

OHIO E.P.A.

SEP -9 2003

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Perma-Fix of Dayton, Inc.
300 South West End Avenue
Dayton, Ohio 45427

**Director's Final
Findings and Orders**

Respondent

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 Perma-Fix of Dayton, Inc. (Respondent) pursuant to the authority vested in the director of the Ohio Environmental Protection Agency (Ohio EPA) under § 3734.13 and § 3745.01 of the Ohio Revised Code (ORC).

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership relating to the Facility shall in any way alter Respondent's obligations under these Orders. Respondent's obligations under these Orders may be altered only by the written action of the director of Ohio EPA.

III. DEFINITIONS

1. Unless otherwise stated, all terms in these Orders shall have the same meaning as used in Chapter 3734. of the ORC and the regulations promulgated thereunder.
2. The effective date of these Orders is the date these Orders are entered into the Ohio EPA director's journal.

IV. FINDINGS OF FACT

The director of Ohio EPA has determined the following findings of fact:

1. Respondent is a "person" as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).
2. Respondent operates a permitted treatment, storage and disposal facility located at 300 South West End Avenue, Dayton, Ohio (Facility). Respondent was incorporated to do business in the State of Ohio on October 7, 1941. Respondent received hazardous waste generator identification number OHD004274031 on January 1, 1979.
3. Respondent is authorized to store hazardous waste in containers in accordance with the terms and conditions of its Ohio Hazardous Waste Facility and Installation and Operation Permit No.05-57-0555, issued and effective December, 29, 1995, ORC Chapter 3734., and all applicable Ohio hazardous waste rules.
4. At the Facility, Respondent generates "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03, including D001, D007 and D018. Respondent is a large quantity generator of hazardous waste.
5. On September 29, 2001, Ohio EPA conducted a compliance evaluation inspection at the Facility, and determined that Respondent had:
 - a. Stored hazardous waste which was generated off-site greater than the maximum permitted capacity of 13,750 gallons of containerized hazardous waste, in violation of ORC § 3734.11.(B) and Permit Condition C.1.(a);
 - b. Failed to properly label all the hazardous waste storage containers with the words "Hazardous Waste," in violation of OAC rule 3745-52-34(A)(3); and
 - c. Stored two (2) 55-gallon containers of hazardous waste (D007), which was generated on site, in the less than 90-day storage area at the Facility for greater than 90 days, in violation of ORC § 3734.11(B), OAC 3745-50-58(A) and the Permit Condition A.5.

Ohio EPA has determined that Respondent's storage of the two (2) 55-gallon containers of hazardous waste (D007) as described above also constitutes a violation of ORC § 3734.02(F).

6. By letter dated October 16, 2001, Ohio EPA notified Respondent of the violations referenced in Finding Nos. 5.a. through 5.c.
7. By letter dated October 30, 2001, Respondent submitted a response to Ohio EPA's October 16, 2001, letter. Respondent informed Ohio EPA that the containers of waste identified in Finding No. 5.b. were determined to contain non-hazardous waste.
8. On November 28, 2001, Ohio EPA conducted a Return to Compliance inspection at the Facility.
9. By letter dated December 4, 2001, Ohio EPA notified Respondent that Respondent had abated those violations referenced in Finding No. 5.
10. By letter dated April 16, 2002, Ohio EPA notified Respondent that, since 1995, Respondent had failed to pay hazardous waste off-site treatment fees for the calendar years 1995 through 2000, in violation of OAC rule 3745-50-35. Ohio EPA has determined that treatment fees due for those calendar years total \$21,948.74.
11. By letter dated May 13, 2002, Respondent responded to Ohio EPA's April 16, 2002 Notice of Violation letter.
12. Respondent has a current overpayment of treatment fees for calendar year 2002 in the amount of \$5,957.77.

V. ORDERS

Respondent shall achieve compliance with Chapter 3734. of the ORC and the regulations promulgated thereunder according to the following compliance schedule:

1. Within thirty (30) days after the effective date of these Orders, Respondent shall pay the delinquent hazardous waste facility treatment fees, identified in Finding No. 10, to Ohio EPA in the amount of \$15,990.97 which will be deposited into the hazardous waste facility management fund established pursuant to ORC § 3734.18. Payment shall be made by tendering a certified check in the stated amount to Ohio EPA, Department 631, Columbus, Ohio 43265-0631, made payable to "Treasurer, State of Ohio." A copy of the check shall be submitted in accordance with Section IX of these Orders.
2. Respondent shall pay to Ohio EPA the amount of \$28,641.00 in settlement of Ohio EPA's claims for civil penalties which may be assessed for

noncompliance pursuant to ORC Chapter 3734. and which will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28. Payment of the \$28,641.00 shall be made pursuant to the following schedule:

- a. Within 30 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$9,547.00;
- b. Within 90 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$9,547.00; and
- c. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$9,547.00.

The payments shall be made by tendering certified checks in the stated amounts to Ohio EPA, Department 631, Columbus, Ohio 43265-0631, made payable to "Treasurer, State of Ohio." Copies of these checks shall be submitted in accordance with Section IX of these Orders.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt and successful negotiation of the certified checks required above.

VII. 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 signatory to these Orders, for any liability arising out of or relating to the operations of Respondent's Facility.

VIII. 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. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Respondent's operation of its Facility. Ohio EPA reserves all rights and privileges except as specified herein.

IX. NOTICE

All documents demonstrating compliance with these Orders, and other documents required under these Orders to be submitted to Ohio EPA, shall be addressed to:

Ohio Environmental Protection Agency
Southwest District Office
Division of Hazardous Waste Management
Attn: DHWM Manager
401 East 5th Street
Dayton, Ohio 45402

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Christopher Jones, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
Attn: Manager, Compliance Assurance Section
P.O. Box 1049
Columbus, Ohio 43216-1049

For deliveries to the building:

Christopher Jones, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
Attn: Manager, Compliance Assurance Section
122 South Front Street
Columbus, Ohio 43215

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

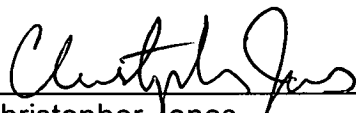
X. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities, including closure of hazardous waste units at the Facility, pursuant to ORC Chapter 3734. or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

XI. SIGNATORIES

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such signatory to this document.

IT IS SO ORDERED:



Christopher Jones
Director

SEP 09 2003

Date

XII. WAIVER

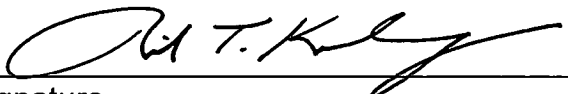
In order to resolve disputed claims, without admission of fact, violation or liability, and, subject to Section X of these Orders, in lieu of further enforcement action by Ohio EPA for only the violations addressed in these Orders, Respondent agrees that these Orders are lawful and reasonable, that the times provided for compliance herein are reasonable and that Respondent agrees to comply with these Orders. Subject to Section X., above, compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations cited herein.

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

Notwithstanding the preceding, Ohio EPA and Respondent agree that in the event that 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.

IT IS SO AGREED:

Perma-Fix of Dayton, Inc.



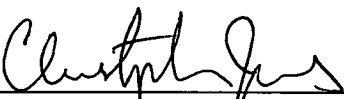
Signature

8-22-03
Date

RICHARD T. KELELY
Printed or typed name

VICE PRESIDENT
Title

Ohio Environmental Protection Agency



Christopher Jones
Director

SEP 09 2003
Date