



James R. Fouts - Mayor

December 14, 2016

OFFICE OF THE MAYOR

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Bill Schuette
Attorney General
G. Mennen Williams Building
7th Floor
525 W. Ottawa Street
P.O. Box 30212
Lansing, MI 48909

Dear Attorney General Schuette:

As the mayor of Warren, Michigan, Michigan's third largest city in population, I am writing to request that your office conduct an investigation of the Freedom Hill County Park landfill illegal dumping.

Although the closed landfill is not located in Warren, our city is a member of the South Macomb Disposal Authority that is responsible for the maintenance of this landfill. Warren's percentage of this cost is 47 percent with the remainder of the costs going to other Macomb County cities that are SMDA members. The SMDA has spent over \$3 million to remediate the landfill to meet M-DEQ requirements.

My request centers around the decision of Mark Hackel, Macomb County Executive, to allow a contractor to illegally dump road excavation materials at the landfill without any permission to do this from the SMDA or the Michigan DEQ.

At least 200,000 yards of materials have been dumped at the closed landfill in violation of a 2005 consent decree with the M-DEQ that mandated that no action could be initiated at the Freedom Hill landfill without approval of the SMDA and the M-DEQ.

The following are excerpts from a corrective action plan for the landfill as a result of the illegal dumping prepared for the SMDA by Anderson, Eckstein and Westrick, Inc. and TRC Environmental Corporation on November 30, 2016. This corrective action was necessary because of the illegal dumping at Freedom Hill approved by County Executive Hackel:

DIRECT QUOTATION

The need for corrective action is due to a separate and unapproved action which is described below.

“During the summer and fall of 2016, two berms were constructed on Freedom Hill Landfill; one along the west landfill limits and one along the south and east landfill limits. **The construction of these berms has compromised (damaged or removed) a substantial number of the remediation assets and created a number of uncontrolled leachate outbreaks.** Therefore, the following describes the necessary corrective

actions to restore the assets, stop the leachate outbreaks, and reshape the cap in a manner required by the regulations.”

Stop Existing Seeps – At our on-site visit with TRC MDEQ (Greg Barrows) on Thursday, November 17, 2016, **approximately 12 seeps were identified.**

High levels of Methane along the West Property Line – **High levels of methane were measured at three monitoring wells** along the west property line during the semi-annual monitoring event performed in early November. The first action will be to determine how far the methane has migrated in the soil to the west onto the Bethesda Christian Church property.

Gas Vent Disturbance – During the filling of low spots and construction of the berms, **several of the vents were disturbed and the nozzles** (for measuring methane levels) and ports (for measuring leachate levels) and ports (for measuring leachate levels) were covered.

Grading Issues – The berm that was constructed on the east and south edge of the Freedom Hill landfill is approximately 15 feet high. The berm appears to have a front (north and west side) slope of about a 1 on 3,

about a 15 to 20 foot flat top, and a 1 on 2 to 2 ½ back (south and east side) slope. Maintenance maximum slope is 1 on 3.

Fill Over Trees and Tree Wells that were planted as part of the remediation plan – During the construction of the berms, several of the TreeWell Systems were covered or damaged. Also, seeps were occurring at some tree well locations and the wells and trees were excavated and backfilled with certified clean clay to stop the seeps. Due to the pressure of the berm on the waste below, it is anticipated that approximately 30 to 40 additional TreeWell Systems will be installed.

This action plan was also the direct result of my facebook entry that warned of possible contamination because of the illegal dumping. This illegal dumping by the contractor has been on-going since last summer. No corrective action was taken until November 21, 2016. Instead, Mr. Hackel decided to criticize me for my warning.

Clearly, Mr. Hackel and the contractor had not planned or undertaken any corrective action during or after the illegal dumping.

The investigation I am requesting your office to conduct should address the following questions:

1. Under what legal authority did Mr. Hackel approve this illegal dumping?
2. Why was this illegal dumping not reported to the M-DEQ or the SMDA Board?
3. Is this illegal dumping a violation of state environmental laws or regulations?
4. What financial arrangement, if any, did Mr. Hackel have with the contractor to use a county facility for illegal dumping? How many yards were dumped and what were the fees paid to the county by the contractor? What was the contents of the excavation? Were there chunks of concrete in the dirt? How much did the contractor save in landfill and transport costs? Did the taxpayer-funded road project include costs of transport and landfill disposal costs and shouldn't there be a refund for those costs because the contractor did not have these costs because of the illegal dumping?
5. Did the contractor use his personal or corporate jet to transport Mr. Hackel and others to Detroit Tiger – Baltimore Orioles baseball games in Baltimore the weekend of May 12-15 and to the Kentucky Derby on May 7, 2016? Were there any other contractor-financed jet trips for Mr. Hackel by this contractor (Dan's Excavating)?
6. Did Dan's Excavating contribute to Mr. Hackel's campaign or hold any fundraisers for other candidates at Mr. Hackel's request?
7. If so, is that a conflict of interest, favoritism, or a quid pro quo?

8. Why was no corrective action taken by Mr. Hackel until **after** my written concerns about possible Red Run Drain contamination?
9. Can the county ethics commission investigate impartially since all of the Commission members are appointed by Mr. Hackel?

I am requesting a full investigation by your office of Mr. Hackel's illegal actions.

This situation could have resulted in an environmental disaster in our county.

It is not enough to excuse Mr. Hackel's actions by referring to the corrective action plan now underway. Illegal actions by public officials must have consequences to avoid actions like this in the future.

Sincerely,


James R. Fouts, Mayor
City of Warren