UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of: OGM, Ltd. d/b/a Clean Water Ltd. 300 Cherokee Drive Dayton, Ohio 45417 **Respondent.**	))))))))))	**Docket No. CWA-05-2014-0006** **Proceeding to Assess a Class II Civil Penalty under Section 311(b)(6)(B)(ii) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)(B)(ii).**

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(B)(ii) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990; and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is OGM, Ltd., d/b/a Clean Water, Ltd., a domestic limited liability company organized under the laws of the State of Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its rights to request a hearing as provided in 40 C.F.R § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), states that the President of the United States shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharge of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges."

10. Section 311(j)(5)(A)(i) and (C)(iv) of the CWA, 33 U.S.C. § 1321(j)(5)(A)(i) and (C)(iv), states that the President shall issue regulations requiring the owner or operator of "an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or upon the navigable waters of the United States [or] adjoining shorelines" to "submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil."

11. Through Section 2(d)(1) of Executive Order 12777 (October 18, 1991), the President delegated to the EPA Administrator the authority to issue such regulations to govern owners and operators of such onshore facilities that are non-transportation-related.

12. The EPA Administrator subsequently promulgated regulations, codified at 40 C.F.R. Part 112, Subparts A and D (a/k/a the Facility Response Plan or FRP regulations), implementing these delegated statutory authorities.

13. 40 C.F.R. § 112.20(a)(2) states, in part, that the owner or operator of a FRP-regulated facility that commenced operations after February 18, 1993 but prior to August 30, 1994, must submit a FRP that satisfies the requirements of 40 C.F.R. § 112.20 no later than August 30, 1994.

14. 40 C.F.R. § 112.20(f)(1) states, in part, that a facility could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines, if it meets the criteria of either Sections 112.20(f)(1)(i) or 112.20(f)(1)(ii), as applied in accordance with the flowchart contained in Attachment C-1 to Appendix C of 40 C.F.R. Part 112.

15. 40 C.F.R. § 112.20(f)(1)(ii) is applicable if a facility has a total oil storage capacity greater than or equal to one (1) million gallons, and if any one of four subsections (i.e. Sections 112.20(f)(1)(ii)(A) through (D)), is true.

16. 40 C.F.R. § 112.20(f)(1)(ii)(A) is applicable if the facility does not have secondary containment for each aboveground oil storage area sufficiently large to contain the capacity of the largest aboveground oil storage tank within each storage area plus sufficient freeboard to allow for precipitation.

17. 40 C.F.R. § 112.20(f)(1)(ii)(B) is applicable if a facility is located at a distance (as calculated using the appropriate formula in Appendix C to 40 C.F.R. Part 112 or a comparable formula) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments.

Factual Allegations

18. Respondent, as a domestic limited liability company, is a "person" as that term is defined at Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

19. Respondent is the "owner and/or operator" as those terms are defined in Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of a bulk oil storage facility located at 300 Cherokee Road, Dayton, Ohio (the Facility).

20. The Facility is an existing facility that was in operation on or before August 30, 1994.

21. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products located at the Facility.

22. Respondent's Facility is a "non-transportation-related onshore facility" as that term is defined in 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

23. Respondent's Facility is an "onshore facility" as that term is defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

24. Respondent's Facility has a total oil storage capacity of greater than or equal to one (1) million gallons.

25. The Opossum Creek flows into the Great Miami River which is a navigable water within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and

40 C.F.R. § 112.2, and Complainant contends that the Facility is located at a distance (as calculated using the appropriate formula in Appendix C to Part 112 or a comparable formula) such that a discharge from the Facility could cause injury to fish and wildlife and sensitive environments.

26. Respondent's Facility is a non-transportation related, onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the United States or adjoining shorelines, within the meaning of Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), and 40 C.F.R. § 112.20(f)(1) and, therefore, is an "FRP-regulated facility."

27. Until August 19, 2013, Respondent's Facility did not have secondary containment for each aboveground storage area sufficiently large to contain the capacity of the largest aboveground oil storage tank within each storage area plus sufficient freeboard to allow for precipitation.

28. Respondent's failure to have secondary containment for each aboveground storage area sufficiently large to contain the capacity of the largest aboveground oil storage tank within each storage area plus sufficient freeboard to allow for precipitation is a violation of 40 C.F.R. § 112.8(c)(2)

29. As an FRP-regulated facility in operation on or before August 30, 1994, an FRP for the Facility should have been submitted to the EPA Regional Administrator no later than August 30, 1994.

30. Respondent became the owner and/or operator of an FRP-regulated facility when it purchased the Facility from Perma-Fix of Dayton, Inc. in March 2008. Respondent, as the owner and/or operator of an FRP-regulated facility, is subject to the FRP regulations.

31. Respondent has not submitted an FRP to the EPA Region 5 Administrator.

32. Respondent's failure to submit an FRP as the owner and/or operator of the Facility after March 2008, is a violation of Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), and 40 C.F.R. § 112.20(a)(1).

Civil Penalty and Required Relief

33. Complainant has determined that an appropriate civil penalty to settle the violations alleged in this CAFO is $30,000.

34. In determining this penalty amount, Complainant considered the seriousness of the violation, the economic benefit to the violator, if any, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require. Complainant also considered the EPA's "Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act," dated August 1998 (the CWA Penalty Policy), and Respondent's agreement to perform a supplemental environmental project costing at least $30,550.

35. The civil penalty shall be paid as follows: Within 30 days after the effective date of this CAFO, Respondent agrees to pay a civil penalty of $14,725 for the alleged CWA violations.

36. Required Relief:

a. Within 60 days of effective date of this CAFO, Respondent shall prepare and submit an FRP to EPA, Region 5.

b. Within 60 days of the effective date of this CAFO, Respondent shall amend the Facility's Spill Prevention, Control and Countermeasures (SPCC) Plan to update

the increased secondary containment capacity of Containment Pad E and submit the amended SPCC Plan to EPA Region 5.

c. If Respondent fails to meet any of the deadlines set forth in items 36.a. and 36.b., above, Respondent shall pay EPA an additional civil penalty of $10,000 within 30 days of such failure to meet each required deadline, unless the Regional Administrator has issued a written waiver to Respondent.

Payment of Terms

37. Respondent agrees to pay the penalty and/or fines for failing to meet the above deadlines in paragraphs 35 and 36 by sending a cashier's or certified check, payable to the "Environmental Protection Agency," noting on the check "OSTLF-311" to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

38. The check must note Respondent's name and the docket number of this CAFO.

39. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, and the case docket number must accompany the payment. Respondent agrees to send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Ellen Riley (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
riley.ellen@epa.gov

Thomas Turner (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
turner.thomas@epa.gov

40. If Respondent does not timely pay the civil penalty agreed to herein, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

41. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a $15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, EPA will assess a six percent (6%) per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

42. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment by installing, operating, and maintaining automated level controls with overflow sensors on the storage containment units identified in Exhibit A at Respondent's Dayton, Ohio bulk oil storage facility.

43. At its facility, Respondent must complete the SEP as specified in Exhibit A and spend at least $30,550 on the items listed as "Equipment Costs" and "Installation Costs."

44. Respondent must complete the SEP within 120 days of the Effective Date of this CAFO.

45. Respondent certifies as follows:

> I certify that OGM, Ltd., d/b/a Clean Water Ltd. is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO, except as required by this CAFO. I further certify OGM, Ltd., d/b/a Clean Water Ltd. has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.
>
> I certify that OGM, Ltd., d/b/a Clean Water Ltd. is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not expired.

46. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

47. Respondent must submit a SEP completion report to EPA by no later than 30 days after completion of this SEP (based upon the time frame established above in Paragraph 44). This report must contain the following information:

a. Detailed description of the SEP as completed;

b. Description of any operating problems and the actions taken to correct the problems;

c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;

d. Certification that Respondent has completed the SEP in compliance with this CAFO; and

e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

48. Respondent must submit all notices and reports required by this CAFO by first-class mail to Ms. Ellen Riley, at the address provided in Paragraph 39, above.

49. In each report or document that Respondent submits as provided by this CAFO, it must certify that the report or document is true and complete by including the following statement signed by one of its officers:

> I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

50. Following receipt of the SEP completion report described in Paragraph 47 above, EPA must notify Respondent in writing that:

a. It has satisfactorily completed the SEP and the SEP report;

b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies. The parties may agree in writing to extend this 30 day period; or,

c. It has not satisfactorily completed the SEP and EPA will seek stipulated penalties under Paragraph 52 below.

51. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under Paragraph 52, below.

52. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

a. Except as provided in Subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, then Respondent must pay a penalty of $15,525.

b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in Paragraph 43, then Respondent will not be liable for any stipulated penalty under Subparagraph a, above.

c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in Paragraph 43, then Respondent must pay a penalty of $3,881.25.

d. If Respondent did not submit timely the SEP completion report, including all required information identified in Paragraph 47, then Respondent must pay penalties in the following amounts for each day after such report was due until it submits the report:

Penalty Per Violation Per Day	Period of Violation
$500	1st through 14th day
$1,000	15th through 30th day
$1,500	31st day and beyond

53. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

54. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in Paragraphs 37-41 above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts.

55. Any public statement that Respondent makes referring to the SEP must include the following language, "OGM, Ltd., d/b/a Clean Water Ltd. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against it for violations of Section 311 of the Clean Water Act, 33 U.S.C. § 1321."

56. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.

d. Respondent has the burden of providing that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

57. Nothing in this CAFO is intended to nor will be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

58. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP, except to the extent that such costs exceed the sum of $30,550.

General Provisions

59. This CAFO resolves Respondent's liability only for federal civil penalties for the violations alleged in this CAFO.

60. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw this Consent Agreement and proposed final Order within 15 days of receipt of a commenter's petition, submitted pursuant to 40 C.F.R. § 22.45(c)(4)(ii), requesting that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.

61. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any other violations of law.

62. This CAFO does not affect Respondent's responsibility to comply with the CWA and any other applicable federal, state and local laws and regulations.

63. Except as provided herein, Respondent certifies that, to the best of its knowledge, it is complying with Section 311 of the CWA, 33 U.S.C. § 1321 and its implementing regulations and commits to being within compliance with Section 311 of CWA, 33 U.S.C. § 1321 within 90 days of the Effective Date of the CAFO as provided herein.

64. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31 and the August 1998 CWA Penalty Policy.

65. The terms of this CAFO shall be binding upon Respondent and its officers, directors, agents, servants, employees, and successors and assigns.

66. The civil penalty specified herein is not deductible for federal tax purposes.

67. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

68. Each party agrees to bear its own costs and attorney's fees in this action.

69. This CAFO constitutes the entire agreement between the parties.

OGM, Ltd. d/b/a Clean Water Ltd., Dayton, Ohio, Respondent

4-11-2014 Brad M. Malatesta

Date

Brad Malatesta
President

U.S. Environmental Protection Agency, Complainant

4-28-14 Richard C Karl

Date

Richard C. Karl, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: OGM, Ltd. d/b/a Clean Water Limited, Dayton, Ohio
Docket No. CWA-05-2014-0006

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

____
Date

____
Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

CWA-05-2014-0006

OGM, LTD. D/B/A/ CLEAN WATER LTD – DESCRIPTION OF SEP

OGM, Ltd. d/b/a/ Clean Water Ltd. (CWL) has prepared this proposal to design, install and implement a Supplemental Environmental Project (SEP) as part of the Consent Agreement and Final Order (CAFO) with U.S. EPA, subject to the agreed terms specified below. The SEP is a pollution prevention project which would enhance the tank product level controls and spill prevention measures in the facility's main tank farm, which encompasses Containment Pads A, B and C. This project would build upon the procedures in the Spill Prevention, Control and Countermeasures (SPCC) Plan and Facility Response Plan (FRP) at the facility which is the subject of the CAFO. The project would satisfy the nexus condition to be eligible as a SEP under applicable Agency policies. Finally, the project is voluntary and not mandated by any federal, state or local environmental law or regulation.

CWL will install ultrasound product level controls with digital readouts on ten aboveground storage tanks at the facility. The level controls are equipped with programmable alarms, which can be tied into a separate alarm system to provide both visual and audio alarms within the facility. The system will be designed to allow CWL to potentially implement further product management and control measures in the future (beyond the current SEP proposal), such as remote control and emergency pump shutoffs. Based on the frequency with which product and/or waste material is transferred to and from each tank, as well as operational considerations, CWL has identified the following ten tanks to be included in this project: Tank No. C-4, Tank No. P-1, Tank No. R-2, Tank No. S-9, Tank No. S-10, Tank No. S-11, Tank No. W-1, Tank No. W-2, Tank No. W-5, and Tank No. W-6. CWL commits to installing ultrasound level sensors on these ten tanks, for a total project cost of $30,550.00. A breakdown of the estimated costs of equipment and labor (not including design and personnel training costs) of the project is below:

Equipment Costs:	
10 Greyline Non-Contacting Ultrasonic Level Sensors	$21,000.00
Miscellaneous Equipment (wires, conduit, alarms)	$ 3,000.00
Installation Costs:	
Crane Rental (3 days @ $1,250.00)	$ 3,750.00
Labor (2 employees x 40 hours @ $22.50)	$ 1,800.00
Third-Party Electrician	$ 1,000.00
Total:	**$30,550.00**

Implementation of the project (including installation of sensors and the alarm system, testing, and troubleshooting) will be complete within 120 days of the effective date of the CAFO.

The system will be designed to allow other tanks to be incorporated in the future. Additionally, the system will be designed to be compatible with a central control system that may later be installed.

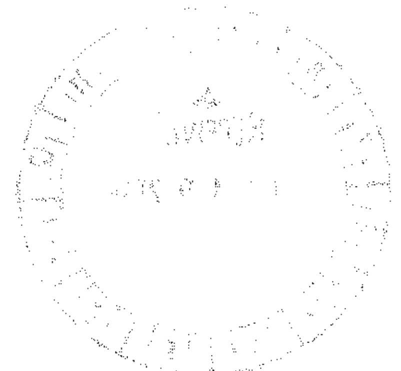

EXHIBIT A