



LAW DEPARTMENT

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June 27, 2022

Via email (david@den-man.com) and U.S.Mail
David Holman, President
Den-Man Contractors, Inc.
14700 Barber Avenue
Warren, Michigan 48088

RE: IMMEDIATE CORRECTIVE ACTION REQUIRED

Dear Mr. Holman:

Federal agents advised City officials that they had concerns with backfill material which Den-Man Contractors, Inc. (“Den-Man”) used on 135 demolition sites identified on the attached list. These sites were demolished, backfilled, and graded in 2017-2018, by Den-Man, under various agreements with both the Detroit Building Authority and the Detroit Land Bank Authority. The Detroit Demolition Department (“DDD”), formed in July 2020, is now in charge of the demolition program for the City of Detroit. Den-Man’s contact at DDD (“DDD Contact”) will be Tim Palazzolo, email of tpalazzolo@detroitmi.gov. Den-Man’s environmental contact at the Buildings, Safety Engineering & Environmental Department – Environmental Affairs (“BSEED-EA Contact”) will be Hosam Hassanien, email of hassanienh@detroitmi.gov. The DDD and BSEED-EA Contacts are collectively referred to as the “City Contacts.”

Because the Federal agents did not provide specific evidence of a problem with the Sites, the City conducted random sampling of 8 City funded sites. The results, copies enclosed, show that 7 of the 8 sites do not comply with applicable law and violate the applicable contracts.

The purpose of this letter is to advise Den-Man of its breach of contract, and demand that Den-Man, at its sole cost and expense, immediately take all necessary steps to implement this Corrective Action Plan to correct the breach. The required steps are as follows:

- 1. On or before July 1, 2022.** Provide to the DDD and BSEED-EA Contacts written confirmation that Den-Man acknowledges its responsibility to, and will in fact, implement and carry out this Corrective Action Plan at Den-Man’s sole cost and expense.
- 2. On or before July 1, 2022.** Begin installation of Temporary HDPE Snow Fences at each of the 134 sites, and complete installation at all Sites not later than July 18, 2022.
- 3. On or before July 8, 2022.** Provide to the City Contacts written confirmation of whether Den-Man intends to test the remaining 127 Sites (135 total sites – 8 tested = 127 sites) under the requirements for Option A below. Or, in the alternative, whether Den-Man elects to remove and replace the fill material without testing under the requirements in Option B below. Regardless of Den-Man’s choice, Den-Man must immediately begin steps, under the requirements set forth in

Option B below, to replace the fill material at the seven sites which testing has revealed are contaminated.

4. **Immediately after July 8, 2022.** Commence and carry out the required work in accordance with the requirements of Option A or B below.

REQUIREMENTS FOR OPTION (A) - SAMPLE, ANALYZE, AND EVALUATE THE FILL MATERIAL FOR USE IN THE DEMOLITION PROGRAM.

The requirements for Option A are as follows:

- 1) Employ a qualified environmental professional to:
 - a. Develop a Work Plan detailing the soil sampling activities to be completed at each of the Sites. The Work Plan must include all of the tasks that will be conducted to implement the Corrective Action Plan. Specifically, the Work Plan will detail the following site activities, at a minimum:
 - Preparation of a Site-Specific Health and Safety Plan (HASp) in accordance with State and Federal regulations.
 - Identification and clearance of existing subsurface and overhead utility lines.
 - Description of the soil sampling activities including sampling depths and locations, sampling equipment decontamination procedures, sample collection and preservation methodology(ies), sampling intervals, field soil screening and visual/olfactory observations techniques, rationale for sample selection, and sample packaging and shipping procedures.
 - Laboratory analytical testing including the USEPA-approved analytical methodologies.
 - Preparation of a fill material sampling summary report for submittal to the department.

Submit the draft Work Plan to BSEED-EA with copy to DDD as directed within seven (7) calendar days of the date of this Corrective Action Plan for review and approval prior to proceeding with the site activities. After addressing the City's review comments (if any), the environmental professional will finalize the Work Plan and submit hard and electronic copies of the final Work Plan to the Department.

- b. Upon approval of the Work Plan, schedule, coordinate, and mobilize field personnel and equipment to collect no less than three (3) discrete representative samples from the fill material at each of the Sites. Submit all soil samples to a qualified analytical laboratory, under strict chain of custody protocol, for analysis of the following constituents of concern with a seven (7) business-day turn-around time:
 - i. Volatile Organic Compounds (VOCs, U.S. EPA Method 8260);
 - ii. Semi-Volatile Organic Compounds (SVOCs, U.S. EPA Method 8270);
 - iii. Polychlorinated biphenyls (PCBs, U.S. EPA Method 8080); Chloride (U.S. EPA Method 9056)
 - iv. Michigan 10 Metals (arsenic, barium, cadmium, chromium, copper, lead, mercury, selenium, silver, and zinc, U.S. EPA Methods 6000 & 7000 series);
 - v. Chloride (U.S. EPA Method 9056); and

- vi. Herbicides and pesticides (U.S. EPA Method 8081/8082)
- c. Upon receipt of the analytical results, tabulate the results and compare the data to the state's current Part 201 Residential Generic Cleanup Criteria (GCC). In addition, prepare a scaled-site figure for each site that identifies the site address, parcel boundaries, adjacent rights-of-way, area of the backfill, and locations and depths of the samples.
- d. Prepare a fill material sampling summary report that includes all analytical results, tabulations, figures, soil boring logs, and findings. The findings must include a written opinion of any human health risks, including an evaluation of any potential pathways for human exposure, and the findings must include the following statement:
 - i. "[COMPANY NAME] has evaluated the fill material located at [SITE ADDRESS(ES)] on behalf of [CONTRACTOR NAME] for use in the Detroit Demolition Program. Based upon the analytical results, we have determined that the material [is / is not] contaminated above the state's Part 201 Residential Generic Cleanup Criteria. Therefore, in our professional opinion, the material [is / is not] suitable for use as fill. [COMPANY NAME] warrants that no information or documentation has been deleted, omitted, or changed which would otherwise cause the City of Detroit and its agencies and authorities to reach a different conclusion. Furthermore, [COMPANY NAME] understands that the City of Detroit and its agencies and authorities rely upon the overall completeness, accuracy, and conclusions in this report and hereby provides reliance on the contents presented herein."
- 2) Submit the draft fill material sampling summary report to the City Contacts within thirty (30) calendar days of the Work Plan approval date for review and approval. After addressing the City's review comments (if any), the environmental professional will finalize the fill material sampling summary report and submit hard and electronic copies of said report to the City Contacts. If the City determines that the analytical results identify constituents of concern with concentrations above the state's Part 201 Residential Generic Cleanup Criteria at one or more of the Sites, Den-Man must immediately remove and replace the fill materials at those sites determined by the City to be backfilled and graded with unsuitable, contaminated fill material(s) as stipulated in Option (B) below.

REQUIREMENTS FOR OPTION (B) - REMOVE AND REPLACE THE FILL MATERIAL

The requirements of Option B are as follows:

- 1) If Den-Man selected Option (A), Den-Man may submit those analytical results to a licensed, Type II landfill for disposal. If the landfill accepts the analytical results and approves the disposal, Den-Man must immediately proceed to Step 4 below. If the landfill does not accept the analytical results and/or denies the disposal OR if Den-Man did not pursue Option (A), Den-Man must immediately proceed to Step 2 below.
- 2) Employ a qualified environmental professional to collect one (1) representative composite sample that consists of three (3) discrete representative samples of the fill material. Submit the sample to a qualified laboratory through a documented chain of custody for Toxicity Characteristic Leaching Procedure (TCLP, U.S. EPA Method 1311) analysis with a seven (7) business-day turn-around time. If Den-Man pursued Option (A), the environmental professional will only need to submit

the sample for TCLP analysis of those constituents of concern identified by the licensed, Type II landfill. If Den-Man did not pursue Option (A), the environmental professional must submit the sample for the full TCLP analysis.


- 3) Upon receipt, immediately submit the fill material analytical results and any associated documentation to the Department and the licensed, Type II landfill selected for material disposal for approval. In addition, based on the totals analytical data, and in order for Den-Man to secure landfill approval for disposal of the fill materials, Den-Man must be prepared to provide results of the Toxicity Characteristic Leaching Procedure (TCLP) analysis for the collected samples, if requested by the landfill. Upon receipt, immediately forward the landfill approval to the City Contacts.
- 4) Excavate all fill material under the supervision and direction of the City or its authorized representative. Immediately load, transport, and dispose of all excavated materials at the selected Type II landfill in accordance with all applicable federal, state, and local laws, regulations, and rules. Provide a copy of the load/trip tickets and disposal documentation to the City Contacts within seven (7) calendar days of disposal. **Note, the temporary storage or staging of any removed fill materials at a City-owned or operated property or any other property pending landfill disposal is prohibited.**
- 5) Identify an approved source of new fill material or submit a new source of fill material for the City's review and approval prior to proceeding with any backfilling activities. Immediately following removal of the unsuitable, contaminated fill material and approval of the source of the new fill material, each site will be backfilled/ compacted, graded, and finalized in accordance with the Scope of Services. If fill and grading activities do not occur on the day of the excavation, maintain the site(s) as required under the associated Scope of Services. This includes, but is not limited to, the installation, maintenance, and repair of fencing and the characterization, pump-out, and proper disposal of any standing water in the open hole.
- 6) Compile all site analytical data and submit a draft site restoration summary report documenting the fill materials removal and site restoration activities completed at all sites determined by the City to be backfilled and graded with unsuitable, contaminated fill material(s) to the City Contacts within fifteen (15) calendar days of completing the final site grading and restoration activities for review and approval. After addressing the City's review comments (if any), the environmental professional will finalize the site restoration summary report and submit hard and electronic copies of said report to the City Contacts. The summary report must include the following information and soil data, at a minimum:
 - A description of all site activities completed.
 - The actual volume of all fill materials removed from the Sites.
 - The actual volume of new fill materials used to backfill and grade the Sites.
 - Photographic documentation of all field activities completed.
 - A scaled-site figure for each site depicting the limits of backfilled and graded area(s) and restored final grade relative to existing site features including property boundaries and adjacent rights-of-way.
 - Complete and legible copies of all waste disposal documents, including truck tickets, waste manifests, and landfill tickets.
 - Copies of all trip/load tickets for the new fill material used to backfill and grade the remediated sites.

- Copies of all TCLP documentation, if applicable, including but not limited to sampling protocols, chain of custody, and analytical results.

ADDITIONAL PROVISIONS

1. The City reserves the right to amend or clarify this Corrective Action Plan as circumstances may require, to ensure that the Sites comply with all requirements of the applicable contract and law.
2. If (i) Den-Man fails to acknowledge by July 1, 2022, its responsibility to, and that it will in fact, implement and carry out this correction action plan at Den-Man's sole cost and expense, or if (ii), Den-Man fails to properly and timely comply with any of the provisions of this Corrective Action Plan, then the City, and the Detroit Land Bank Authority (DLBA), and their agencies, departments and contractors reserve the right to move forward with execution of the Corrective Action Plan by other means, and to hold Den-Man responsible for all costs and expenses, as allowed by the relevant contracts and applicable law.
3. In order to move forward, Den-Man will need to obtain authorized access from the respective owners. This Corrective Action Plan does not authorize access to any of the Sites.
4. This Corrective Action Plan is without prejudice to the City or the DLBA, and the City and DLBA reserve all rights and remedies under the applicable contracts and law.

Very truly yours,



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