



State of Ohio Environmental Protection Agency

Southwest District

401 East Fifth Street  
Dayton, Ohio 45402-2911

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www.epa.state.oh.us

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

October 14, 2008

Kimball Birdseye  
RL Fender Construction Company  
362 Huffman Avenue  
Dayton, Ohio 45403

**Re: Notice of Violation  
RL Fender Construction Co, OHR 000 146 993, Montgomery County**

Dear Mr. Birdseye,

On October 2, 2008 I inspected the RL Fender facility at 362 Huffman Avenue in Dayton, Ohio to determine compliance with Ohio's hazardous waste laws as found in Chapter 3734 of the Ohio Revised Code (ORC) and Chapter 3745 of the Ohio Administrative Code (OAC). You represented RL Fender during the inspection.

This letter describes the violations found during the inspection and the actions which RL Fender should take to correct these.

Ohio EPA found the following violations of Ohio's hazardous waste laws and regulations. **Within 30 days** of receipt of this letter, RL Fender must submit a written response describing how each violation has been abated.

**VIOLATION 1-**

**Waste Determination  
Ohio Administrative Code (OAC) 3745-52-11**

This regulation requires a facility that generates waste to determine if it is a hazardous waste.

According to an unmanifested waste report dated January 25, 2008 from Permafrix to Ohio EPA, RL Fender generated a waste which was transported off site by Permafrix January 16, 2008. RL Fender had determined the waste was non hazardous. Later Permafrix determined the waste was hazardous. Therefore, RL Fender had generated a waste but did not determine it was hazardous in violation of OAC 3745-52-11.

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To abate this violation, prior to off site transportation or disposal RL Fender must determine if wastes generated are hazardous wastes. RL Fender may use generator knowledge or analysis to make these determinations. All information used to make a determination should be retained on site. For further guidance how to make such determinations please see the following web pages.

<http://www.epa.state.oh.us/ocapp/sb/publications/identifyingwaste.pdf>

<http://www.epa.state.oh.us/dhwm/pdf/GeneratorKnowledge6.pdf>

### **VIOLATION 2-**

#### **Manifests – general requirements OAC 3745-52-20 (A)**

This regulation requires that a generator who offers hazardous waste for off site treatment, storage, or disposal must prepare a uniform hazardous waste manifest before offering the hazardous waste for off site transportation.

On January 25, 2008 Permafix provided an unmanifested waste report to Ohio EPA. The report states that on January 16, 2008 5700 lb of waste was transported from RL Fender to Permafix. This waste was offered for transportation on non hazardous waste manifest. According to correspondence from Permafix to RL Fender dated January 16, 2008, Permafix determined that 1200 Lb of waste on line 1 which was shipped as non hazardous waste was later determined to be a hazardous waste by Permafix. Therefore on January 16, 2008 RL Fender had offered hazardous waste for transportation and off site disposal without preparing a hazardous waste manifest in violation of OAC 3745-52-20 (A).

To abate this violation RL Fender must ensure that all shipments of hazardous waste from the facility are accompanied by a uniform hazardous waste manifest.

### **GENERAL CONCERN-**

RL Fender's generator status is notified as conditionally exempt generator (CEG) (less than 100 Kg of hazardous waste per month). If RL Fender would generate greater than 100 Kg of hazardous waste in any given month or store more than 2,200 lbs of hazardous waste on site at one time, its generator status would change and further regulations would apply. Attached is the link to a guidance document explaining how to determine your facilities generator status and which regulations apply.

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[http://www.epa.state.oh.us/dhwm/pdf/Episodic\\_Generation.pdf](http://www.epa.state.oh.us/dhwm/pdf/Episodic_Generation.pdf)

It does not appear that RL Fender was a large quantity generator in 2008 which would require annual reporting. However, during the inspection October 2, 2008 Ohio EPA made a copy of manifest #003422053 which shows that 2,400 lb of hazardous waste was transported from RL Fender to Permafix on January 16, 2008. This gives the appearance that greater than 2,200 lbs of hazardous waste was stored on site which would change RL Fender's generator status to Small Quantity Generator (SQG) for that month. To address this concern determine how much hazardous waste was transported off site from RL Fender to Permafix on January 16, 2008 1200 lb or 2400 lb. Provide Ohio EPA a written response to this letter indicating the finding. If RL Fender prefers to remain a CEG, it must not store more than 2,200 lbs of hazardous waste on site at one time.

This concludes Ohio EPA's findings. If you have any questions about this letter or how to comply with hazardous waste regulations, please call me at (937) 285-6082. Enclosed you will find a copy of the checklists that I completed as a result of the inspection. Ohio EPA's failure to list specific deficiencies or violations in this letter does not relieve your company from having to comply with all applicable regulations.

Sincerely,



Brian Gitzinger  
District Representative  
Division of Hazardous Waste Management

Enclosure

cc: Dinah Crawford, DHWM, SWDO

BG/plh



**CONDITIONALLY EXEMPT SMALL QUANTITY GENERATOR REQUIREMENTS  
COMPLETE AND ATTACH A PROCESS, WASTE, P2 SUMMARY SHEET**

CESQG: ≤ 100Kg. (Approximately 25-30 gallons) of waste in a calendar month or < 1 Kg. of acutely hazardous waste.  
 SQG: Between 100 and 1,000 Kg. (About 25 to under 300 gallons) of waste in a calendar month.  
 LQG: ≥ 1,000 Kg. (~300 gallons) of waste in a calendar month or ≥ 1 Kg. of acutely hazardous waste in a calendar month.

NOTE: To convert from gallons to pounds: Amount in gallons x Specific Gravity x 8.345 = Amounts in pounds.

Safety Equipment Used:

**WASTE EVALUATION**

1.	Have all wastes generated at the facility been adequately evaluated? [3745-52-11]	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A <input type="checkbox"/>
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**GENERATOR CLASSIFICATION**

2.	Does the generator produce <100 kg. of hazardous waste per month? [conditionally exempt small quantity generator ("CESQG")]	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
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NOTE: If quantities of hazardous waste accumulated on-site at any one time exceed 1,000 Kg. - or the generator produces between 100 and 1,000 Kg. of hazardous waste per month, it is operating as a Small Quantity Generator ("SQG"). If so, complete the Small Quantity Generator Requirements checklist.

**OFF-SITE SHIPMENT OF HAZARDOUS WASTE**

3.	Does the CESQG ensure delivery of hazardous waste(s) to an off-site permitted TSD? [3734.02(F)]	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
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**TREATMENT OF HAZARDOUS WASTE**

4.	Does the generator treat hazardous waste in a:	
	a. Container that meets 3745-66-70 to 3745-66-77?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>
	b. Tank that meets 3745-66-90 to 3745-66-101 except 3745-66-97(C)?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>
	c. Drip pads that meet 3745-69-40 to 3745-69-45?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>
	d. Containment building that meets 3745-256-100 to 3745-256-102?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>

NOTE: Complete appropriate checklist for each unit.

NOTE: If the CESQG conducts treatment they are subject to the LQG requirements.

NOTE: If waste is treated to meet LDRs, use LDR checklist.



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**Ohio Environmental Protection Agency  
RCRA SUBTITLE C SITE  
IDENTIFICATION/VERIFICATION FORM**

For Ohio EPA use only

E-mail this completed form to  
tammy.mcconnell@epa.state.oh.us or mail it to Tammy  
McConnell, Central Office

2. Site EPA ID No.	EPA ID Number: ohr 000 146 993								
3. Site Name	Name: RL Fender Construction Co						Website: (Optional)		
4. Site Location Information	Street Address: 362 Huffman Ave								
	City, Town, or Village: Dayton						State: OH		
	County Name: Montgomery						Zip Code: 45403		
5. Site Land Type (check only one)	Private <input checked="" type="checkbox"/>	County <input type="checkbox"/>	District <input type="checkbox"/>	Federal <input type="checkbox"/>	Indian <input type="checkbox"/>	Municipal <input type="checkbox"/>	State <input type="checkbox"/>	Other <input type="checkbox"/>	
6. NAICS code(s) <a href="http://www.census.gov/epcd/www/naics.html">www.census.gov/epcd/www/naics.html</a>	23331								
7. Facility Representative  Additional names can be recorded in number 12  Only provide address information if it is different than the site address	First Name: Kimball			MI: M		Last Name: Birdseye			
	Phone Number: 937-258-9604					Phone Number Extension:			
	E-Mail Address:								
	Fax Number: 937-258-2575					Fax Number Extension:			
	Street or P.O. Box:								
	City, Town or Village:								
	State:			Country:			Zip Code:		
8. Legal Owner and Operator of the Site List Additional Owners and/or Operators in the Comment Section or on another copy of this form page	Name of Site's Legal Owner: Schimp Investment LLC						Date Became Owner (mm/dd/yyyy): 04/08/08		
	Owner Type:	Private <input checked="" type="checkbox"/>	County <input type="checkbox"/>	District <input type="checkbox"/>	Federal <input type="checkbox"/>	Indian <input type="checkbox"/>	Municipal <input type="checkbox"/>	State <input type="checkbox"/>	Other <input type="checkbox"/>
	Street or P.O. Box:								
	City, Town or Village:					Owner Phone #:			
	State:					Country:		Zip Code:	
	Name of Site's Operator: RL Fender Construction Co.						Date Became Operator (mm/dd/yyyy): 01/01/1997		
	Owner Type:	Private <input checked="" type="checkbox"/>	County <input type="checkbox"/>	District <input type="checkbox"/>	Federal <input type="checkbox"/>	Indian <input type="checkbox"/>	Municipal <input type="checkbox"/>	State <input type="checkbox"/>	Other <input type="checkbox"/>
	Street or P.O. Box:								
	City, Town or Village:					Operator Phone #:			
	State:					Country:		Zip Code:	
9. Violations Cited?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No								
10A. Type of Regulated Waste Activity (Mark "X" in all of the appropriate boxes)									
<input type="checkbox"/> Not Regulated					<input type="checkbox"/> Conditionally Exempt Small Quantity Generator				
<input checked="" type="checkbox"/> UNKNOWN: Cited for violation of 3745-52-11					<input type="checkbox"/> United States Importer of Hazardous Waste				
<input type="checkbox"/> Large Quantity Generator (LQG)					<input type="checkbox"/> Mixed Waste (Hazardous and Radioactive) Generator				
<input type="checkbox"/> Small Quantity Generator (SQG)									
<input type="checkbox"/> Hazardous Waste Transporter					<input type="checkbox"/> Exempt Boiler and/or Industrial Furnace				
<input type="checkbox"/> Treater, Storer or Disposer of Hazardous Waste					<input type="checkbox"/> Small Quantity On-Site Burner Exemption				
<input type="checkbox"/> Recycler of Hazardous Waste					<input type="checkbox"/> Smelting, Melting, Refining Furnace Exemption				
<input type="checkbox"/> Underground Injection Control Facility									



<b>10B. Universal Waste Activities (Indicate types of universal waste managed (check all boxes that apply))</b>			
<input type="checkbox"/> <b>Small Quantity Handler of Universal Waste</b>		<input type="checkbox"/> <b>Large Quantity Handler of Universal Waste</b> (accumulates 5,000 kg. or more)	
<input type="checkbox"/> <b>Destination Facility for Universal Waste</b>			
Check all boxes below that apply for each of the three types of facilities above		<b>10C. Used Oil Activities (Indicate Type(s) of Activity(ies))</b>	
	<b>Managed</b>	<input type="checkbox"/> <b>Used Oil Generator</b>	<input type="checkbox"/> <b>Off-Specification Used Oil Burner</b>
<b>Batteries</b>	<input type="checkbox"/>	<input type="checkbox"/> <b>Used Oil Transporter</b>	<input type="checkbox"/> <b>Used Oil Fuel Marketer Who Directs Shipment of Off-Spec. Oil</b>
<b>Pesticides</b>	<input type="checkbox"/>	<input type="checkbox"/> <b>Used Oil Transfer Facility</b>	<input type="checkbox"/> <b>Used Oil Fuel Marketer to Off-Specification Used Oil Burner</b>
<b>Mercury containing equipment</b>	<input type="checkbox"/>	<input type="checkbox"/> <b>Used Oil Processor</b>	
<b>Lamps</b>	<input type="checkbox"/>	<input type="checkbox"/> <b>Used Oil Re-refiner</b>	
11. Waste Codes for Federally Regulated Hazardous Wastes. Please list the codes for the federally regulated hazardous waste handled at the site. List them in the order they are presented in the regulations (e.g., D001, D003, F007, U112). Use an additional page if more space is needed. If there are more than 7 waste codes and they are the same as listed in the most recent RCRAInfo source record, you do not need to list them all. Instead just indicate the date of the most recent source record.			
12. Comments: Use this area to describe whether the inspection was announced, whether the waste is stored in tanks or containers, etc.			
<b>Announced</b>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<b>Additional Facility Representatives:</b>
<b>Tanks</b>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<b>Other Comments:</b>
<b>Containers</b>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
13. Name of Inspector(s)		Name of Inspector(s)	Date of Inspection/Time (mm/dd/yyyy) (hh:mm)
Brian Gitzinger			10/2/2008
14. OPTIONAL CERTIFICATION. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.			
Signature of Owner, Operator, or an Authorized Representative		Name and Title (Print)	Date (mm/dd/yyyy)



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