



COLORADO
Department of Public
Health & Environment

Mr. John Cody
Director of Economic Development
City of Thornton
Thornton City Hall
9500 Civic Center Drive
Thornton, CO 80229

Sent via email to John.Cody@thorntonco.gov; Chad.Howell@thorntonco.gov

August 2, 2021

RE: Invitation to August 2021 City of Thornton Meeting

Dear Mr. Cody,

Thank you for sharing the City of Thornton's formal invitation to speak with Thornton City Council about Thornton, LLC and Mr. Jay Brown (collectively, Thornton, LLC). We appreciate the City of Thornton's commitment to redevelopment and environmental remediation at the Thornton Shopping Center site. We are also thankful for the City of Thornton's support of state regulatory efforts.

We recognize the City Council and community members have questions about the Colorado Department of Public Health and Environment (CDPHE)'s next steps. However, due to ongoing district court litigation and a pending enforcement action against Thornton, LLC, we are limited about what we can say publicly regarding potential future regulatory decisions and enforcement options. While we regret that we cannot appear before a public meeting of the City Council at this time, we will continue to share documents and information with the City of Thornton and concerned community members.

Currently, CDPHE has an open Compliance Advisory on Thornton, LLC. CDPHE and Thornton, LLC also have a stipulation for required next steps and off-site injections. Although the final court deadline isn't until November 1, 2021, we do want to provide the City Council with a few facts and principles that might influence possible future decision-making in the event Jay Brown is unable to pay for remediation:

1. CDPHE will hold Jay Brown and Thornton, LLC accountable for performing the approved, in-effect corrective action plan and any other plans CDPHE subsequently approves.
2. What CDPHE would do if Mr. Brown did not or could not perform remediation depends on a number of factors specific to that future situation, including, but not limited to, when it occurs, what Mr. Brown and Thornton, LLC failed to do, what approved plans are in place, and whether the matter is in litigation.
3. Most immediately, if Thornton, LLC does not complete Phase II off-site BOS injections by the end of August 2021, CDPHE could ask the court to hold Thornton, LLC and Mr. Brown in contempt of a court order.
4. Unlike other states or environmental programs, the State of Colorado does not have dry cleaner release remediation fund, state "Superfund" program, cleanup-and-cost-recovery framework, or other applicable legal authority and funding to permit us to conduct a



Resource Conservation and Recovery Act (RCRA)/Colorado Hazardous Waste Act (CHWA) corrective action site cleanup if a property owner is unable to do so. This is why we work to hold property owners accountable. An alleged lack of funds is not a defense to RCRA/CHWA liability.

Please let us know if you have additional questions. In addition, if community members have questions about public health or the environment, please direct them to contact our Community Involvement team, Laura Dixon (laura.dixon@state.co.us) and Lauren Errico (lauren.errico@state.co.us).

Thank you again for your dedication to the people of Thornton and environmental protection.

Cordially,

Lindsay Masters Murl
Environmental Protection Specialist
Corrective Action Unit
Colorado Department of Public Health and Environment

ecc: Chad Howell, City of Thornton
Brian Hlavacek, Tri-County Health
Katie Keefe, Adams County
Doug Knappe, CDPHE
Robert Beierle, CDPHE
Laura Dixon, CDPHE
Lauren Errico, CDPHE
Emily Splitek, Colorado AGO
HMWMD Records

