



**COLORADO**

Department of Public  
Health & Environment

December 2, 2021

Mayor Jan Kulmann  
Office of the Mayor and City Council  
Thornton City Hall  
9500 Civic Center Drive  
Thornton, CO 80229

Dear Mayor Kulmann,

Thank you for your letter from the City of Thornton to Governor Polis, dated October 11, 2021, regarding the Thornton Shopping Center. The City of Thornton's commitment to seeing the Thornton Shopping Center site remediated and repurposed for the benefit of the community is clear, and we very much appreciate your interest in accelerated cleanup of this contamination.

The Colorado Department of Public Health and Environment (CDPHE) is similarly committed to this goal, and working in partnership with the City of Thornton to ensure protection of human health and the environment. CDPHE believes the City of Thornton would be a natural steward of this site. However, CDPHE must operate within the bounds of its statutory responsibilities to achieve this objective.

Unfortunately, CDPHE cannot offer the City of Thornton a covenant not to sue under the Resource Conservation and Recovery Act/Colorado Hazardous Waste Act (RCRA/CHWA). While covenants not to sue may be applied under other laws and/or cleanup programs, CDPHE cannot waive corrective action owner/operator liability for this site. Owner/operator liability is a fundamental pillar of RCRA/CHWA, and corrective action is a results-driven process. Because CHWA establishes requirements necessary to protect human health and the environment, a promise to limit the cleanup to a certain dollar amount would not meet the substantive requirements of CHWA. Further, RCRA sets a floor, not a ceiling, for state regulation of hazardous wastes, and CDPHE cannot administer or enforce a program that does not meet the minimum standards of RCRA.

CDPHE also is concerned about the precedent such an agreement would set. CDPHE has never issued a covenant not to sue under similar circumstances, and doing so might open the door for other contaminated RCRA/CHWA sites to argue for lesser cleanups. CDPHE believes the residents of the City of Thornton would also want CDPHE's assurance that the Thornton Shopping Center cleanup will be held to the same standards as other RCRA/CHWA corrective action sites. Limiting the cleanup to an arbitrary dollar amount could result in contamination remaining at the site in concentrations which exceed state standards. The citizens of the City of Thornton should have the full benefit of the protective standards that apply throughout the state.

As discussed on November 18, 2021, CDPHE is very interested and willing to explore other approaches, short of a covenant not to sue, that could allow the City to still achieve a successful cleanup of this site. We would welcome the opportunity to work collaboratively with the City of Thornton under a new Corrective Action Plan. If the City of Thornton acquired the property as an owner/operator, the City would gain significant freedom to control the cleanup under a new



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Corrective Action Plan. According to the City's environmental consultants, \$7 million in public funds should be sufficient. As long as the City of Thornton meets its corrective action obligations, and complies with applicable laws and regulations, CDPHE would have no reason to pursue enforcement action. Further, as discussed, CDPHE will continue to explore additional assurances to Thornton after the \$7 million is spent, and will also work with Thornton to find additional funding sources and options to supplement the City's existing funds if more than \$7M is required.

If the City of Thornton chooses not to acquire the Thornton Shopping Center, CDPHE will continue to hold the responsible parties accountable. Currently, they are subject to a court order and must implement their Corrective Action Plan. CDPHE will continue to modify plans, and enforce as necessary, to push for complete investigation and remediation.

RCRA/CHWA cleanups may take years to complete, and this is a complex site. The fact that the City of Thornton has funds available could make a significant difference in the cleanup timeframe. While RCRA/CHWA cleanups are results-driven, remediation of the source area would likely result in a significant reduction in contaminant levels.

It is CDPHE's belief that the City of Thornton is best situated to ensure that the Thornton Shopping Center is remediated in a way that is timely and results in a benefit to the community. If the City of Thornton took ownership of the property, CDPHE would do all it can do - lawfully and in accordance with its responsibilities as an environmental protection agency - to help the City of Thornton implement a successful RCRA/CHWA cleanup. We look forward to further partnering with you at this site.

A handwritten signature in blue ink, appearing to read 'S. McGrath', is positioned above the typed name.

Shaun McGrath  
Environmental Health & Protection Director  
Colorado Department of Public Health & Environment

cc: Mr. Philip Weiser, Colorado Attorney General  
Ms. Jill Hunsaker Ryan, Executive Director, CDPHE  
Ms. Tracie M. White, Director, Hazardous Materials & Waste Management Division