

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
DEC 28 2007

ENTIRED DIRECTOR'S JOURNAL

In the Matter of:

Ocanna, Inc.
c/o BDB Agent Co.
3800 Embassy Parkway
Akron, Ohio 44333

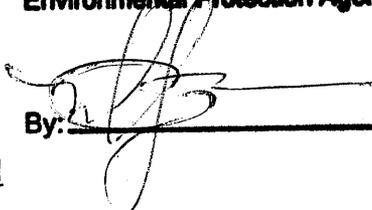
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Director's Final Findings
and Orders

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.

PREAMBLE

It is agreed by the parties hereto as follows:

By: 

Date: 12/28/07

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Ocanna, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03, 3734.02, 3734.13 and 3745.01.11

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 of Respondent or of the Facilities (as hereinafter defined) 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 Chapters 3704 and 3734 and the rules promulgated thereunder.

IV. FINDINGS

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3704.03, 3734.02, 3734.13 and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

General:

1. Respondent is an Ohio corporation. Respondent is a "person" as defined in ORC § 3734.01(G) and Ohio Administrative Code ("OAC") Rules 3745-15-01(U), 3745-27-01(P)(3) and 3745-50-10(A).

2. Prior to July 3, 2007, Respondent, then known as Annaco, Inc., operated two facilities in Akron, Ohio: an automobile engine block and ferrous and non-ferrous scrap metal processing and recycling facility located at 943 Hazel Street ("Annaco Facility"); and a ferrous and non-ferrous scrap metal recycling operation, Harry's Scrap Metals, at 888 Hazel Street ("Harry's Facility") (together, "the Facilities"). As of July 3, 2007, Respondent sold all of its assets at the Facilities, including the Annaco trade name, to Metalico, Inc.

3. Prior to June 2006, B.H.B Land Company ("B.H.B.") was the owner of both the Annaco Facility and Harry's Facility. As of June 2006, the owner of the real property at the Annaco Facility was 943 Hazel LLC, and the owner of the real property at Harry's Facility was Ocanna Plant II LLC. As of July 2, 2007, ownership of the real property at the Annaco Facility was acquired by Melinda Hazel, LLC, and ownership of the real property at Harry's Facility was acquired by Elizabeth Hazel, LLC.

Division of Air Pollution Control ("DAPC"):

4. The Akron Regional Air Quality Management District ("ARAQMD") acts as an agent of Ohio EPA for the Ohio EPA/DAPC in Summit County.

5. At the Annaco Facility, among other things, Respondent collected used oil from an engine block processing and recycling operation and used this oil to fuel a 3.021 million Btu per hour ("mmBtu/hr") hot water heater. The hot water heater was an "emissions unit" as identified in OAC Rule 3745-31-01(MM), and was designated as "emissions unit B001." Also, emissions unit B001 was an "air contaminant source," as defined in OAC Rules 3745-31-01(I) and 3745-35-01(B)(4), and ORC § 3704.01(C).

6. OAC Rule 3745-31-02(A)(1) prohibits, in part, any person from causing, permitting, or allowing the installation of a new source of air pollutants without first obtaining a Permit to Install ("PTI") from the Director of Ohio EPA, unless otherwise specified by law or rule. A "new source" is defined in OAC Rule 3745-31-01(TTT) as, in part, any air contaminant source for which an owner or operator undertakes a continuing program of installation or enters into a binding contractual obligation to undertake and complete, within a reasonable time, a continuing program of installation, on or after January 1, 1974, and that at the time of installation would have otherwise been subject to the provisions of OAC Chapter 3745-31.

7. ORC § 3704.05(C) prohibits any person who is the holder of a permit issued under ORC § 3704.03(F) or (G) from violating any of its terms or conditions. Any PTI issued by the Director of Ohio EPA was issued under ORC § 3704.03(F) or (G).

8. ORC § 3704.05(G) prohibits, in part, any person from violating any rule of the Director of Ohio EPA that was issued, adopted, or made under ORC Chapter 3704. OAC Chapter 3745-31 was adopted by the Director pursuant to ORC Chapter 3704.

9. On February 18, 1987, Respondent submitted a PTI application to ARAQMD for the installation of emissions unit B001 as a new source. However, Respondent had already installed emissions unit B001 in December 1986, in violation of OAC Rule 3745-31-02(A)(1) and ORC § 3704.05(G).

10. On September 18, 1987, Respondent submitted an analysis of the used oil burned as fuel in emissions unit B001. The reported concentrations of contaminants in the used oil were used by ARAQMD to set the limits in the PTI and are contained in Finding 11. Respondent's analytical results indicated the analysis was performed using "Direct Analysis."

11. On May 11, 1988, ARAQMD issued PTI 16-529 to Respondent for emissions unit B001. Among other things, the terms and conditions of the PTI required the following:

- a. the used oil burned as fuel must contain no more than the following concentrations of contaminants [in parts per million ("ppm")]:

<u>Contaminant</u>	<u>Maximum concentration allowed by PTI</u>	<u>Analysis submitted by Respondent with PTI application</u>
arsenic	5 ppm	<0.2 ppm
cadmium	6 ppm	5.7 ppm
chromium	12 ppm	11.4 ppm
lead	100 ppm	59.2 ppm
barium	40 ppm	27.4 ppm
total halogen	1000 ppm	700 ppm

- b. the used oil burned as fuel must be analyzed for contaminant concentrations at least once each year; and
- c. Respondent must notify the U.S. Environmental Protection Agency and Ohio EPA of any analysis indicating the used oil contained higher concentrations of contaminants than allowed by the PTI.

12. On June 30, 1998, Ohio EPA issued a Permit to Operate ("PTO") to Respondent for emissions unit B001 pursuant to OAC Chapter 3745-35. Among other things, the PTO required Respondent Ocanna to maintain monthly records of the amount of used oil burned in emissions unit B001, the hours of operation of emissions unit B001, and the average hourly amount of used oil burned in emissions unit B001. Respondent did not keep these records from June 30, 1998 until May 1, 2006, in violation of ORC §

3704.05(C).

13. In July 2003, during a records review of Respondent's file, Ohio EPA's Division of Hazardous Waste Management ("DHWM") discovered Respondent had submitted annual analytical results for the used oil using an analytical method that determined the degree of mobility of the contaminants in the oil rather than the total concentration of contaminants in the oil. Although no required analytical method was identified in the PTI or PTO, the method used by Respondent resulted in reported contaminant concentrations significantly lower than the actual contaminant concentrations.

14. On or about August 2003, Ohio EPA/DHWM requested Respondent to sample the used oil and have it analyzed using analytical methods which report the total concentration of contaminants in the oil. A sample of used oil was taken by Respondent on August 29, 2003 and Envisage Environmental Incorporated of Richfield, Ohio, had the sample analyzed by Summit Environmental Technologies, Inc. A test report was prepared on September 8, 2003. Ohio EPA/DHWM also took a sample of the used oil on November 18, 2003, and had it analyzed by an independent laboratory. The results of each analysis are shown in the following table along with the PTI limits for each contaminant.

<u>Contaminant</u>	<u>PTI Limit</u>	<u>Respondent's Analysis</u>	<u>DHWM's Analysis</u>
Arsenic	5 ppm	39 ppm	37.9 ppm
Cadmium	6 ppm	38 ppm	34.6 ppm
Chromium	12 ppm	120 ppm	84.5 ppm
Lead	100 ppm	3900 ppm	3670 ppm
Barium	40 ppm	350 ppm	305 ppm
Total Halogen	1000 ppm	<100 ppm	596 ppm

Both analyses indicated Respondent burned used oil with metal contaminant concentrations in excess of those allowed by the PTI, in violation of ORC § 3704.05(C).

15. On December 8, 2003, ARAQMD sent a Notice of Violation ("NOV") letter to Respondent. The NOV cited, in part, Respondent with the following violations:

- a. failing to comply with the used oil contaminant content restrictions in PTI 16-529 based upon the test results of September 8, 2003 from Summit Environmental Technologies, Inc.;
- b. failing to comply with the allowable hourly lead emission rate in the above-mentioned PTI based upon the same test results;

- c. failing to submit quarterly deviation reports as specified in the PTO issued on June 30, 1998;
- d. failing to submit proper quarterly deviation reports as specified in the PTO issued on June 30, 1998; and
- e. failing to perform testing of the used oil for metals using a proper method (despite employing a proper method when applying for PTI 16-529).

ARAQMD requested Respondent submit, within 14 days of the receipt of the letter, a written plan of action to achieve compliance, which may have to include discontinuing the use of any off-specification used oil, copies of the original annual fuel oil analyses from test labs going back to 1988, and monthly records of the gallons of used oil burned and the actual operating hours for each month for emissions unit B001 for all years back to 1988.

16. In a letter dated January 30, 2004, Respondent replied to ARAQMD's NOV of December 8, 2003, and provided the following information:

- a. information provided with the PTI application in 1987 acknowledging that used oil exceeded the on-specification used oil threshold but was not a characteristic hazardous waste, and could therefore be used for energy recovery in an industrial furnace or boiler, and the PTI recognized the used oil as off-specification;
- b. in PTOs sometime after 1988, permit writers mistakenly specified the on-specification limitations instead of the off-specification limitations in the PTI;
- c. there was no documentation that the actual lead emissions exceeded the allowable hourly emission lead emission limitation; and
- d. the PTO needed to be rewritten to incorporate the appropriate conditions for the use of off-specification used oil and the appropriate testing procedures.

The documents and information requested in ARAQMD's NOV of December 8, 2003 were not provided with Respondent's letter.

17. In a letter dated March 11, 2004, ARAQMD informed Respondent that it had not provided the records requested in the NOV of December 8, 2003. Also, it indicated that the metals content of the used oil in two grab sample analyses in 2003 exceeded both the limitations in the air permits for emissions unit B001 and that a probable compliance strategy was to cease burning of the used oil generated on-site. ARAQMD requested submission, within 7 days of receipt of the letter, of the items requested in the December 8, 2003 NOV. It also indicated its plan to request Ohio EPA to take enforcement action

against Respondent.

18. In a letter dated March 22, 2004, legal counsel for Respondent submitted records of the annual analyses of the used oil to demonstrate Respondent's used oil qualified as an off-specification used oil and the gallons of used oil burned during the calendar year, except for the 1991 and 1998 reports, which could not be located (the original lab reports, if available, were to be provided later). According to the letter, records of the gallons of used oil burned per month were not provided since such data was not recorded and only annual usage was required to be reported, and the hours of operation per month were not provided since this data was not required to be recorded.

19. In a letter dated April 1, 2004, Respondent's legal counsel submitted copies of the requested original lab reports except for the annual reports for calendar years 1989 through 1992 and 1998, and most of the original PCB and halogen reports prior to 1997, which have not been located. The letter indicated the missing reports may have been discarded since the record retention requirements of OAC Chapter 3745-279 are for three years. No compliance plan was submitted.

20. The annual reports submitted by Respondent indicate that an inappropriate test method (i.e., EP-Toxicity) for metals content was being used to report such information to ARAQMD from the date of the first report for calendar year 1988 (February 9, 1989) until the report dated April 16, 2004 for calendar year 2003. Therefore, Respondent failed to submit annual reports that contained a chemical analysis of the constituents specified in PTI 16-529 and in the PTOs of November 8, 1991, January 13, 1995 and June 30, 1998, in violation of ORC § 3704.05(C). Some of the proper test results were submitted by Respondent's counsel along with a letter dated April 1, 2004.

21. Based on the reports submitted by Respondent, Respondent violated ORC § 3704.05(C) as follows:

- a. analysis of the October 31, 1994 sample of used oil shows exceedances (23.7 ppm, 16.5 ppm, 82.3 ppm, 294 ppm, 3,960 ppm) of the limitations (5 ppm, 6 ppm, 12 ppm, 40 ppm, 100 ppm) in PTI 16-529 and the November 7, 1994 PTO issued for emissions unit B001, for arsenic, cadmium, chromium, barium and lead, respectively, and the flash point (95 degrees Fahrenheit) was below the minimum value of 100 degrees Fahrenheit;
- b. analysis of the February 6, 2002 sample of used oil shows that heat content (4,000 Btu/lb) was below the minimum value (5,000 Btu/lb);
- c. analysis of the February 22, 2004 sample of used oil shows exceedances (32.5 ppm, 121 ppm, 200 ppm, 3,814 ppm) of the limitations (6 ppm, 12 ppm, 40 ppm, 100 ppm) in PTI 16-529 for cadmium, chromium, barium and lead, respectively;

- d. analysis of the October 6, 2004 sample of used oil shows an exceedance (123 ppm) of the limitation (100 ppm) in PTI 16-529 for lead;
- e. analysis of the January 5, 2006 sample of used oil shows exceedances (36.6 ppm, 35.8 ppm, 95.0 ppm, 177 ppm, 385 ppm) of the limitations (5 ppm, 6 ppm, 12 ppm, 40 ppm, 100 ppm) in PTI 16-529 for arsenic, cadmium, chromium, barium and lead, respectively.
- f. analysis of the October 25 and 26, 2006 sample of used oil shows exceedances (44.7 ppm, 169 ppm, 354 ppm and 4,050 ppm) of the limitations (6 ppm, 12 ppm, 40 ppm and 100 ppm) in PTI 16-529 for cadmium, chromium, barium and lead, respectively.

22. On April 3, 2007, Respondent and Ohio EPA agreed to have Respondent file a new PTI application with ARAQMD for emissions unit B001 to revise certain metal concentration limitations for used oil and related monitoring, record-keeping and reporting requirements. The agreed revised metal concentration limitations for the used oil in emissions unit B001 are identified in a sidebar letter from Ohio EPA to Respondent's counsel, dated October 17, 2007. Furthermore, Ohio EPA withdrew its allegation that the allowable hourly lead emission rate in PTI 16-529 was violated based on stack test information provided by Respondent.

Division of Hazardous Waste Management ("DHWM"):

23. At the Annaco Facility, Respondent generated "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC Rules 3745-50-10(A) and 3745-51-03. Respondent operated as a large quantity generator of hazardous waste at the Annaco Facility, and generated baghouse dust (D006/D008 hazardous waste) and ash from the operation of emissions unit B001. Respondent also generated roto-sort waste from metal recycling operations at Harry's Facility. Roto-sort waste was generated when piles of small fragments of plastics and metals, graded site soil and other debris were screened to separate recyclable metals. The ash wastes and roto-sort wastes were placed into piles at the Annaco Facility and Harry's Facility.

24. On June 24, 2003, Ohio EPA/DHWM conducted a compliance evaluation inspection at the Annaco Facility. As a result of the inspection, Ohio EPA/DHWM determined Respondent had, inter alia:

- a. failed to adequately evaluate wastes generated at the Annaco Facility to determine if those wastes were hazardous wastes, in violation of OAC Rule 3745-52-11;
- b. failed to maintain manifests of off-site shipments of hazardous waste at the Annaco Facility which bear the handwritten signature from the designated facility, in violation of OAC Rule 3745-52-42(A);

- c. failed to provide annual hazardous waste management training to employees at the Annaco Facility who handle and/or manage hazardous waste, in violation of OAC Rule 3745-65-16;
- d. failed to conduct and document weekly inspections of all emergency equipment at the Annaco Facility, in violation of OAC Rule 3745-65-33;
- e. failed to submit a copy of the contingency plan to local authorities that may be requested to provide emergency services at the Annaco Facility, in violation of OAC Rule 3745-65-53(B); and
- f. failed to submit and maintain the appropriate land disposal restriction notification forms for off-site shipments of hazardous waste, in violation of OAC Rule 3745-270-07(A)(2) and (A)(8).

25. On June 24, 2003, Respondent provided responses to the violations referenced in Findings 24.a through 24.f of these Orders.

26. By letter dated July 8, 2003, Ohio EPA/DHWM notified Respondent of the violations referenced in Findings 24.a through 24.f of these Orders. Ohio EPA/DHWM also notified Respondent that it had abated the violation referenced in Finding 24.b of these Orders, and requested information regarding the regulatory status of emissions unit B001.

27. By letters dated August 6 and 29, 2003, Respondent provided responses to Ohio EPA/DHWM's July 8, 2003 letter.

28. By letter dated September 3, 2003, Ohio EPA/DHWM requested information regarding the regulatory status of emissions unit B001. Ohio EPA/DHWM questioned whether emissions unit B001 qualified as either a "boiler" or an "industrial furnace" pursuant to OAC Rules 3745-50-10 and 3745-279-61, and as defined in OAC Rule 3745-50-10(A), and whether Respondent burned used oil in emissions unit B001 which exceeded the specification levels found in Table 1 of OAC Rule 3745-279-11.

29. By letters dated September 11, September 24, and October 17, 2003, Respondent provided responses to Ohio EPA/DHWM's September 3, 2003 letter. Respondent's October 17, 2003 letter indicated the used oil burned in emissions unit B001 exceeded the specification levels found in Table 1 of OAC Rule 3745-279-11, and was considered "off-specification" used oil.

30. On November 18, 2003, Ohio EPA/DHWM conducted a follow-up inspection at the Annaco Facility.

31. By e-mail correspondence dated November 25, 2003, Ohio EPA/DHWM requested information from Respondent regarding the regulatory status of emissions unit B001.

32. By letter dated December 10, 2003, Ohio EPA/DHWM notified Respondent that Respondent had abated the violations referenced in Findings 24.a and 24.c through 24.e of these Orders. Ohio EPA/DHWM also requested information regarding the regulatory status of emissions unit B001. Ohio EPA/DHWM notified Respondent that, based upon information obtained in correspondence referenced in Finding 27 and Finding 29 of these Orders and the follow-up inspection referenced in Finding 30 of these Orders, that Respondent had:

- a. failed to label five above-ground used oil storage tanks with the words, "Used Oil," and failed to store used oil in tanks which are in good condition and not leaking, in violation of OAC Rule 3745-279-22; and
- b. failed to adequately evaluate the ash and roto-sort waste streams to determine if those wastes were hazardous wastes, in violation of OAC Rule 3745-52-11.

33. By letter dated December 10, 2003, Ohio EPA/DHWM notified Respondent of the violations referenced in Findings 32.a and 32.b of these Orders.

34. By letters dated January 30 and February 17, 2004, Respondent provided responses to Ohio EPA/DHWM's December 10, 2003 letter. Respondent's responses indicated that emissions unit B001 qualified as an "industrial furnace."

35. By letter dated March 12, 2004, Ohio EPA/DHWM notified Respondent that Respondent had abated the violation referenced in Finding 24.f of these Orders. The letter also notified Respondent that Respondent's emissions unit B001 did not qualify as an "industrial furnace" and Respondent failed to demonstrate that off-specification used oil was burned for energy recovery in an approved device, in violation of OAC Rules 3745-279-12(C) and 3745-279-61(A).

36. By letter dated April 13, 2004, Respondent submitted responses to Ohio EPA/DHWM's March 12, 2004 letter.

37. By letter dated August 11, 2004, Ohio EPA/DHWM notified Respondent that Respondent had abated the violation referenced in Finding 32.b of these Orders. The letter also requested information regarding the regulatory status of emissions unit B001.

38. By letter dated September 8, 2004, Respondent provided responses to Ohio EPA/DHWM's August 11, 2004 letter.

39. By electronic correspondence dated September 29, 2004, Ohio EPA/DHWM requested additional information regarding the regulatory status of emissions unit B001.

40. In correspondence dated October 13, 2004, Respondent provided responses to Ohio EPA/DHWM's September 29, 2004 electronic correspondence.

41. By letter dated October 25, 2004, Ohio EPA/DHWM notified Respondent that Respondent had abated the violations referenced in Findings 32.a and 35 of these Orders.

Division of Solid and Infectious Waste Management ("DSIWM"):

42. As part of its metal recycling operations, Respondent generated a waste stream consisting of small fragments of plastic, metals and various other debris ("roto-sort waste"). The roto-sort waste was generated when piles of metals, graded site soil and other debris were screened to separate recyclable metals.

43. The roto-sort waste constituted a solid waste pursuant to ORC § 3734.01(E) and OAC Rule 3745-27-01(S)(24).

44. Respondent disposed of the roto-sort waste at both the Annaco Facility and Harry's Facility, in violation of ORC § 3734.03 and OAC Rule 3745-27-05(C).

45. Respondent also disposed of excavated soil from the Annaco Facility at Harry's Facility. The excavated soil contained pieces of metal, plastic and other debris similar to the roto-sort waste. The excavated soils and wastes are currently mounded along the eastern side of Harry's Facility in a long mound approximately ten feet high and 500 feet long ("perimeter mound waste").

46. The perimeter mound waste constitutes a solid waste pursuant to ORC § 3734.01(E) and OAC Rule 3745-27-01(S)(24).

47. Respondent's disposal of the perimeter mound waste was a violation of ORC § 3734.03 and OAC Rule 3745-27-05(C).

48. "Solid wastes" are defined in ORC § 3734.01(E) as "such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural and community operations." OAC Rule 3745-27-01(S)(24) defines "solid wastes" as "such unwanted residual solid or semisolid material, including, but not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt and debris, as results from industrial, commercial, agricultural or community operations."

49. ORC § 3734.03 provides that "[n]o person shall dispose of solid wastes by . . . open dumping" OAC Rule 3745-27-05(C) provides "[n]o person shall conduct, permit, or allow open dumping. In the event that open dumping is occurring or has occurred at a property, the person(s) responsible for the open dumping, the owner of the property or the person(s) who allow or allowed open dumping to occur, shall promptly remove and dispose or otherwise manage the solid waste in accordance with Chapter 3734. of the Revised Code, and shall submit verification that the solid waste has been properly managed."

50. ORC § 3734.05(A)(1) provides that "[n]o person shall operate or maintain a solid waste facility without a license. . . ." OAC Rule 3745-37-01(A) provides "[n]o person

shall conduct municipal solid waste landfill. . . operations without possessing a separate, valid license. . . as required by Chapter 3734. of the Revised Code and the Administrative Code rules adopted thereunder."

51. ORC § 3734.11(A) states, "[n]o person shall violate any section of this chapter, any rule adopted under it, or any order issued under section 3734.13 of the Revised Code."

52. On November 7, 2003, Ohio EPA/DSIWM conducted an inspection at the Annaco Facility and observed the following violations:

- a. open dumping of solid waste, in violation of OAC Rule 3745-27-05(C) and ORC § 3734.03;
- b. establishing a solid waste facility without a permit, in violation of ORC § 3734.02(C);
- c. operating a municipal solid waste landfill without a license, in violation of OAC Rule 3745-37-01(A) and ORC § 3734.05(A)(1); and
- d. for violating rules adopted under ORC Chapter 3734, in violation of ORC § 3734.11(A).

These violations were documented in a letter to Respondent dated December 5, 2003.

53. On November 10, 2003, Ohio EPA/DSIWM conducted an inspection at Harry's Facility and observed the following violations:

- a. open dumping of solid waste, in violation of OAC Rule 3745-27-05(C) and ORC § 3734.03;
- b. establishing a solid waste facility without a permit, in violation of ORC § 3734.02(C);
- c. operating a municipal solid waste landfill without a license, in violation of OAC Rule 3745-37-01(A) and ORC § 3734.05(A)(1); and
- d. for violating rules adopted under ORC Chapter 3734, in violation of ORC § 3734.11(A).

These violations were documented in a letter to Respondent dated December 5, 2003.

54. On December 12, 2003, Respondent met with Ohio EPA representatives to discuss solid waste, hazardous waste, air pollution, and surface water violations at the

Annaco Facility and Harry's Facility.

55. On December 24, 2003, Ohio EPA/DSIWM received a letter from Respondent stating that, as a legitimate recycling facility, it was exempt from solid waste regulations.

56. On April 6, 2004, Ohio EPA/DSIWM conducted inspections at both the Annaco Facility and Harry's Facility and observed the following violations:

- a. open dumping of solid waste, in violation of OAC Rule 3745-27-05(C) and ORC § 3734.03;
- b. establishing a solid waste facility without a permit, in violation of ORC § 3734.02(C);
- c. operating a municipal solid waste landfill without a license, in violation of OAC Rule 3745-37-01(A) and ORC § 3734.05(A)(1); and
- d. for violating rules adopted under ORC Chapter 3734, in violation of ORC § 3734.11(A).

These violations were documented in a letter to Respondent dated April 14, 2004.

57. On April 20, 2004, Ohio EPA/DSIWM received a facsimile from Countywide Recycling and Disposal Facility ("Countywide") indicating that from March 29, 2004, to April 14, 2004, Respondent had disposed of approximately 1,155 tons of roto-sort waste at Countywide. However, approximately two thousand two hundred sixty (2,260) cubic yards of solid wastes remain at the Annaco Facility and Harry's Facility, in violation of OAC Rule 3745-27-05(C) and ORC § 3734.03.

All Divisions:

58. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and their benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

For the Division of Air Pollution Control:

1. Pursuant to ORC § 3704.06, Respondent is assessed a civil penalty in the amount of fifty-three thousand dollars (\$53,000) in settlement of Ohio EPA's claims for civil penalties associated with the violations identified in Findings 4 through 22 of these Orders. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio

EPA the amount of forty-two thousand four hundred dollars (\$42,400) of the total penalty amount. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$42,400. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of the check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining ten thousand six hundred dollars (\$10,600) of the civil penalty to Ohio EPA, Respondent shall fund the supplemental environmental project ("SEP") identified in Order 11. In the event Respondent defaults or otherwise fails to complete the project as specified in Order 11, the \$10,600 for the project in Order 11 shall immediately become due and payable to Ohio EPA. Such payment shall be made by an official check made payable to "Treasurer, State of Ohio" and sent to Brenda Case, or her successor, together with a letter identifying Respondent, to the above-stated address. A copy of the check shall be sent to James A. Orlemann, or his successor, at the above-stated address.

For the Division of Hazardous Waste Management:

3. Pursuant to ORC Chapter 3734, Respondent is assessed a civil penalty in the amount of eighteen thousand dollars (\$18,000) in settlement of Ohio EPA's claims for civil penalties associated with the violations identified in Findings 23 through 41 of these Orders. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of fourteen thousand four hundred dollars (\$14,400) of the total penalty amount, which will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$14,400. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to the following:

Ohio EPA
Office of Fiscal Administration
Department L-2711
Columbus, Ohio 43260-2711

Copies of the check(s) shall be sent to the Ohio EPA/DHWM contacts identified in Section X of these Orders.

4. In lieu of paying the remaining three thousand six hundred dollars (\$3,600) of the civil penalty to Ohio EPA, Respondent shall fund the supplemental environmental project ("SEP") identified in Order 11. In the event Respondent defaults or otherwise fails to complete the SEP as specified in Order 11, the \$3,600 shall immediately become due and payable to Ohio EPA. Such payment shall be made by an official check made payable to "Treasurer, State of Ohio" and sent to Brenda Case, or her successor, together with a letter identifying Respondent, to the above-stated address. A copy of the check shall be sent to the Ohio EPA/DHWM contacts identified in Section X of these Orders.

For the Division of Solid and Infectious Waste Management:

5. Pursuant to ORC Chapter 3734, Respondent is assessed a civil penalty in the amount of fifteen thousand one hundred seventy-eight dollars (\$15,178) in settlement of Ohio EPA's claims for civil penalties associated with the violations identified in Findings 42 through 57 of these Orders. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of twelve thousand one hundred forty-two dollars (\$12,142) of the total penalty amount, which will be deposited into the environmental protection remediation fund established pursuant to ORC § 3734.281. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$12,142. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to the above-stated address. A copy of the check shall be sent to the Ohio EPA/DSIWM contact identified in Section X of these Orders.

6. In lieu of paying the remaining three thousand thirty-six dollars (\$3,036) of the civil penalty to Ohio EPA, Respondent shall fund the supplemental environmental project ("SEP") identified in Order 11. In the event Respondent defaults or otherwise fails to complete the SEP as specified in Order 11, the \$3,036 shall immediately become due and payable to Ohio EPA. Such payment shall be made by an official check made payable to "Treasurer, State of Ohio" and sent to Brenda Case, or her successor, together with a letter identifying Respondent, to the above-stated address. A copy of the check shall be sent to the Ohio EPA/DSIWM contact identified in Section X of these Orders.

7. Within three hundred and sixty-five (365) days after the effective date of these Orders, Respondent shall excavate all perimeter mound waste located at the Harry's Facility to the level of the adjacent "flat" area, and dispose of all perimeter mound waste including any perimeter mound waste that has fallen down the slope of the perimeter mound leading to the little Cuyahoga River, at a licensed solid waste facility.

8. Within thirty (30) days after completing the waste removal specified in Order 7 above, Respondent shall cover the area of Harry's Facility disturbed by the waste removal with six (6) inches of clean soil and appropriately grade, seed, and mulch the area to form a dense vegetative cover in order to protect the Little Cuyahoga River from storm

water runoff. If waste removal is completed after the growing season, Respondent shall seed the area at the beginning of the next growing season.

9. Respondent shall provide Ohio EPA/DSIWM advanced written notice, not less than ten (10) days prior to conducting any field activities required to be taken pursuant to Orders 7 and 8 above. Upon request, Respondent shall allow Ohio EPA/DSIWM to be present during such field activities.

10. Within fifteen (15) days after completion of the perimeter mound waste removal activities, Respondent shall provide documentation to Ohio EPA/DSIWM, indicating weight and/or volume of the wastes and name of the final disposal facility where all waste was disposed.

Supplemental Environmental Project ("SEP"):

11. In lieu of paying the remaining \$10,600 of civil penalty specified in Order 2, the remaining \$3,600 of civil penalty specified in Order 4, and the remaining \$3,036 of civil penalty specified in Order 6, Respondent shall fund a SEP by making a contribution in the total amount of seventeen thousand two hundred thirty-six dollars (\$17,236) to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD0). Respondent shall make payment on or within thirty (30) days after the effective date of these Orders by tendering an official check(s) made payable to the "Treasurer, State of Ohio" for \$17,236. The official check(s) shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent and Fund 5CD0, to the above-stated address. Copies of the check(s) shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the above-stated address, and to the Ohio EPA/DHWM and OhioEPA/DSIWM contacts identified in Section X of these Orders.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing that Respondent has performed all obligations under these Orders to the satisfaction of the following representatives of Ohio EPA: for Orders 1, 2 and 11, the Chief of Ohio EPA's Division of Air Pollution Control; for Orders 3, 4 and 11, the Chief of Ohio EPA's Division of Hazardous Waste Management; for Orders 5 through 11, the Chief of Ohio EPA's Division of Solid and Infectious Waste Management. If the Ohio EPA representative does not agree that all obligations have been performed, then the Ohio EPA representative will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to the Ohio EPA representatives indicated in Section X of these Orders and shall be signed by a responsible official of

Respondent. For purposes of these Orders, a responsible official is the person authorized to sign in OAC Rule 3745-35-02(B)(1) for a corporation.

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 party to these Orders, for any liability arising from, or related to, the operation of Respondent's facilities.

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. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to the following:

1. For DAPC:

Akron Regional Air Quality Management District
146 South High Street, Room 904
Akron, Ohio 44308
Attn: Lynn Malcolm

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Thomas Kalman

or to such persons and addresses as may hereafter be otherwise specified in writing by the Chief of Ohio EPA's Division of Air Pollution Control.

2. For DHWM:

Ohio Environmental Protection Agency
Northeast District Office
Division of Hazardous Waste Management
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attn: DHWM Manager

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

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

For deliveries to the building:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
50 West Town Street, Suite 700
Columbus, Ohio 43215
Attn: Manager, Compliance Assurance Section

or to such persons and addresses as may hereafter be otherwise specified in writing by the Chief of Ohio EPA's Division of Hazardous Waste Management.

3. For DSIWM Orders 5, 6, 9 and 10:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Solid and Infectious Waste Management
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Brian Dearth

For DSIWM Orders 9 and 10:

Ohio Environmental Protection Agency
Northeast District Office
Division of Solid and Infectious Waste Management
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attn: Unit Supervisor

or to such persons and addresses as may hereafter be otherwise specified in writing by the Chief of Ohio EPA's Division of Solid and Infectious Waste Management.

XI. RESERVATION OF RIGHTS

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

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

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.

XIII. EFFECTIVE DATE

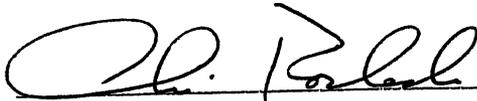
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. 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 SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



Chris Korleski
Director

12/27/07
Date

IT IS SO AGREED:

Ocanna, Inc.



Signature

DECEMBER 19, 2007
Date

MORRIS BERZON
Printed or Typed Name

PRESIDENT
Title