



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

OCT 19 2009

REPLY TO THE ATTENTION OF:  
LR-8J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Todd J. Anderson  
Chief Financial Officer  
Mercury Waste Solutions, LLC  
302 North Riverfront Drive  
Mankato, Minnesota 56001

Re: Consent Agreement and Final Order  
Mercury Waste Solutions, LLC  
Docket Nos: **RCRA-05-2010-0002**

**TSCA-05-2010-0001**

**MM-05-2010-0001**

Dear Mr. Anderson:

Enclosed please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The originals were filed on           OCT 19 2009           with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$54,000 in the manner prescribed in paragraph 77 of the CAFO, and reference all checks with the number **BD2751042R001** and **2751047X001** docket numbers See Above. Your payment is due within 30 calendar days of the effective date of the CAFO.

for \$37,600 for \$16,400

In accordance with agency procedures, EPA plans to timely revise the outstanding Significant Non-Complier designation on the database of record, in order to reflect the resolution that we have reached here. Also, enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*. Thank you for your cooperation in resolving this matter.

Sincerely,

Willie H. Harris, P.E.  
Chief, RCRA Branch  
Land and Chemicals Division

Enclosures

cc: Pat Chabot, WDNR

## **NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS**

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: ) Docket Nos.: RCRA-05-2010-0002  
) TSCA-05-2010-0001  
Mercury Waste Solutions, LLC )  
21211 Durand Avenue )  
Union Grove, Wisconsin 53182 ) MM-05-2010-0001  
) Proceeding to Commence and Conclude  
Respondent. ) an Action to Assess a Civil Penalty

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RECEIVED  
OCT 19 2009

Consent Agreement and Final Order  
Preliminary Statement

REGIONAL HEARING CLERK  
USEPA  
REGION 5

1. This is a multi-media administrative action commenced and concluded under Section 3008 of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. § 6928, and Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a), 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. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. The Respondent is Mercury Waste Solutions, LLC, which is and was at all times relevant to this Complaint, a limited liability company operating under the laws of the State of Minnesota, with a place of business at 21211 Durand Avenue, Union Grove, Wisconsin ("Facility").

4. Jurisdiction for this action is conferred upon EPA by Sections 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928; and Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

5. 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).

6. 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.

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

#### **Jurisdiction and Waiver of Right to Hearing**

8. Respondent admits the jurisdictional allegations in this CAFO and denies the remaining allegations in this CAFO.

9. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO under any provision(s) of law, and its right to appeal this CAFO.

10. This CAFO shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers of Respondent and/or the Facility

11. If Respondent fails to comply with any provision contained in this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of the

EPA to bring a civil action in the appropriate United States District Court to compel compliance with the CAFO or to seek an additional penalty for the noncompliance.

### **General Allegations**

#### **Statutory and Regulatory Background**

12. Pursuant to Sections 3001 - 3005 of RCRA, 42 U.S.C. §§ 6921 - 6925, the Administrator has promulgated regulations governing generators and transporters of hazardous waste, and governing facilities that treat, store and dispose of hazardous waste. At all times relevant to this Complaint, those regulations were codified at 40 C.F.R. Parts 260 through 279.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or of any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of EPA granted the State of Wisconsin final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program on January 31, 1986. 51 Fed. Reg. 3783. The Administrator of EPA granted final authorization to administer additional RCRA and certain HSWA requirements on June 6, 1989 (54 Fed. Reg. 22278); January 22, 1990 (54 Fed. Reg. 48243); April 24, 1992 (57 Fed. Reg. 15029); August 2, 1993 (58 Fed. Reg. 31344); and October 4, 1994 (59 Fed. Reg. 39971). The EPA-authorized Wisconsin regulations

are codified at Wisconsin Administrative Code (WAC) Chapters NR 600-690. See also 40 C.F.R. Part 272, Subpart YY.

15. EPA has provided notice of commencement of this action to the State of Wisconsin pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

### **Factual Allegations and Alleged Violations**

#### **A. RCRA**

16. Respondent is a “person” as defined by WAC s. NR 600.03 and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

17. Respondent is and was at all times relevant to this Complaint the owner or operator, as defined by WAC s. NR 600.03 and 40 C.F.R. § 260.10, of the Facility.

18. At all times relevant to this Complaint, Respondent generated and stored wastes at the Facility which were solid wastes, as defined in WAC s. NR 600.03 [40 C.F.R. § 261.2].

19. Respondent recycles / recovers metallic mercury from various mercury contaminated waste streams.

20. At the Facility, elemental mercury is retorted from commercial materials / hazardous waste / universal waste and purified for commercial distribution.

21. The recovery of mercury at the Facility takes place in one of four stationary mercury retort furnaces, a continuous-feed retort furnace and in a fluorescent bulb crushing/separation unit.

22. The mercury retort furnaces, heated electrically, operate by bringing the temperature of the mercury wastes up to the point where the mercury is vaporized.

23. During heating, the ovens are operated under a vacuum. Vapors are cooled gradually in condensation vessels which are cooled by a non-contact ethylene glycol and water mixture surrounding the shell of a condenser.

24. Following the mercury collection system, airflow passes through a canister filter designed for the removal of particulate matter from the air stream. Following the particulate filtration air flow is directed through a wet scrubber and two sulfur impregnated carbon filters (operated in series).

25. The Facility receives mercury contaminated-wastes carrying the primary EPA hazardous waste code of D009 (Mercury). Additional wastes codes attached to the mercury-contaminated waste may include D001 (Oxidizer only), D004 (Arsenic), D005 (Barium), D006 (Cadmium), D007 (Chromium), D008 (Lead), D010 (Selenium) and D011 (Silver), U151 (Mercury as a commercial chemical product), K071 (Brine purification muds from the mercury cell process in chlorine production), K106 (Wastewater treatment sludge from the mercury cell process in chlorine production), and P092 (Phenylmercury acetate).

26. The Facility generates hazardous wastes including, but not limited to, debris (EPA Hazardous waste number D009), and retort oil (EPA Hazardous waste number D001).

27. Respondent submitted a notification form on May 31, 1996, which identified the Facility as a large quantity generator.

28. Respondent submitted a Part A application on May 24, 1997 and submitted a revised Part A application on February 9, 2000.

29. On May 15, 2000, the Wisconsin Department of Natural Resources (“WDNR”) issued a Feasibility and Plan of Operation Report Determination to the Facility.

30. On July 6, 2000, the WDNR issued the Facility Hazardous Waste Management Facility Permits for regulations authorized to Wisconsin (i.e. container / tank storage, contingency plan, facility operation, personnel training, waste analysis, and recordkeeping requirements).

31. On December 22, 2000 and June 18, 2001, the WDNR issued/reissued the Facility a temporary authorization determination regarding inclusion of corrective action as part of its hazardous waste operating license.

32. On July 26, 2000, EPA issued Respondent a Hazardous Waste Management Facility Permit that addressed hazardous waste regulations including, but not limited to, air emission requirements from the storage and treatment of hazardous waste, certain prohibitions on land disposal of hazardous waste, waste analysis requirements, requirements for the operation of industrial furnaces that treat hazardous waste.

33. EPA conducted a multimedia inspection at the Facility from July 24 through 28, 2006. WDNR personnel assisted with the inspection on July 25 and 26, 2006.

34. EPA conducted a RCRA follow-up inspection and an inspection for compliance under the Toxic Substances Control Act (TSCA) at the Facility on October 25, 2006.

35. On July 2, 2007, EPA issued a ‘Request for Information’ (“Information Request”) to Respondent to submit certain information pursuant to Section 3007 of RCRA, 42 U.S.C.

§ 6927 and Section 104(e) of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 U.S.C. § 9604(e).

36. EPA granted Respondent an extension of time to respond to the Information Request.

37. On October 5, 2007, Respondent timely submitted its answers to the Information Request.

### **Specific Allegations of Violation**

#### **COUNT 1 (RCRA) - FAILURE TO MAINTAIN AND OPERATE THE FACILITY IN A MANNER THAT MINIMIZES THE POSSIBILITY OF A FIRE, EXPLOSION, OR ANY UNPLANNED, SUDDEN OR NONSUDDEN RELEASE OF HAZARDOUS WASTE OR HAZARDOUS WASTE CONSTITUENTS**

38. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

39. Section IV.A of the EPA Hazardous Waste Management Facility Permit requires that Respondent must maintain and operate the Facility in a manner that minimizes the possibility of a fire, explosion, or any unplanned, sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, ground water or surface water that could threaten human health or the environment [40 C.F.R. § 264.31].

#### **August 2006 Incident**

40. On or about August 16, 2006, an oven seal for Retort Oven #3 was compromised which caused the unplanned release of hazardous waste or hazardous waste constituents from the Facility while Respondent was processing silver oxide batteries that contained mercury.

Respondent estimated that a release of approximately 2.5 pounds of mercury (equivalent to 2.8 ounces of liquid mercury) to the environment resulted.

41. North Shore Environmental, a contractor to Respondent, detected mercury concentrations of 0.932 milligrams per cubic meter of air using a Nippon mercury survey meter model EMP-1A. The air sample was collected adjacent to the northwest access door to the Facility on August 16, 2006.

42. State and local agencies that responded to the incident included the Kansasville Fire Department, the Town of Burlington Fire Department, the Wind Lake Fire Department, the Salem Fire Department, the Raymond Fire Department, the Mount Pleasant Fire Department, the City of Racine Fire Department, the Union Grove Fire Department, and the Racine County Sheriff.

**August 2003 Incident**

43. On or about August 24, 2003, the top cover of one of the Facility's collection systems on a retort oven was knocked off as a result of electrostatic ignition.

44. Following the incident, Respondent installed a bonding system to eliminate the possibility of static electricity causing flashbacks on the ovens.

45. Respondent failed to maintain and operate the Facility in a manner that minimizes the possibility of a fire, explosion, or any unplanned, sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, ground water or surface water that could threaten human health or the environment based on the two incidents listed above [40 C.F.R. § 264.31].

46. By failing to maintain and operate the Facility properly, Respondent failed to comply with Section IV.A of the EPA Hazardous Waste Management Facility Permit. By failing to comply with the terms of the EPA permit, Respondent violated Section 3004 of RCRA.

#### B. TSCA

47. The Polychlorinated Biphenyls (PCB) Disposal and Marking regulations were lawfully promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605, on February 17, 1978 (43 Federal Register [Fed. Reg.] 7150). The PCB Manufacturing, Processing, Distribution in Commerce and Use regulations (PCB rule) were lawfully promulgated on May 31, 1979 (44 Fed. Reg. 31514) and incorporated the disposal and marking regulations. The PCB rule was subsequently amended and partially recodified at 40 C.F.R. Part 761.

48. Respondent is a “person” as defined at 40 C.F.R. § 761.3 and is subject to the prohibitions set forth at 40 C.F.R. Part 761.

49. During the October 25, 2006 inspection of the Facility representatives of the EPA gathered information to determine the Facility’s compliance with the PCB rule.

50. At the time of the inspection, the Facility had one 55 gallon drum that contained held liquid PCBs.

51. At the time of the inspection, Respondent’s 55 gallon drum was stored for disposal.

52. Respondent’s 55 gallon drum is a PCB container as defined at 40 C.F.R. § 761.3.

53. Respondent’s PCB container is a PCB item as defined at 40 C.F.R. § 761.3.

54. As a result of the October 25, 2006 inspection, Complainant has determined that Respondent has violated the Federal regulations regarding the recordkeeping, use, storage, marking, etc. requirements of the PCB regulations, 40 C.F.R. Part 761, as detailed below, and thereby violated Section 15 of TSCA, 15 U.S.C. § 2614.

**COUNT 2 (TSCA) - FAILURE TO DEVELOP AND MAINTAIN ANNUAL DOCUMENT**

55. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

56. The PCB rule at 40 C.F.R. § 761.180(a) required, inter alia, that, effective July 2, 1978, each owner or operator of a facility using or storing at one time at least 45 kilograms of PCBs contained in PCB container(s), or one or more PCB transformers, or 50 or more PCB large capacitors develop and maintain records on the disposition of PCBs and PCB items. These records form the basis of annual PCB documents, to be prepared for each facility by July 1, covering the previous calendar year. 43 Fed. Reg. 7150 (February 17, 1978) (subsequently amended at 54 Fed. Reg. 52716 [December 21, 1989] to include recordkeeping and reporting requirements applicable beginning February 5, 1990).

57. During calendar year 2005, Respondent was storing PCB liquids in PCB container(s) at the Facility.

58. The PCB containers contained at least 45 kilograms of PCBs.

59. On October 25, 2006, Respondent had not developed and maintained complete records and did not have annual documents on the disposition of its PCB items for calendar year 2005.

60. Respondent's failure to develop and maintain records and annual documents constitutes a violation of 40 C.F.R. § 761.180(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

**COUNT 3 (TSCA) - FAILURE TO PREPARE A SPILL PREVENTION, CONTROL AND COUNTERMEASURES PLAN**

61. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

62. The PCB rule at 40 C.F.R. § 761.65(b) requires that PCBs and PCB items stored for disposal be placed in an area with adequate roof, walls, and continuous floor and curbing constructed from smooth impervious materials with no drain valves, floor drains, expansion joints, sewer lines or other openings.

63. The PCB rule at 40 C.F.R. § 761.65(c) requires, for temporary storage of containers holding liquid PCBs at concentrations equal or greater than 50 ppm, in an area that does not comply with the storage requirements of 40 C.F.R. § 761.65(b), that a Spill Prevention, Control and Countermeasures Plan ("SPCC Plan") be prepared.

64. On October 25, 2006, Respondent had a container at the Facility holding liquid PCBs greater than 50 ppm in a temporary storage area (the "PCB Storage Area") that did not meet the requirements of 40 C.F.R. § 761.65(b).

65. On October 25, 2006, Respondent did not have a SPCC Plan prepared for the Facility.

66. Respondent's failure to prepare a SPCC Plan for temporary storage of PCB containers constitutes a violation of 40 C.F.R. § 761.65(c) and Section 15 of TSCA, 15 U.S.C. § 2614.

#### **COUNT 4 (TSCA) - FAILURE TO MARK PCB STORAGE AREA**

67. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

68. The PCB rule at 40 C.F.R. § 761.40(a) requires that all PCB transformers, PCB large high voltage capacitors, PCB containers, PCB article containers and each storage area used to store PCBs and PCB items for disposal be marked with an M<sub>L</sub> label.

69. The PCB Storage Area at the Facility contained PCBs for disposal.

70. On October 25, 2006, Respondent's PCB Storage Area was not marked with an M<sub>L</sub> label.

71. Respondent's failure to mark its PCB Storage Area with the M<sub>L</sub> label constitutes a violation of 40 C.F.R. § 761.40 and Section 15 of TSCA, 15 U.S.C. § 2614.

#### **Civil Penalty**

##### **A. RCRA**

72. The Administrator of EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, EPA may assess a civil penalty of up to \$27,500 per day for each violation of Subtitle C of RCRA occurring or continuing on or after January 31, 1997 and a civil

penalty up to \$32,500 per day for each violation of Subtitle C of RCRA occurring on or after March 15, 2004.

73. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle the RCRA portion of this action is \$37,600. In determining the penalty amount, Complainant took into account the seriousness of the violation, Respondent's ability to pay a penalty, and any good faith efforts to comply with the applicable requirements. Complainant also considered EPA's *RCRA Civil Penalty Policy*, dated June 23, 2003.

#### **B. TSCA**

74. Section 16 of TSCA, 15 U.S.C. § 2615, authorizes the assessment of a civil penalty of up to \$25,000 per day for each violation of TSCA. The civil penalty proposed in this Complaint has been determined in accordance with the statutory penalty criteria of TSCA, set forth at Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), which states that the Administrator, in determining the amount of a civil penalty, shall take into account the nature, circumstances, extent and gravity of the violation(s) and, with respect to the violator, ability to pay, effect on ability to continue in business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. In analyzing the facts and circumstances of this case in consideration of those statutory criteria, Complainant has utilized the "Polychlorinated Biphenyls (PCB) Penalty Policy," dated April 9, 1990, Notice of Availability of Polychlorinated Biphenyls Penalty Policy, 55 Fed. Reg. 13955 (April 13, 1990),

and has determined that an appropriate civil penalty to settle the TSCA portion of this action is \$16,400.

### C. General

75. Pursuant to Section 3008 of RCRA, and Section 16 of TSCA, and having considered the nature of the violations and other relevant factors, Complainant has determined that an appropriate civil penalty to settle this action is \$54,000 (consisting of \$37,600 for the RCRA violation alleged, and \$16,400 for the TSCA violations alleged). In determining the settlement penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and other matters as justice might require. Complainant also considered EPA's enforcement and penalty policies, as set forth above.

76. Complainant has determined the penalty amount in part based on information submitted to EPA by Respondent.

77. Within 30 days after the effective date of this CAFO, Respondent shall submit a cashier's or certified check, payable to the order of the "Treasurer, United States of America," in the amount of fifty four thousand dollars (\$54,000) to:

#### CHECK PAYMENTS

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

2751042R001

2751047X001

*RCRA  
for \$37,600*

*TSCA  
for \$16,400*

Respondent must include the case name and docket number(s) on the check and in the letter transmitting the check.

### **WIRE TRANSFERS**

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York  
ABA = 021030004  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

### **OVERNIGHT MAIL**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101  
Contact: Natalie Pearson  
314-418-4087

Respondent must include the case name and docket number on the check and in the letter transmitting the check.

### **ACH (also known as REX or remittance express)**

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, D.C. 20074  
Contact: Jesse White  
301-887-6548  
ABA = 051036706  
Transaction Code 22 – checking  
Environmental Protection Agency  
Account 310006  
CTX Format

## **ON LINE PAYMENT**

There is now an On Line Payment Option, available through the Department of Treasury.

This payment option can be accessed from the information below:

**WWW.PAY.GOV**

Enter 'sfo 1.1' in the Search Public Forms field.

Open form and complete required fields.

Upon payment of the civil penalty, Respondent shall send to each of the persons listed below a copy of the check or proof of transfers and a transmittal letter referencing the name of

Respondent and the docket number(s) of this CAFO:

Regional Hearing Clerk  
EPA, Region 5 (E-13J)  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Paul Atkociunas  
RCRA Branch (LR-8J)  
EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Kenneth Zolnierczyk  
Chemicals Management Branch (LC-8J)  
EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Andre Daugavietis  
Office of Regional Counsel (C-14J)  
EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

78. The penalties specified above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

79. If Respondent does not timely pay the civil penalty, 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.

80. Pursuant to 31 C.F.R. § 901.9, Respondent shall pay the following on any amount overdue under this CAFO:

- a. **Interest.** Interest will accrue on any amount overdue from the date the payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.
- b. **Monthly Handling Charge.** Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due,
- c. **Non-Payment Penalty.** Respondent will pay a six percent per annum penalty on any principal amount 90 days past due. This non-payment penalty is in addition to charges that accrue under subparagraphs (a) and (b).

#### General Provisions

81. Respondent has demonstrated and hereby certifies that it is now in compliance with the requirements that formed the basis of the allegations above. Specifically, Respondent has submitted information to EPA, and certifies that the Facility is managed in a manner that minimizes the possibility of a fire, explosion, or any unplanned, sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, ground water or surface water that could threaten human health or the environment.

82. This CAFO resolves Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

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

84. This CAFO does not affect Respondent's responsibility to comply with RCRA, TSCA and other applicable federal, state, local laws or permits.

85. This CAFO shall terminate upon payment of the required penalty amount as set forth.

86. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, the EPA's RCRA Civil Penalty Policy, and the EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

87. The terms of this CAFO bind Respondent, its successors, and assigns.

88. Each person signing this agreement 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.

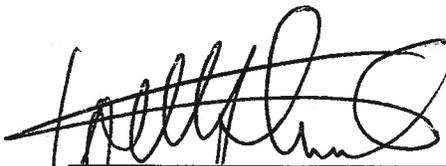
89. Each party agrees to bear its own costs and attorney's fees in this action.

90. This CAFO constitutes the entire agreement between the parties concerning the subject matter hereof.

**Mercury Waste Solutions, LLC, Respondent**

9-23-09

Date

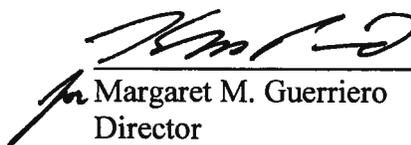


Todd J. Anderson  
Chief Financial Officer

**United States Environmental Protection Agency, Complainant**

10.7.09

Date



Margaret M. Guerriero  
Director  
Land and Chemicals Division

RECEIVED  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460  
OCT 14 2009

**In the Matter of:**

**Mercury Waste Solutions, LLC.**

**Docket Nos. RCRA-05-2010-0002**

**TSCA-05-2010-0001**

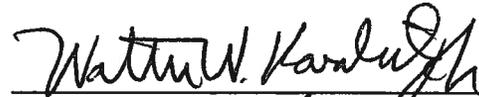
**MM-05-2010-0001**

**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. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

\_\_\_\_\_  
Date

10/16/09



\_\_\_\_\_  
Bharat Mathur  
Acting Regional Administrator  
EPA Region 5

**RECEIVED**

OCT 19 2009

**REGIONAL HEARING CLERK  
USEPA  
REGION 5**

CASE NAME: Mercury Waste Solutions, LLC  
DOCKET NOS: RCRA-05-2010-0002 TSCA-05-2010-0001 MM-05-2010-0001

**CERTIFICATE OF SERVICE**

I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590.

I further certify that I then caused an original of the filed document to be mailed via Certified Mail, Return Receipt Requested to the following:

David A. Crass  
Michael Best & Friedrich LLP  
One South Pinckney Street, Suite 700  
Madison, Wisconsin 53703

Return Receipt #

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REGIONAL HEARING CLERK  
USEPA  
REGION 5

and a copy of the filed document to be mailed via First Class Mail to:

Pat Chabot  
Natural Resources Program Coordinator  
Wisconsin Department of Natural Resources  
P.O. Box 7921  
Madison, Wisconsin 53707

Dated: 10/19/2009

Gaye Cuerington  
Gaye Cuerington  
Administrative Program Assistant  
United States Environmental Protection Agency  
Land and Chemicals Division - RCRA Branch  
77 W. Jackson Boulevard  
Chicago, IL 60604-3590  
(312)



Note: The gravity-based penalty amount is determined using the Revised Penalty Matrices for the RCRA Civil Penalty Policy, dated January 11, 2005. The multi-day component of the gravity-based civil penalty is determined using the multi-day matrix outlined in the Revised Penalty Matrices for the RCRA Civil Penalty Policy, dated January 11, 2005 for violations that occurred after March 15, 2004. The multi-day component of the gravity-based penalty is determined from the multi-day matrix outlined in the RCRA Civil Penalty Policy dated June 2003 for those violations that occurred on or before March 15, 2004. Policy adjustments and economic benefit (BEN) are as explained in the 2003 RCRA Civil Penalty Policy. Finally, the gravity-based penalty is adjusted for inflation (where appropriate) in order to implement the Civil Monetary Penalty Inflation Rule pursuant to the Debt Collection Improvement Act of 1996.

**RCRA Adjustment (+ / -) [Percent]**      -10  
**RCRA Adjustment (+ / -)**                      -0.1