

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Timothy Conway
Name of Case Attorney

8/27/14
Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CAA-01-2014-0040

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Mereco Technologies Group, Inc.
1505 Main St.
West Warwick, RI 02893

Total Dollar Amount of Receivable \$ 60,000.00

Due Date: 9/26/14

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1st \$ _____ on _____
- 2nd \$ _____ on _____
- 3rd \$ _____ on _____
- 4th \$ _____ on _____
- 5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office Phone Number

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

RECEIVED

AUG 27 2014

EPA ORC
Office of Regional Hearing Clerk

In the Matter of:)
)
Mereco Technologies Group, Inc.)
1505 Main Street)
West Warwick, Rhode Island 02885)
)
Respondent)
_____)

Docket No. CAA 01-2014-0040

CONSENT AGREEMENT AND FINAL ORDER

The Complainant, United States Environmental Protection Agency, Region I (“EPA”), alleges that Mereco Technologies Group, Inc. (“Respondent”) violated certain provisions of the Rhode Island Air Pollution Control Regulations and the National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing found at 40 CFR Part 63, Subpart VVVVVV (“Chemical Manufacturing NESHAP”), at its facility located at 1505 Main Street, West Warwick, Rhode Island. EPA also alleges that Respondent failed to apply for and obtain a permit pursuant to Rhode Island Air Pollution Control Regulations Regulation 9.

EPA and Respondent agree to settlement of this matter through this Consent Agreement and Final Order (“CAFO”) without the filing of an administrative complaint, as authorized under 40 C.F.R. § 22.13(b).

EPA and Respondent agree that settlement of this matter is in the public interest, and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.

Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

A. PRELIMINARY STATEMENT

1. The provisions of this CAFO shall apply to and be binding upon EPA and upon Respondent and its officers, directors, successors, and assigns. The “Effective Date” of this CAFO shall be defined as the date that this CAFO is filed with the Regional Hearing Clerk, as described in the Final Order.
2. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. Respondent waives any defenses it might have as to jurisdiction and venue. Respondent consents to the terms of this CAFO.
3. Respondent neither admits nor denies the general or specific factual and legal allegations contained below in Section B. For purposes of this CAFO and any action necessary to enforce it, Respondent hereby waives its right to request a judicial or administrative hearing or otherwise to contest the allegations in this CAFO. Respondent waives any right to appeal this CAFO.

Statutory and Regulatory Authorities

4. Section 110(a) of the Clean Air Act (“CAA”, or the “Act”), 42 U.S.C. § 7410(a), requires that each state prepare a SIP incorporating regulations designed to attain and maintain healthy air quality. A state must submit its SIP and any SIP revisions to EPA for approval. Once EPA has approved a SIP, EPA may enforce the SIP’s requirements and prohibitions pursuant to Section 113 of the CAA, 42 U.S.C. § 7413.
5. EPA has approved the Rhode Island SIP under Section 110 of the CAA, 42

U.S.C. § 7410. The SIP contains various federally-approved portions of the Rhode Island Air Pollution Control Regulations (“RI APC Regulations”) and can be accessed at http://www.epa.gov/region1/topics/air/sips/sips_ri.html.

6. EPA promulgated the Chemical Manufacturing NESHAP under Section 112 of the Act, 42 U.S.C. § 7412. Regulations promulgated under CAA Section 112 are enforceable by EPA in accordance with Section 113 of the Act, 42 U.S.C. § 7413.

7. Respondent’s alleged violations described herein render Respondent liable for penalties under Section 113(d) of the Act. Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes EPA to issue an administrative penalty order to enforce the requirements or prohibitions described herein.

8. EPA has provided notice to Respondent and to the Rhode Island Department of Environmental Management of EPA’s findings of violations described in this CAFO, at least 30 days prior to the issuance of an administrative penalty order pursuant to Section 113(d) of the Act.

9. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Civil Monetary Inflation Rule (see Pub. L. 104-134 and 40 C.F.R. Part 19), EPA may assess penalties of up to (i) \$27,500 for each day of each violation of the Act occurring after January 30, 1997 through March 15, 2004, (ii) \$32,500 for each day of each violation of the Act occurring after March 15, 2004 through January 12, 2009, and (iii) \$37,500 for each day of each violation of the Act occurring after January 12, 2009.

10. Section 113(d) of the Act limits EPA’s authority to issue administrative complaints to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred no more than twelve months prior to the initiation

of the action, unless the EPA Administrator and the Attorney General for the U.S. Department of Justice (“DOJ”) jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative action. Pursuant to the Debt Collection Improvement Act and its implementing regulations, the above-described penalty cap has been raised to \$320,000 for violations occurring after December 6, 2013.

11. This CAFO alleges violations that occurred more than twelve months ago. EPA and DOJ have jointly determined that this matter is appropriate for administrative action.

B. EPA FINDINGS

General Findings

12. Respondent is a batch specialty chemical manufacturer, with operations at its Main Street facility (“Facility”).

13. Respondent was formed as a Rhode Island corporation in 1992. Respondent is the parent corporation of Metachem Resins Corporation (“Metachem”), which has been operating at this location since 1978.

14. In the process of manufacturing specialty chemical products at the Facility, Respondent blends raw materials to disperse liquids or solids evenly and make a uniform blended product. Respondent also mixes resins and activators in a process to form solid articles.

15. On September 14, 2011, an EPA inspector performed an inspection at the Facility.

16. On June 14, 2012, EPA, pursuant to Section 114 of the Act, issued a Reporting Requirement to Metachem for response. On August 7, 2012, Metachem submitted a written response to EPA’s Reporting Requirement.

17. On February 12, 2014, EPA issued a CAA Notice of Violation (“NOV”) to

Metachem.

18. On April 2, 2014, EPA and Respondent held a conference in response to the NOV. Based on information received at that conference, EPA alleges for purpose of this Consent Agreement and Final Order that Respondent has violated applicable regulations, as described in Paragraphs 19-29 of this CAFO.

Specific Findings

Alleged Violation of Rhode Island Air Pollution Control Regulation 9

19. Under the SIP at RI APC Regulation 9.2.1, no person may construct, install or modify, or cause the construction, installation, or modification of, any stationary source subject to RI APC Regulation 9 without obtaining an air pollution control permit.

20. Under the SIP at RI APC Regulation 9.3.1, a minor source permit is required for the construction, installation, or modification of any stationary source or process having the potential to emit 10 pounds per hour or 100 pounds per day of any air contaminant into the atmosphere.

21. EPA alleges that Respondent's potential to emit exceeds 10 pounds per hour from its operations and that Respondent's potential to emit also exceeds 100 pounds per day from its operations. Accordingly, EPA has determined that Respondent requires an air pollution control permit.

22. EPA alleges that, to date, Respondent has not applied for an air pollution control permit under RI APC Regulation 9. Accordingly, EPA has determined that Respondent has constructed, installed, or modified the Facility or processes at the Facility without having obtained an air pollution control permit, in violation of RI APC Regulation 9 of the SIP and the Clean Air Act.

Alleged Violations of the National Emission Standards for Hazardous Air Pollutants

23. The Chemical Manufacturing NESHAP applies to owners or operators of chemical manufacturing process units located at an area source of hazardous air pollutants (“HAPs”). See 40 C.F.R. § 63.11494.
24. The term “area source” is defined in 40 C.F.R. Part 63, Subpart A, as a stationary source of HAP emissions that is not a major source; that is, a facility that does not emit or have the potential to emit, in the aggregate, 10 tons per year or more of a single HAP, or 25 tons per year or more of any combination of HAPs.
25. Forty C.F.R. Part 63, Subpart 6V applies to owners or operators of chemical manufacturing process units (CMPUs) located at area source of HAPs that use as feedstocks any of the target HAPs listed in Table I of Subpart 6V, at concentrations greater than 0.1% by weight for carcinogens, or 1.0% for non-carcinogens. See 40 C.F.R. § 63.11494(a).
26. On February 24, 2010, Mereco submitted an initial notification indicating that it was subject to the Chemical Manufacturing NESHAP, citing use of the chemicals chromium, manganese, cadmium, lead, methylene chloride and nickel, all of which are Table I HAPs which currently are used or have been used in production operations.
27. Pursuant to 40 C.F.R. §§ 63.9(h) and 63.11501(b), EPA alleges that Respondent was required to submit a Notice of Compliance Status by May 20, 2013. To date, EPA alleges that Respondent has not submitted a Notice of Compliance Status.
28. Accordingly, EPA has determined that Respondent has violated and continues to violate 40 C.F.R. §§ 63.9(h) and 63.11501(b).

Summary of Findings

29. Based upon the forgoing, EPA alleges that Respondent:
- a. failed to apply for a state air pollution control permit under RI APC Regulation 9; and
 - b. failed to submit to EPA a Notice of Compliance Status, due May 20, 2013, in violation of 40 C.F.R. 63.9(h) and 63.11501(b).

C. TERMS OF SETTLEMENT

30. Respondent neither admits nor denies the specific factual allegations of Section B of this CAFO.

31. As a condition of settlement, Respondent agrees to the non-penalty provisions in Appendix 1 (Terms of Compliance) of this CAFO. Respondent shall fully implement the compliance measures set out in Appendix 1, which are incorporated into this CAFO and are fully enforceable herein. Respondent shall implement the compliance measures by not later than the effective date of this CAFO except as otherwise provided in Appendix 1. Respondent shall continue to comply with the terms and conditions of Appendix 1 until the Rhode Island Department of Environmental Management (“RIDEM”) issues a federally-enforceable state air emissions permit to Respondent for the Facility that incorporates terms and conditions no less stringent than those of Appendix 1.

32. In accordance with Section 113(d)(2)(B) of the Act, EPA has compromised the maximum penalty of \$37,500 per day per violation in this matter, applying the factors set forth in Section 113(e) of the Act and the 1991 Clean Air Act Civil Penalty Policy, including Respondent’s significant cooperation in agreeing to perform the non-penalty obligations in Appendix 1 to this CAFO.

33. EPA has determined that it is fair and proper to assess a civil penalty for the violations alleged in this CAFO in the amount of sixty thousand dollars (\$60,000).

34. Respondent shall pay the penalty of sixty thousand dollars (\$60,000) within thirty (30) days of the Effective Date.

35. Respondent shall make payment by submitting a bank, cashier's, or certified check, to the order of the "Treasurer, United States of America," in the amount of sixty thousand dollars (\$60,000) to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

36. Respondent shall note the case name and docket number of this action on the check and in an accompanying cover letter, and shall simultaneously provide copies of the check and cover letter to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
Suite 100, Mail Code ORA18-1
5 Post Office Square
Boston, MA 02109-3912

and

Timothy M. Conway
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region I
Suite 100, Mail Code OES4-03
5 Post Office Square
Boston, MA 02109-3912

37. Stipulated Penalties: Respondent shall be liable for stipulated penalties in the amount of \$500 for each day for each failure to perform any action required in Appendix

1. After the date upon which RIDEM issues the state air permit described in Appendix 1, Respondent shall remain liable for violations of Appendix 1 that occur prior to that date.

38. Stipulated penalties arising under this CAFO shall accrue for each violation of the CAFO. Separate stipulated penalties shall accrue simultaneously for separate violations. Stipulated penalties shall accrue regardless of whether EPA has notified Respondent that a violation has occurred.

39. Pursuant to Section 113(d)(5) of the CAA, if Respondent fails to pay any penalty amount it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. 42 U.S.C. § 7413(d)(5). Interest will be assessed on the penalty if it is not paid by the due date established herein. In that event, interest will accrue from the date the CAFO was signed by the EPA Regional Judicial Officer, at the "underpayment rate" established pursuant to 26 U.S.C § 6621(a)(2). In the event that the penalty is not paid when due, an additional charge will be assessed to cover the United States' enforcement expenses, including attorneys' fees and collection costs. A quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter.

40. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit.

D. GENERAL PROVISIONS

41. All submissions required by this Order shall be sent to:

If by Respondent:

Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency—Region 1
Suite 100 Mail Code OES4-5
5 Post Office Square
Boston, MA 02109-3912
Attention: Joan Jouzaitis

If by EPA:

Mereco Technologies Group, Inc.
1505 Main Street
West Warwick, Rhode Island 02885
Attention: Philip Papoojian, President and COO

With a copy to:

Robin Main, Esq.
Hinckley Allen & Snyder, LLP
50 Kennedy Plaza, Suite 1500
Providence, RI 02903

42. The stipulated penalties in this CAFO, the civil penalty under Paragraph 34, above, any interest, and the nonpayment penalties and/or charges as described in Paragraph 39, above, shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes, and shall not be deductible for purposes of state, or local taxes unless allowed by law.

43. Respondent shall pay stipulated penalties plus any interest due thereupon within fifteen (15) days of receipt of a written demand by Complainant for such penalties. The method of payment shall be in accordance with the provisions of Paragraphs 35 and 36 herein. Complainant may, in its sole discretion, elect not to seek stipulated penalties or to

compromise any portion of stipulated penalties that accrue pursuant to this CAFO.

44. Payment of the civil penalty, and any interest, non-payment penalties, and/or other charges, does not waive, suspend, or modify the responsibility of Respondent to comply with the requirements of all of the federal laws and regulations administered by EPA and shall not be a defense to any actions subsequently commenced pursuant to said laws and regulations.

45. This CAFO constitutes a settlement by EPA of all claims against Respondent for civil penalties pursuant to Section 113 of the Act for the violations alleged in Section B of this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state, or local law. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

46. Except as described in Paragraph 39, each party shall bear its own costs and fees in this proceeding, including attorneys fees, and specifically waives any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

47. Each party certifies that at least one of their undersigned representatives is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind such party to this document.

48. Termination: Respondent's obligations under this CAFO shall terminate upon the date that all of the following actions are fully performed and completed: (a) issuance by

RIDEM of the state air permit for which Respondent is to apply pursuant to Appendix 1; (b) payment in full by Respondent of all penalties specified in Paragraph 34; (c) completion of all requirements of Appendix 1 that are not conditions of the state air permit; and (d) payment in full by Respondent of any stipulated penalties assessed by EPA pursuant to Paragraph 37.

E. DISPUTE RESOLUTION

49. Except where dispute resolution is expressly foreclosed by this CAFO, the dispute resolution provisions of this Section E shall be the exclusive mechanism to resolve disputes arising under or with respect to this CAFO, including Appendix 1 to this CAFO. However, such procedures shall not apply to actions by EPA to enforce obligations of Respondent that have not been disputed in accordance with this Section E.

50. Respondent shall notify EPA in writing of its objection(s) within ten (10) days of the disputed EPA action or within ten (10) days of Respondent's receipt of EPA's written demand for the disputed stipulated penalty. Respondent's written notice ("Objection Letter") shall describe the substance of the objection(s) and shall invoke this Section of the CAFO. Upon EPA's receipt of Respondent's Objection Letter, the parties shall conduct informal negotiations for up to fifteen (15) business days. Respondent's obligation to perform the disputed action or pay the disputed stipulated penalty shall be suspended for the duration of this 15-day period. If there is no agreement at the conclusion of this 15-day period, but both parties agree that further negotiations would be fruitful, the parties may agree to continue dispute resolution (which can include more informal negotiations, mediation, or any other appropriate dispute resolution technique) for a period of time specified in writing. This written agreement to extend negotiations

shall specify whether Respondent's obligation to perform the disputed action or pay the disputed stipulated penalty will be further suspended. Any mutual resolution reached by the parties pursuant to this Section E shall be memorialized in writing, signed by both parties, and be incorporated as an enforceable provision of this CAFO. If the parties have not resolved the dispute by the conclusion of the dispute resolution period specified in Paragraph 50 (including any agreed-upon extensions), then Respondent shall abide by EPA's position regarding the disputed action or stipulated penalty unless Respondent, within five (5) business days after the end of the period, notifies EPA in writing that it seeks further dispute resolution of this matter.

51. In the written notice described in Paragraph 50, Respondent may supplement its Objection Letter by providing further details or additional arguments regarding the substance of the dispute, and may also request a meeting with the Manager of the Legal Enforcement Office in EPA Region I's Office of Environmental Stewardship, or with his or her designee, in order for Respondent to make an oral presentation of its position. Within fifteen (15) business days of receiving Respondent's written notice, and after any requested meeting with Respondent, the Legal Enforcement Office Manager or his or her designee shall issue a written decision to Respondent regarding the disputed issues. Such decision shall be final, incorporated as an enforceable provision of this CAFO, and followed by both parties.

52. A "force majeure" event is defined as an event arising from circumstances entirely beyond the control of Respondent, including Respondent's contractors and subcontractors, that delays or prevents the timely performance or completion of any requirement of this CAFO, despite Respondent's best efforts to avoid or minimize such

delay or non-completion. "Best efforts" include anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring, and (b) after it has occurred, such that the delay is minimized to the greatest extent possible. Force majeure events shall not include unexpected or increased costs, changed financial circumstances, change of ownership of Respondent, or the financial inability of Respondent to meet any requirement of this CAFO.

53. If any event occurs that delays or prevents, or that is expected to delay or prevent, the timely performance or completion of a requirement of the CAFO, Respondent shall notify EPA in writing not more than seven (7) days after the event or Respondent's knowledge of the event, whichever is earlier. In the notice, Respondent shall describe in detail the expected length of the delay or non-completion, the cause(s) of the delay or non-completion, the measures taken or planned to be taken by Respondent to prevent or minimize the delay or non-completion, and the timetable for implementing these measures. Failure by Respondent to comply with the notice requirements of this Paragraph shall void the remainder of this Section as to the event causing the delay or non-completion, and shall constitute a waiver of Respondent's right to request a performance extension based on the event.

54. If EPA agrees that the actual or expected delay in performing or completing the requirement, or the actual or expected non-completion of the requirement, has been or will be caused by a force majeure event, EPA and Respondent shall stipulate in writing to an extension of time for the performance or completion, with the extension not to exceed the delay resulting from the event. An extension of time for performing or completing one requirement of this CAFO shall not automatically extend the time for performing or

completing other requirements.

55. If EPA does not agree that the actual or expected delay in performing or completing the requirement, or the actual or expected non-completion of the requirement, has been or will be caused by a force majeure event, EPA will notify Respondent in writing of its decision, and any delays in the performance or completion of the requirement shall not be excused. EPA's decision shall be final and binding on both parties unless Respondent seeks dispute resolution pursuant to Section E above.

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FOR MERECO TECHNOLOGIES GROUP, INC.

Name

Philip M. Capozzi

Date

8/13/14

Title

President & COO

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Sam Silverman, acting for *8-14-14*
Susan Studlien, Director Date
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I

Timothy M. Conway *8/13/14*
Timothy M. Conway Date
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region I