

**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

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

COPY

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.

III. DEFINITIONS

3. Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3734. and the rules promulgated thereunder. 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 a portion of the R&B Development Landfill and the Matousek Landfill, located north and south of the intersection of Antenucci Blvd. and Transportation Blvd., in Garfield Heights, Cuyahoga County, Ohio, that 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.

IV. FINDINGS OF FACT

4. The Director of Ohio EPA has determined the following findings:
 - A. On March 18, 2005, the Director issued Final Findings and Orders ("March 18, 2005 Orders") to Respondents to resolve violations of solid waste and

water pollution laws and rules and to authorize Respondents to conduct work associated with the construction of the City View Center at the Facilities.

- B. Appendices C, D, E and F of the March 18, 2005 Orders contain specifications of the work that Respondents are authorized to conduct on the Facilities.
- C. Subsequent to commencement of work specified in Appendices C, D, E and F of the March 18, 2005 Orders, Respondents MPG, Garfield, and GHLFP have submitted requests for alterations to the work authorized in the appendices.
- D. To establish a procedure for approval of changes to the Orders and/or to the appendices, the Director and Respondents have agreed to amend the March 18, 2005 Orders by the addition of new Section XVIII. MODIFICATIONS AND ALTERATIONS.
- E. With the exception of the addition of new Section XVIII. MODIFICATIONS AND ALTERATIONS, provided for in these Orders, it is the parties' intent that all other provisions of the March 18, 2005 Orders shall remain unchanged and in full force and effect.

V. ORDERS

- 5. The March 18, 2005 Orders issued to Respondents are hereby modified in the following manner:
 - A. The following language shall be added as new Section XVIII. MODIFICATIONS AND ALTERATIONS:

XVIII. MODIFICATIONS AND ALTERATIONS

- 33. These Orders may be modified or altered in the following manner:
 - A. Modifications to these Orders, not including alterations of the Appendices, shall be by agreement of the parties in the form of Director's Final Findings and Orders and shall be effective on the date entered in the journal of the Director of Ohio EPA.
 - B. In the event that Respondents desire to alter the language of the Appendices only, Respondents shall submit five copies of the requested alteration, including proposed revisions to the language of the Appendices and revised plan sheets, to Ohio

EPA for review and authorization. Respondents shall send four copies to Ohio EPA, NEDO, and one copy to Ohio EPA, Central Office. All alterations to the Appendices shall be by agreement of the parties in the form of a letter signed by representatives from Ohio EPA's Central Office and NEDO authorizing the alteration.

- B. All other provisions of the March 18, 2005 Orders shall remain unchanged and in full force and effect. A copy of the March 18, 2005 Orders is attached as Appendix A.

VI. OTHER CLAIMS

6. 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.

VII. OTHER APPLICABLE LAWS

7. 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.

VIII. NOTICE

8. 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
Central Office
Division of Solid and Infectious Waste Management

Attn: Supervisor, Processing & Engineering Unit
PO Box 1049
Columbus, Ohio 43216-1049

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.

IX. RESERVATION OF RIGHTS

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

X. INDEMNIFICATION

10. 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.

XI. TERMINATION

11. 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.”

12. 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.

XII. WAIVER

13. Respondents consent to the issuance of these Orders and agree to comply with these Orders. The Respondents hereby waive the right to appeal the issuance, terms and service of these Orders, and the Respondents hereby waive any and all rights they may have to seek administrative or judicial review of these Orders either in law or equity.
14. 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.

XIII. EFFECTIVE DATE

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

XIV. SIGNATORY AUTHORITY

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

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Joseph P. Koncelik, Director

IT IS SO AGREED:

McGill Property Group , LLC

Signature

Date

Garfield Land Development, LLC

Signature

Date

GHLFP, LLC

Signature

Date

C. J. Natale, Inc.

Signature

Date

The City of Garfield Heights

Signature

Date