



State of Ohio Environmental Protection Agency

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Columbus, OH 43216-1049

**CERTIFIED MAIL**

March 7, 2008

**Re: Director's Final Findings & Orders  
Exemption Pursuant to R.C. 3734.02(G)  
OGM, LTD dba Clean Water, LTD  
US EPA ID No.: OHD 004 274 031**

Mr. Brad M. Malatesta  
President & CEO  
OGM, LTD dba Clean Water, LTD  
2480 Jackson Pike  
Columbus, Ohio 43222

Dear Mr. Malatesta:

On March 5, 2008 I sent you a cover letter along with a copy of the Director's Final Findings and Orders (Orders). The cover letter incorrectly identified our Ohio EPA District office contact and facility identification number. This has been corrected.

Please discard that correspondence and replace it with this one.

Attached are the Orders issued to OGM, LTD dba Clean Water, LTD on March 5, 2008. These Orders are effective March 5, 2008.

If you have any questions concerning compliance with these Orders, do not hesitate to contact Harold O'Connell at (937) 285-6078.

Sincerely,

David A. Sholtis  
Assistant Chief  
Division of Hazardous Waste Management

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**Attachments**

cc: Michael A. Savage, Chief, DHWM  
Harry Sarvis, Mgr., CAS, DHWM  
Todd Anderson, Legal  
Heidi Greismer, PIC  
Harold O'Connell, Mgr., DHWM, SWDO  
Kristin L. Watt, Vorys, Sater, Seymour and Pease LLP

Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korleski, Director

OHIO E.P.A.

MAR -5 2008

ENTERED DIRECTOR'S JOURNAL

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

OGM, LTD  
d/b/a Clean Water, LTD : Director's Final Findings  
2480 Jackson Pike : and Orders  
Columbus, Ohio 43222 :

PREAMBLE

It is hereby agreed by and among the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to OGM, LTD d/b/a Clean Water, LTD (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) §§ 3734.02(G), 3734.13 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon the Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent, or of the Facility, shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

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.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

I certify this to be a true and accurate copy of the  
official documents as filed in the records of the Ohio  
Environmental Protection Agency.

By: John E. Jacks Date: 3-5-08

1. Pursuant to ORC § 3734.02(G) and rule 3745-50-31 of the Ohio Administrative Code (OAC), the Director, by order, may exempt any person generating, storing, treating, disposing of, or transporting hazardous waste in such quantities or under such circumstances that, in the determination of the Director, are unlikely to adversely affect the public health or safety or the environment from any requirement to obtain a permit or comply with other requirements of ORC Chapter 3734. Any such exemption shall be consistent with and equivalent to rules promulgated under the Resource Conservation and Recovery Act of 1976, 90 Stat. 2806, 42 U.S.C. § 6921 et seq., as amended.
2. Respondent is the prospective owner and operator of a permitted hazardous waste facility located at 300 Cherokee Drive, Dayton, Ohio (Facility). The Facility is currently owned and operated by Permafix of Dayton, Inc.
3. The Facility is an "off-site facility" as that term is defined in ORC § 3734.41(G) and Ohio Administrative Code (OAC) rule 109:6-1-01(P).
4. ORC § 3734.42(F)(1) provides, in pertinent part, that "[w]henver there is a change in the ownership of . . . any off-site hazardous waste treatment, storage, or disposal facility, the prospective owner shall file a disclosure statement with the attorney general and the director at least one hundred and eighty days prior to the proposed change in ownership. See also OAC rule 109:6-1-02(A)(3). Under ORC § 3734.42(F)(1), the Director is authorized to disapprove the change in ownership if the Director determines that the disclosure statement or the investigative report contains information that would require a denial of a permit under ORC § 3734.44.
5. In a letter dated November 9, 2007, Respondent notified Ohio EPA that Respondent intended to enter into a transaction to acquire the Facility from Permafix of Dayton, Inc. In this letter, Respondent also requested an exemption, pursuant to ORC § 3734.02(G), from the 180-day pre-notification requirement specified in ORC § 3734.42(F)(1).
6. Since Ohio EPA's receipt of Respondent's letter referenced in Finding No. 5. of these Orders, the Office of the Attorney General and Ohio EPA have received copies of Respondent's disclosure statements.
7. ORC § 3734.42(F)(3), defines the term "change in ownership" to include "any change in the names, other than those of officers, directors, partners, or key employees, contained in the disclosure statement." The transaction to purchase the Facility referenced in Finding No. 5. of these Orders, constitutes a "change in ownership" as defined by ORC § 3734.42(F)(3).

8. ORC § 3734.42(F)(2) provides that "[i]f the parties to a change in ownership decide to proceed with the change prior to the action of the Director on the disclosure statement and investigative report, the parties shall include in all contracts or other documents reflecting the change in ownership language expressly making the change in ownership subject to the approval of the Director and expressly negating the change if it is disapproved by the Director pursuant to division (F)(1) of this section."
9. Pursuant to ORC § 3734.02(G), the Director may, by order, exempt any person generating, collecting, storing, treating, or disposing of, or transporting . . . hazardous waste, . . . in such quantities or under such circumstances that, in the determination of the director, are unlikely to adversely affect the public health or safety or the environment from any requirement under ORC Chapter 3734. Such an exemption shall be consistent with and equivalent to any regulations adopted by the administrator of the United States environmental protection agency under the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921, et seq., as amended.
10. Pursuant to ORC § 3734.02(G), the Director has determined that issuance to the Respondent of an exemption from the requirement to submit an environmental background disclosure statement at least 180 days prior to the proposed change in ownership referenced in Finding No. 5. of these Orders is unlikely to adversely affect public health safety or the environment.

#### V. ORDERS

1. The Respondent is hereby exempted from the requirement to file a disclosure statement at least 180 days prior to the date of the proposed change in ownership of the Facility, as required by ORC § 3734.42(F)(1) and OAC rule 109:6-1-02(A)(3).
2. Except as otherwise expressly provided herein, the Respondent shall comply with all other applicable requirements of ORC Chapter 3734. and the rules promulgated thereunder, as well as OAC Chapter 109:6-1.
3. The Director may revoke these Orders for any reason, including but not limited to Respondent's failure to comply with any of these Orders or a determination that Respondent's activities at the Facility adversely affect public health or safety or the environment.

4. The issuance of these Orders by the Director does not release Respondent of any liability it may have incurred for any violations which may have occurred at the Facility prior to the effective date of these Orders. The issuance of these Orders does not release Respondent from any obligation it has to comply with the State of Ohio's environmental laws, except as otherwise specifically provided herein.
5. These Orders do not exempt Respondent from any other local, state, or federal laws or regulations which are otherwise applicable.

#### **VI. OTHER CLAIMS**

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, the operation of Respondent's Facility.

#### **VII. OTHER APPLICABLE LAWS**

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 Respondent.

#### **VIII. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section IX. of these Orders.

#### **IX. WAIVER**

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

**X. EFFECTIVE DATE**

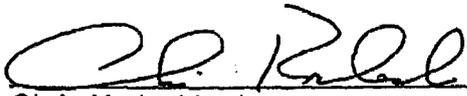
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**XI. SIGNATORY AUTHORITY**

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 ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**

  
Chris Korleski  
Director

MAR 05 2008  
Date

**IT IS SO AGREED:**

**OGM, LTD d/b/a Clean Water, LTD**

  
Signature

2-11-2008  
Date

BRAD M. MALATESTA  
Printed or Typed Name

PRESIDENT & CEO  
Title