) to allow Respondents to place solid waste above the vertical limits of solid waste placement at the Facilities while performing activities described under Appendices C, D, E and F of these Orders is unlikely to adversely affect the public health or safety or the environment; provided however, Respondents strictly comply with all terms and conditions of these Orders and the Appendices attached

hereto and incorporated herein.

48). Respondents acquired ownership of a portion Parcel Number 543-07-001 without filing a disclosure statement with the attorney general and the director at least one hundred eighty days prior to the proposed change in ownership of the parcel which is part of the Matousek Landfill.

B. Division of Surface Water Findings

1). On November 17, 2003, Respondent MPG submitted a Notice of Intent (NOI) to obtain coverage under the Storm Water Construction General Permit ("SWCGP") OHC00002. Ohio EPA granted Respondent MPG coverage under permit No. 3GC00458*AG for the City View Center site. The City View Center site is a tributary to the Ohio Canal, and the Cuyahoga River. The Ohio Canal and the Cuyahoga River are defined as waters of the state under ORC Section 6111.01.

2). On January 29, 2004, Respondent MPG submitted a Storm Water Pollution Prevention Plan ("SWP3") for review by Ohio EPA. Ohio EPA comments were addressed in revisions to the SWP3 submitted by Respondent MPG on February 6, 2004.

3). Pursuant to ORC Section 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC Sections 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.

4). Part 1.B.4. of the SWCGP prohibits the discharge of leachate from the unearthed municipal solid waste. Inspections conducted by Ohio EPA on April 1, 2004, June 3, 2004, and September 28, 2004, found that leachate had discharged from the unearthed municipal solid waste in violation of the SWCGP and ORC Section 6111.07.

5). Part II.A. of the SWCGP requires that every operator engaged at the site obtain coverage under the SWCGP. An inspection conducted by Ohio EPA on April 1, 2004, found that the site contractor, Respondent Natale, had failed to file a Co-Permittee NOI in violation of the SWCGP and ORC Section 6111.07.

6). On May 5, 2004, Respondent Natale submitted a NOI to obtain

coverage under the SWCGP OHC00002. Ohio EPA granted Respondent Natale coverage under permit number 3GC00458*AG for the City View Center site. The City View Center site is a tributary to the Ohio Canal, and the Cuyahoga River. The Ohio Canal and the Cuyahoga River are defined as waters of the state under ORC Section 6111.01.

7). Part III.G.2.c. of Respondent MPG's and Respondent Natale's SWCGP requires that erosion control practices, which control the flow of runoff from disturbed areas and steep slopes, be functional throughout earth disturbing activity. An inspection conducted by Ohio EPA on April 1, 2004, found that a stabilized outlet had not been provided for one of the sedimentation basins. At the time of inspection, Ohio EPA noted an erosion gully, in violation of the SWCGP and ORC Section 6111.07.

8). Part III.G.2.d.ii. of Respondent MPG's and Respondent Natale's SWCGP requires that sediment control structures be functional throughout earth disturbing activity, and within seven (7) days from the start of grubbing, and that the controls continue to function until the upslope development area is restabilized. Ohio EPA conducted inspections on April 1, 2004, and June 3, 2004, and found that sediment control structures had not been constructed within seven (7) days from the start of grubbing and/or were not constructed as per the specifications of Respondent MPG's and Respondent Natale's SWP3, in violation of the SWCGP and ORC Section 6111.07.

9). Part III.G.2.d.iii. of Respondent MPG's and Respondent Natale's SWCGP requires that runoff from a drainage area not exceed the capacity of silt fencing or be directed to a sedimentation basin. An inspection conducted by Ohio EPA on June 3, 2004, found that runoff from the East-Northeast face of the Mound was directed to a silt fence, and exceeded the capacity of the silt fence, in violation of the SWCGP and ORC Section 6111.07.

10). Part III.G.2.g.i. of Respondent MPG's and Respondent Natale's SWCGP requires that non-sediment pollutant controls be implemented. Ohio EPA conducted inspections on April 1, 2004, and June 3, 2004, and found that leachate from the co-mingling of solid waste and storm water was discharged from the site. Failure to install adequate Best Management Practices ("BMPs") to prevent non-sediment pollutants

from leaving the site is violation of the SWCGP and ORC Section 6111.07.

11). Part III.G.2.i. of Respondent MPG's and Respondent Natale's SWCGP requires that inspections of the site be conducted at least once every seven days, and within twenty-four hours of any storm event of one-half inch of rain in a twenty-four hour period. Inspections on April 1, 2004, and June 3, 2004, found that inspection logs were non-existent, or insufficient, in violation of the SWCGP and ORC Section 6111.07.

12). Ohio EPA notified Respondents of the forgoing violations and other violations in NOV letters dated April 20, 2004, June 17, 2004, August 16, 2004, September 28, 2004, November 29, 2004 and December 1, 2004.

13). The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

## V. ORDERS

5. Respondents shall achieve compliance with ORC Chapters 3734. and 6111. and the rules promulgated thereunder and perform the following activities as set forth below:

**Division of Solid and Infectious Waste Management Orders**

A. OAC Rule 3745-27-13/ORC Section 3734.02(H) Authorization

1). Respondents MPG, Garfield, and GHLFP shall comply with all terms and conditions of the December 3, 2003, OAC Rule 3745-27-13 R&B Development Landfill authorization and the December 3, 2003, OAC Rule 3745-27-13 Matousek Landfill authorization issued to Peter J. Limited, except as modified by these Orders.

2). Upon the effective date of these Orders, Respondents MPG, Garfield, and GHLFP are authorized to perform activities at the Facilities in accordance with the documents titled: Response to August 31, 2004,

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Additional Information Request, October 2004, (for R&B Development Landfill) received on October 26, 2004, with subsequent revisions, attached hereto and incorporated herein as Appendix C; Response to September 1, 2004, Additional Information Request, October 2004, (for Matousek Landfill) received on October 26, 2004, with subsequent revisions, attached hereto and incorporated herein as Appendix D; Rule 13 Application Submittal for R&B development Landfill, December 23, 2004, received on December 23, 2004, with subsequent revisions, attached hereto and incorporated herein as Appendix E; and Rule 13 Application Submittal for Matousek Landfill, December 23, 2004, received on December 23, 2004, with subsequent revisions, attached hereto and incorporated herein as Appendix F. Respondents shall perform all activities described in Appendices C, D, E and F as they pertain to the Facilities, and Respondents shall perform all such activities in strict accordance with these Orders and the plans, specifications, and other information contained in Appendices C, D, E and F. There may be no deviation from the requirements of Appendices C, D, E and F without prior written authorization from Ohio EPA. Any future activities at the Facilities beyond those required or authorized under these Orders may require additional Ohio EPA approval.

3). Except as provided in Division of Surface Water Order No. H.1. of these Orders, not later than seven (7) days prior to the start of activities authorized under Appendices C, D, E or F , Respondents MPG, Garfield, and GHLFP shall submit written notification, which specifies the anticipated date of commencement of activities authorized under Appendices C, D, E or F to Ohio EPA, NEDO, and the Cuyahoga County Board of Health.

4). Prior to placement of the gas collection layer or commencement of pile installation over any building pad on the Facilities, Respondents MPG, Garfield, and GHLFP shall receive concurrence from Ohio EPA, NEDO, of a certification report for installation of the final cover system as required by the December 3, 2003, authorizations, and as modified by these Orders.

5). Respondents MPG, Garfield, and GHLFP shall 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 air pollution, leachate, surface water run-on and run-off, and protection of ground water. Where the performance of any

activities set forth in Appendices C, D, E and F requires a permit or other approval, Respondents shall submit applications in a timely manner and take all other actions necessary to obtain such permits or approvals prior to the initiation of work. The Orders shall not be construed to be a permit issued pursuant to any statute or regulation.

6). Respondents MPG, Garfield, and GHLFP shall not create a nuisance and shall not adversely affect the public safety or health or the environment.

7). Respondents MPG, Garfield, and GHLFP shall containerize and securely store all non-liquid waste to be removed from the Facilities until these materials are properly characterized and disposed in accordance with ORC Chapter 3734. and the regulations promulgated thereunder.

8). Not less than seven (7) days prior to the use of any soils for construction of the final cover system occurring after the effective date of these Orders, Respondents MPG, Garfield, and GHLFP shall submit to Ohio EPA a soils prequalification report documenting that the soils meet the specified gradation (ASTM D-422), moisture/density relationship (ASTM D-968 or ASTM D-1557), and laboratory permeability (EM-110 at 95% saturation) as specified in the quality assurance and quality control ("QA/QC") plan.

9). Respondents MPG, Garfield, and GHLFP shall 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 regulations promulgated thereunder. Respondents shall characterize and dispose of all liquid hazardous wastes in accordance with ORC Chapter 3734. and regulations promulgated thereunder.

10). Prior to any removal of non-liquid waste or contaminated soil from the Facilities, Respondents MPG, Garfield, and GHLFP 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, pursuant to OAC Rule 3745-27-13(H)(4).

11). For the purposes of erosion control during activities conducted at the Facilities in accordance with Appendices C, D, E and F, Respondents MPG, Garfield, and GHLFP shall use best management practices and standards as specified in the National Resources Conservation manual titled Rainwater and Land Development.

12). Respondents MPG, Garfield, and GHLFP shall ensure that excavated waste is relocated within previously existing horizontal limits of waste placement or is treated or disposed of at a licensed, permitted treatment or disposal facility, in accordance with ORC Chapter 3734. and the regulations promulgated thereunder. In no event shall waste be placed at any elevation lower than existing waste elevations at any given location at the Facilities.

13). If excavation occurs outside the limits of waste placement at the Facilities, Respondents MPG, Garfield, and GHLFP shall only use clean soil to backfill the excavated areas and may not use material consisting of or containing solid waste, construction or demolition debris, hazardous waste, petroleum contaminated soils or any other waste material to backfill the excavated areas.

14). Not later than sixty (60) days after completing the activities authorized in Appendices C, D, E and F, Respondents MPG, Garfield, and GHLFP shall submit to Ohio EPA a certification report in accordance with OAC Rule 3745-27-13(H)(10). Not later than sixty (60) days after the effective date of these Orders, Respondents shall submit to Ohio EPA a certification report in accordance with OAC Rule 3745-27-13(H)(10) for all areas of the Facilities where the final cover system has been installed.

15). The Director may revoke this authorization if Respondents MPG, Garfield, or GHLFP violate, or are likely to violate, any applicable law, if the continued implementation of the approved plans 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.

B. OAC Rule 3745-27-03(B)/ORC 3734.02(G) Exemption

1). Respondents MPG, Garfield, and GHLFP have requested an exemption pursuant to ORC 3734.02(G) and OAC Rule 3745-27-03(B) in order to perform solid waste relocation activities at the R&B Development

Landfill and the Matousek Landfill. As part of the activities authorized under Appendices C, D, E and F, MPG, Garfield, and GHLFP will be excavating and removing solid wastes from the limits of solid waste placement of the R&B Development Landfill and the Matousek Landfill and placing relocated solid waste in other areas within the R&B Development Landfill and the Matousek Landfill. All solid waste relocation will occur within the current horizontal limits of solid waste placement at the Facilities, and in no event shall solid waste be placed at elevations lower than existing vertical limits of solid waste placement at the Facilities. As a result of this activity, the final vertical limits of solid waste placement and final grades will be above the existing limits of solid waste placement and final grades established in the December 3, 2003 authorizations for the Matousek Landfill and the R&B Development Landfill.

2). OAC Rule 3745-27-13(H)(6) states, in part, that no excavation of waste can occur unless the excavated waste is replaced within previously existing horizontal and vertical limits of waste placement or is treated or disposed of at a licensed, permitted treatment or disposal facility, in accordance with ORC Chapter 3734. and the regulations promulgated thereunder.

3). 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.

4). OAC Rule 3745-27-03(B) states, in part, 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.

5). Upon review of the information supplied in the September 2004, request and subsequent revisions, I have determined that placing solid waste in areas above the vertical limits of solid waste placement at the R&B Development Landfill and the Matousek Landfill 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. Therefore, pursuant to OAC Rule 3745-27-03(B), I hereby exempt Respondents from the requirement of OAC 3745-27-13(H)(6) and the requirement to

obtain a permit to modify the existing R&B Development Landfill and the Matousek Landfill under ORC Sections 3734.02(C) and 3734.05(A)(2), in order to allow Respondents to place solid waste above the vertical limits of solid waste placement at the R&B Development Landfill and Matousek Landfill while performing activities authorized under Appendices C, D, E and F of these Orders; provided however, Respondents comply with all terms and conditions of these Orders.

C. Financial Assurance

1). Within thirty (30) days after the effective date of these Orders, Respondents MPG, Garfield, and GHLFP shall prepare and submit to Ohio EPA a cost estimate that contains an itemized written estimate, in current dollars, of the cost to re-establish closure of the Facilities in the event that the Respondents MPG, Garfield, and GHLFP are unwilling or unable to complete the construction activities undertaken at the Facilities. Ohio EPA may review, approve, and/or require revisions to the cost estimate. Respondents MPG, Garfield, and GHLFP shall revise the estimate and resubmit the estimate for approval within fourteen (14) days of notification of deficiencies.

2). Within sixty (60) days after the effective of these Orders, Respondents MPG, Garfield, and GHLFP shall submit to Ohio EPA an executed and funded financial assurance instrument in the form of a letter of credit or surety bond meeting the requirements of OAC Rules 3745-27-15(G) or (I) and 3745-27-17 for the cost to re-establish closure of the Facilities as discussed in Order No. 5.C.1, above. Respondents shall comply with the requirements of OAC Rules 3745-27-15 and 3745-27-17 notwithstanding any argument that such rules are not legally applicable to Respondents' activities at the Facilities. The amount of the financial assurance instrument in the form of a letter of credit or surety bond shall be determined by the cost estimate to re-establish closure of the Facilities as discussed in Order No. 5.C.1, above. Ohio EPA may review, approve, and/or require revisions to the financial assurance instrument in the form of a letter of credit.

3). The financial assurance instrument in the form of a letter of credit or surety bond established in Order No. 5.C.2, above, shall be maintained until all of construction activities undertaken by or on behalf of Respondents at the Facilities have been completed. The financial assurance instrument in the form of a letter of credit or surety bond

established in Order No. 5.D.2, above, shall be updated annually in accordance with OAC Rule 3745-27-15(D). Respondents shall comply with the requirements of OAC Rules 3745-27-15 and 3745-27-17 notwithstanding any argument that such rules are not legally applicable to Respondents' activities at the Facilities.

4). Within thirty (30) days after the effective date of these Orders, Respondents MPG, Garfield, and GHLFP shall prepare and submit to Ohio EPA a cost estimate that contains an itemized written estimate, in current dollars, of the cost for post-construction care to maintain and operate the following constructed components on the Facilities:

a. Gas extraction and control system. The estimate shall contain line items for maintenance and operation of the gas extraction and control system, repairs to the gas collection layer and for the replacement of blowers, valves, piping, and associated labor, and for inspection and reporting for a period of thirty years.

b. Leachate collection, management, and disposal system. The estimate shall contain line items for collection, testing, management, and disposal of leachate from any leachate collection system, the replacement of tanks, pumps, valves, piping, leachate disposal, and associated labor, and for inspection and reporting for a period of thirty years.

c. Final cover system. The estimate shall contain line items for maintaining and repairing the final cover system due to erosion, settling, or other damage for a period of thirty years.

Ohio EPA may review, approve, and/or require revisions to the cost estimate. Respondents MPG, Garfield, and GHLFP shall revise the estimate and resubmit the estimate for approval within fourteen (14) days of notification of deficiencies.

5). Within sixty (60) days after the effective date of these Orders, Respondents MPG, Garfield, and GHLFP shall submit to Ohio EPA an executed and funded financial assurance instrument in the form of a letter of credit or surety bond meeting the requirements of OAC Rules 3745-27-16(G) or (I) and 3745-27-17 for post-construction care to maintain and operate constructed components on Facilities as discussed in Order No. 5.C.4, above. Respondents shall comply with

the requirements of OAC Rules 3745-27-16 and 3745-27-17 notwithstanding any argument that such rules are not legally applicable to Respondents' activities at the Facilities. The amount of the financial assurance instrument shall be determined by the cost estimate for post-construction care to maintain and operate constructed components on Facilities as discussed in Order No. 5.C.4, above. Ohio EPA may review, approve, and/or require revisions to the financial assurance instrument.

6). The financial assurance established in Order No. 5.C.5, above, shall be maintained for thirty years from the date of the completion of all construction activities undertaken by or on behalf of Respondents at the Facilities and updated annually in accordance with OAC Rule 3745-27-16(D). Respondents shall comply with the requirements of OAC Rules 3745-27-16 and 3745-27-17 notwithstanding any argument that such rules are not legally applicable to Respondents' activities at the Facilities.

D. Operation and Maintenance

1). Except as otherwise provided by Ohio EPA in writing, Respondents shall:

a. Operate and maintain the explosive gas monitoring, collection and extraction system at the Facilities and prevent the formation and migration of explosive gas at or above 25% of the lower explosive limit (1.25% $CH_4$ v/v) within any building at the Facilities and at 100 % of the lower explosive limit (5.0% $CH_4$ v/v) at the Facilities' boundaries;

b. Operate and maintain any leachate collection system at the Facilities, repair all leachate outbreaks and prevent the discharge of leachate from the Facilities;

c. Maintain the landfill cap system at the Facilities and repair damage to the engineered components; and

d. Use their best efforts to prevent trespass onto the Facilities and to ensure that the Facilities do not become a nuisance.

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2). To the extent that Respondents fail to comply with the requirements of paragraph D.1 above, Garfield Heights, in addition to Respondents, shall be liable to perform and shall perform the requirements of paragraph D.1 above.

E. ORC Section 3734.42(F)(1) Background Check

1). Pursuant to ORC Section 3734.02(G), Respondents are hereby exempted from the requirement to file a disclosure statement at least 180 days prior to the date of the proposed change in ownership, as required in ORC Section 3734.42(F)(1) and OAC Rule 109:6-1-02(A)(3), as a result of the past transfer of ownership of the Facilities described herein.

F. Penalty

1). Within sixty (60) days after the effective date of these Orders, Respondents McGill, Garfield, and GHLFP shall pay Ohio EPA the amount of $99,054.00. in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. and which will be deposited into the environmental protection remediation fund established pursuant to ORC Section 3734.281. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for $99,054.00. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondents and the Site. A copy of the check shall be sent to Ohio EPA, Division of Solid and Infectious Waste Management, Supervisor, Systems Management Unit.

G. Time Frames.

1). All activities to be conducted under these Orders shall be conducted in accordance with the time frames specified in these Orders unless such time frames are otherwise extended by Ohio EPA in writing. To the extent Respondents desire to request an extension of any time frame specified in these Orders, Respondents shall submit a written request for such an extension of time to Ohio EPA at least two weeks prior to the expiration of the time frame. Ohio EPA will inform Respondents whether any such request has been granted prior to the expiration of the time frame in question. The mere pendency of a request for an extension of

time by Respondents shall not be construed to imply that an extension is or will be granted.

**Division of Surface Water Orders**

H. General Orders

1). On or before the corresponding dates set forth below, Respondents shall either:

a. complete the installation of (i) Sediment Basin No. 6 on or before April 1, 2005 and (ii) Sediment Basin No. 7 on or before April 15, 2005, each as specified in the SWP3; or

b. complete the installation of an alternative, temporary sediment control practice for the drainage areas controlled by Sediment Basins No. 6 and No. 7 to the extent the installation of Sediment Basins No. 6 and No. 7 as specified in the SWP3 is not technically practicable on or before April 1, 2005 and April 15, 2005, respectively.

Within ninety (90) days after the effective date of these Orders, Respondents shall have completed the installation of Sediment Basins No. 6 and No. 7 as specified in the SWP3.

2). Within fourteen (14) days after the effective date of these Orders, Respondents MPG and Natale shall resolve the violations of permit no. 3GC00458*A by:

a. Implementation of sediment erosion controls as per Part III. G.2.d.ii. of SWCGP OHC00002 and permit no. 3GC00458*AG;

b. Implementation of non-sediment pollutant controls to prevent the discharge of leachate from the construction site as per Part III.G.2.g.i. of SWCGP OHC00002, permit no. 3GC00458*AG and the SWP3;

c. Hiring a Certified Professional in Sediment and Erosion Control (CPESC), or equal approved by Ohio EPA, to perform the inspections required by the SWCGP OHC00002, permit no. 3GC00458*AG and the SWP3;

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d. Submittal of the inspection reports generated by the CPESC to Ohio EPA's Northeast District Office within three (3) days of the date of inspection; and,

e. Maintaining compliance with SWCGP OHC00002, permit no. 3GC00458*AG and the SWP3 throughout the life of the project's construction activities.

I. Penalty

1). Within sixty (60) days after the effective date of these Orders, Respondents MPG and Natale shall pay Ohio EPA the amount of $50,000.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for $50,000.00. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the Facility. A copy of the check shall be sent to Ohio EPA, Northeast District Office, DSW Enforcement Unit Supervisor.

## VI. ACCESS

6. Ohio EPA shall have access at all reasonable times, including during business hours, to the Facilities and any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by Respondents. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including but not limited to the following:

A. Monitoring the Work;

B. Conducting sampling;

C. Inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of these Orders;

D. Monitoring compliance with use restrictions;

E. Conducting investigations and tests related to the implementation of these Orders; and

F. Verifying any data and/or other information submitted to Ohio EPA.

7. To the extent that the Facilities 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 thirty (30) days of the effective date of these Orders, or within thirty (30) 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.

8. Notwithstanding any provision of these Orders, the State of Ohio retains all of its access rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulation.

## VII. LAND USE AND CONVEYANCE OF TITLE

9. Deed Notice

Within thirty (30) days of the effective date of these Orders, Respondents Garfield and GHLFP shall record a notice on the deed to all property comprising the Facilities with the County Recorder's Office for Cuyahoga County, Ohio. The notice shall reference the presence of a solid waste landfill on the property, the existence of these Orders, and the applicability of the Environmental Covenant for the property. A copy of the recorded notice shall be submitted to Ohio EPA within thirty (30) days of recording the notice. If Respondents Garfield and GHLFP convey any interest in property comprising the Facilities, each deed, title, or other instrument shall contain a notice stating that the property is subject to these Orders and the Environmental Covenant and shall contain the following notice:

> "Ohio EPA issued authorization under ORC Section 3734.02(H) and OAC Rule 3745-27-13 to McGill Property Group, LLC, Garfield Land Development, LLC, and GHLFP, LLC (collectively referred to as "the Parties") in Director's Final Findings and Orders issued in March of 2005, to conduct activities at the landfill located on the property subject to this notice. Ohio EPA's review of the Parties' request for authorization under OAC Rule 3745-27-13 was limited to whether the activities authorized at the landfill could result in the release of

contaminants or the formation and migration of explosive gas that might be harmful to human health, safety or the environment. Because Ohio EPA's review was limited to these issues, Ohio EPA makes no representation that the property subject to this notice, if developed for any purpose, including but not limited to commercial and/or industrial development, will be suitable for such purposes. Other regulatory authorities will be responsible for determining any remaining issues such as whether the property as developed is fit for occupancy as a commercial development.

10. Environmental Covenant

Within thirty (30) days after the effective date of these Orders, Respondents Garfield and GHLFP shall record, in the office of the County Recorder of the appropriate county(s) for the property comprising the Facilities, a copy of the Environmental Covenant attached to these Orders as Appendix G. The Environmental Covenant must be recorded in the deed or official records of the County Recorder of Cuyahoga County, Ohio. The terms and conditions of the Environmental Covenant are incorporated into these Orders and shall be binding upon Respondents.

11. Proof of Filing Environmental Covenant

Within thirty (30) days after filing with the County Recorder the executed Environmental Covenant, Respondents Garfield and GHLFP shall certify to Ohio EPA that the Environmental Covenant has been filed for recording, and include with the certification a file and date-stamped copy of the recorded Environmental Covenant. Upon each conveyance by Respondents of an interest in any portion of the property comprising the Facilities, including but not limited to easements, deeds, leases and mortgages, Respondents shall include in the instrument of conveyance a restatement consistent with paragraph 6 of the Environmental Covenant. The terms and conditions of the Environmental Covenant are hereby incorporated into these Orders and shall be binding upon the Respondents. If the Environmental Covenant is violated or breached by Respondents, all Respondents except Respondent Natale shall be in violation of these Orders.

12. Land Use Self-Reporting Requirement

Respondents Garfield and GHLFP shall ensure that no portion of the Facilities will be used in any manner that would adversely affect the integrity of any foundational pilings, explosive gas monitoring, collection and/or extraction system, and/or any engineered components at the Facilities, or violate any of the activity and use limitations applicable

to the Facilities under these Orders. Respondents Garfield and GHLFP shall submit on an annual basis, written documentation verifying that the activity and use limitations remain in place and are being adhered to.

13. Grant of Interest in Property

Prior to each conveyance of an interest in any portion of the Facilities, including but not limited to easements, deeds, leases and mortgages, Respondents Garfield and GHLFP shall notify the Transferee of the existence of the activity and use limitations on the use of property comprising the Facilities, including but not limited to the prohibition on interference with any landfill engineered components, and shall provide a copy of these Orders and the Environmental Covenant to the Transferee. Respondents Garfield and GHLFP shall notify Ohio EPA at least thirty (30) days in advance of each conveyance of an interest in any portion of the Facilities that is owned by a Respondent. Respondents' notice shall include the name and address of the Transferee. Respondents shall also require as a condition of the transfer of any interest in the property that an explosive gas monitoring devices be placed in any and all occupied structures on the property and be maintained in good working condition.

14. Confirmation of Conveyance

Within thirty (30) days after each conveyance of an interest in any portion of the Facilities that is owned by Respondent(s), such Respondent(s) shall submit to Ohio EPA, via certified mail, the following information:

A. A copy of the deed or other documentation evidencing the conveyance;

B. The name, address, and telephone number of the new property owner and the name, address, and telephone number of the contact person for the property owner;

C. A legal description of the property, or the portion of the property, being transferred;

D. A survey map of the property, or the portion of the property, being transferred;

E. The closing date of the transfer of ownership of the property, or portion of the property.

## VIII. ADDITIONAL WORK

15. Respondents shall inspect the Facilities on a quarterly basis and shall immediately inform Ohio EPA in writing of any leachate outbreaks, subsidence at the landfills and/or damage to the Facilities' engineered components.

16. Ohio EPA or Respondents may determine that in addition to the Work required under these Orders, additional work may be necessary to address subsidence at the Facilities, address damage to engineered components at the Facilities, address leachate outbreaks through the installation of temporary or permanent leachate collection systems, including but not limited to the installation of a perimeter leachate collection system, and/or to protect human health or safety and the environment.

17. Within thirty (30) days of receipt of written notice from Ohio EPA that additional work is necessary, unless otherwise specified in writing by Ohio EPA, Respondents shall submit a work plan and a schedule for the performance of the additional work. To the extent the Respondents desire to dispute that additional work is necessary, Respondents reserve the right to appeal any determination by Ohio EPA that additional work is necessary.

18. Upon approval of the work plan and schedule by Ohio EPA, Respondents shall implement the approved work plan for additional work in accordance with the approved schedule.

## IX. OTHER CLAIMS

19. 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.

## X. OTHER APPLICABLE LAWS

20. 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 and/or the Facilities.

## XI. NOTICE

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21. 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

and

Ohio Environmental Protection Agency
Northeast District Office
Division of Surface Water
110 East Aurora Road
Twinsburg, Ohio 44087-1969
Attn: DSW Enforcement Unit Supervisor

and

Cuyahoga County General Health District
5550 Venture Drive
Parma, OH 44130

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

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

Alan J. Bellis
Senior Project Manager
McGill Property Group, LLC
30575 Bainbridge Road, Suite 100
Solon, Ohio 44139

and

Gregg S. Levy, Esq.
Levy & Dubyak

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25200 Chagrin Boulevard, Suite 310
Beachwood, Ohio 44122

and

Shane A. Farolino, Esq.
Roetzel & Andress
222 South Main Street
Akron, Ohio 44308

## XII. RESERVATION OF RIGHTS

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

23. In the event that Respondents do not complete the work required under the Director's Interim Final Findings and Orders issued on March 1, 2005, and/or fail to stabilize the Mound, Ohio EPA specifically reserves the right to require Respondents to remove and/or relocate solid waste and other materials at the Mound, including but not limited to solid waste and other materials placed at the Mound pursuant to the Director's Interim Final Findings and Orders issued on March 1, 2005 , 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 Facilities.

24. Ohio EPA specifically reserves the right to revoke any authorization issued under ORC Section 3734.02(H) and OAC Rule 3745-27-13 and/or exemption issued under ORC Section 3734.02(G) and OAC Rule 3745-27-03(B) related to the Facilities. Furthermore, any authorization issued under ORC 3734.02(H) and OAC Rule 3745-27-13 and/or exemption issued under ORC Section 3734.02(G) and OAC Rule 3745-27-03(B) shall not be construed as implying in any way that additional authorizations under ORC Section 3734.02(H) and OAC Rule 3745-27-13 and/or exemptions under ORC Section 3734.02(G) and OAC Rule 3745-27-03(B) will be issued for activities at the Facilities.

## XIII. INDEMNIFICATION

25. 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.

## XIV. TERMINATION

26. 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 Respondents' obligations under 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: "We certify that the information contained in or accompanying this certification is true, accurate and complete."

27. This certification shall be collectively submitted by Respondents to Ohio EPA and shall be signed by a responsible official of each Respondent. For purposes of these Orders, a responsible official is a principal executive officer of at least the level of vice-president.

## XV. WAIVER

28. In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

29. 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.

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30. 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.

## XVI. EFFECTIVE DATE

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

## XVII. SIGNATORY AUTHORITY

32. 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.

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**IT IS SO ORDERED AND AGREED:**

**McGill Property Group , LLC**

_____
Signature

**Garfield Land Development Company, LLC**

_____
Signature

**GHLFP, LLC**

_____
Signature

**C. J. Natale, Inc.**

_____
Signature

**The City of Garfield Heights**

_____
Signature

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**IT IS SO ORDERED:**

**Ohio Environmental Protection Agency**

_____

Joseph P. Koncelik, Director

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