



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 SEP 29 PM 14:05  
REGIONAL HEARING  
CLERK

SEP 29 2009

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

Patricia Duft, Esq.  
Vice-President Legal-Chief EHS Counsel  
Covidien, Ltd  
675 McDonnell Blvd.  
St. Louis, Mo. 63042

Re: In the Matter of Mallinckrodt Baker, Inc.,  
Docket Number RCRA-02-2008-7104

Dear Ms. Duft:

Enclosed is a copy of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator (or his delegate) of the U.S. Environmental Protection Agency, Region 2. The original of this document will be filed with the Regional Hearing Clerk of EPA, Region 2.

Please ensure that your company makes arrangement for payment of the civil penalty and performance of compliance provisions in accordance with the timeframes(s) specified in the CA/FO.

Thank you for your cooperation in working with us to resolve this matter. If you have any questions, please contact me at (212) 637-3205.

Sincerely,



Jeannie M. Yu  
Assistant Regional Counsel  
Office of Regional Counsel

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2008 SEP 29 PM 4:05

In The Matter of:

**Mallinckrodt Baker, Inc.,**

Respondent,

Proceeding Under Section 3008 of  
the Resource Conservation and  
Recovery Act as amended.

REGIONAL HEARING  
CLERK

**CONSENT AGREEMENT  
AND  
FINAL ORDER**

**Docket No. RCRA-02-2008-7104**

**PRELIMINARY STATEMENT**

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various statutes including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. §§ 6901 *et seq.* (referred to collectively as the "Act" or "RCRA"). The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling and management of hazardous waste at Title 40 of the Code of Federal Regulations ("C.F.R.") Parts 260-273 and 279.

On March 28, 2008, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (the "Region"), issued a Complaint and Notice of Opportunity for Hearing (the "Complaint") to Respondent Mallinckrodt Baker, Inc. (MBI or Respondent). The Complaint alleged that MBI violated requirements of RCRA and regulations concerning the management of volatile organic wastes.

The Complainant and MBI agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving the claims in the Complaint without further litigation. This CA/FO is being issued pursuant to, and under authority of, 40 C.F.R. § 22.18(b). No adjudicated findings of fact or conclusions of law have been made.

EPA'S FINDINGS OF FACT

1. Respondent is MBI.
2. Respondent is a corporation organized pursuant to, and existing under, the laws of New Jersey.
3. Respondent operates a manufacturing facility ("Facility") situated at 600 N. Broad Street, Phillipsburg, New Jersey 08865.
4. Respondent manufactures inorganic and organic dry salts, acids, and solvents for the laboratory, pharmaceutical and microelectronic chemical markets at its Facility.
5. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, on or around August 18, 1980, JT Baker Chemical Co. notified EPA that it conducted activities involving "hazardous waste" at its Phillipsburg Facility (the "Notification").
6. In that Notification, Respondent informed EPA that it would be generating more than 1,000 kilograms of hazardous waste per month.
7. Respondent is a large quantity hazardous waste generator.
8. In 1995, JT Baker was acquired by Mallinckrodt Inc. and became Mallinckrodt Baker, Inc.
9. On or about May 13, 2005 and November 8, 2007, a duly designated representative of EPA, pursuant to Section 3007 of the Act, 42 U.S.C. § 6927, conducted a Compliance Evaluation of Respondent's Phillipsburg Facility.
10. The purpose of these inspections was to evaluate MBI's compliance with Subtitle C of RCRA and its implementing regulations.
11. The EPA inspector, after the May 2005 Inspection, issued a warning to the Facility for the following failures:
  - a. Failure to monitor on a monthly basis consistent with the requirements at 40 C.F.R. Subpart BB; and
  - b. Failure to list all equipment that was in contact with organic hazardous waste for less than 300 hours per calendar year in its operating log, thereby resulting in the need to conduct monthly monitoring of such equipment.
12. On or about December 13, 2007, EPA issued to Respondent a combined Notice of Violation and Request for Information ("NOV/ IRL").

13. On January 18, 2008, Respondent submitted its response to the combined NOV/IRL.
14. More recently, during settlement discussions following issuance of the Complaint, Respondent submitted preliminary cost figures totaling \$154,500 for the installation of vapor recovery return lines to return vapors displaced during the filling of its acetone, isopropanol and ethyl acetate tanks. Respondent has informed EPA that at this time, only isopropanol and ethyl acetate vapors can be recovered by the suppliers. Only the costs associated with the installation and operation of the return lines for recovery of isopropanol and ethyl acetate vapors are eligible for SEP credit.

#### EPA'S CONCLUSIONS OF LAW

1. Respondent is a "person," as that term is defined in § 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10(1993) (N.J.A.C. 7:26G-4.1(a)).
2. The Phillipsburg Facility is a "facility" as that term is defined in 40 C.F.R. § 260.10(1993)(N.J.A.C. 7:26G-4.1(a)).
3. Respondent is the "operator" of the Facility as that term is defined in 40 C.F.R. § 260.10(1993)(N.J.A.C. 7:26G-4.1(a)).
4. At all times mentioned below in this Complaint and subsequent thereto, Respondent has been a "generator" of "hazardous waste" as those terms are defined in 40 C.F.R. § 260.10(1993)(N.J.A.C. 7:26G-4.1(a)).
5. In the Complaint, EPA alleged that Respondent violated Subtitle C of RCRA and its implementing regulations, including New Jersey's authorized hazardous waste regulations, in the following ways:
  - a. Respondent failed to conduct monthly monitoring of approximately 44 valves (not listed in the operating log pursuant to the RCRA 300 hour per year subpart BB exemption) located at Respondent's Facility, that contained or contacted hazardous waste with an organic concentration of at least 10 % by weight, for less than 300 hours per calendar year and approximately three valves that were in contact with hazardous waste, with at least an organic concentration of 10%, for more than 300 hours per calendar year which is a violation of 40 C.F.R. § 265.1057(a) (1993) (N.J.A.C. 7:26G-9.1(a)); and
  - b. Respondent failed to conduct monthly monitoring of three pumps (not listed in the operating log pursuant to the RCRA 300 hour per year subpart BB exemption) at Respondent's facility, that contained or contacted hazardous waste with an organic concentration of at least 10% by weight for less than 300

hours per calendar year which is a violation of 40 C.F.R. § 265.1052(a)(1) (1993) (N.J.A.C. 7:26G-9.1(a)).

### **CONSENT AGREEMENT**

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies the above EPA's Findings of Fact and/or EPA's Conclusions of Law; (c) consents to the assessment of the civil penalty as set forth below; (d) agrees to perform and implement the Supplemental Environmental Project (SEP) in accordance with the terms and conditions set forth herein; (e) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (f) waives its right to contest or appeal that Final Order.

Based upon the foregoing, and pursuant to Section 3008 of RCRA and 40 C.F.R. § 22.18, it is hereby agreed as follows:

1. Respondent shall, after the effective date of this CA/FO, comply with the following:
  - a. Identify and document in the facility's operating log each piece of equipment (valves, pumps, flanges, connectors, etc.) that contains or is in contact with hazardous waste having an organic concentration of at least 10% by weight for less than 300 hours per calendar year in order for these pieces of equipment to be exempt from the requirements of Subpart BB pursuant to 40 C.F.R. §265.1064(g) (1998)(N.J.A.C. 7:26G-9.1(a));
  - b. For other equipment (*i.e.*, equipment that contains or contacts hazardous waste having an organic concentration of 10% by weight for 300 hours or more) or equipment subject to the regulations and not identified and documented pursuant to "1(a)" above, conduct monthly monitoring of valves in light liquid hazardous waste service and record in the facility's operating record all of the information required in 40 C.F.R. § 265.1064(b)(1)(1993) (N.J.A.C. 7:26G-9.1(a)) and maintain such records in accordance with 40 C.F.R. § 265.1090(1998) (N.J.A.C. 7:26G-9.1(a)). Alternatively, for regulated valves, Respondent may conduct monitoring pursuant to alternative leak detection methods set forth in 40 C.F.R. § 265.1061(1998) (N.J.A.C. 7:26G-9.1(a)) and 40 C.F.R. § 265.1062(1998) (N.J.A.C. 7:26G-9.1(a)); and
  - c. Comply with all applicable rules and requirements of RCRA including the organic air emissions found at 40 C.F.R. 265 Subpart BB(1993)(N.J.A.C. 7:26G-9.1(a)).

2. Respondent hereby certifies, at the time of its signature to this document, that, to the best of its knowledge and belief, it is in compliance with all of the applicable hazardous waste regulatory requirements with respect to management of hazardous waste (including organic hazardous waste) at its facility.
3. MBI shall pay a civil penalty to EPA in the total amount of **EIGHT THOUSAND ONE HUNDRED TWENTY- FIVE DOLLARS (\$8,125)**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the Treasurer, United States of America, and shall be mailed to:

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

The check shall be identified with a notation thereon listing the following: *IN THE MATTER OF MALLINCKRODT BAKER, INC.*, and shall bear thereon the Docket Number RCRA-02-2008-7104. Payment of the penalty must be *received* at the above address on or before sixty (60) calendar days after the Effective Date of this CA/FO (the due date).

If MBI chooses to make the payment by EFT, then MBI shall provide the following information to its remitter bank:

- 1) Amount of Payment.
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read D 68010727 Environmental Protection Agency.
- 6) Name of Respondent: Mallinckrodt Baker, Inc.
- 7) Case Number: RCRA-02-2008-7104.

Such EFT must be received on or before 45 calendar days after the Effective Date of this CA/FO.

Whether the payment is made by check or by EFT, MBI shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Jeannie M. Yu, Esq.  
Assistant Regional Counsel  
Environmental Protection Agency, Region 2  
290 Broadway, Room 1635

New York, New York 10007-1866

and

Karen Maples, Regional Hearing Clerk  
Environmental Protection Agency, Region 2  
290 Broadway, Room 1635  
New York, New York 10007-1866

- a. Failure to pay the requisite amount in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.
  - b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C § 3717, on the overdue amount from the date said payment was required to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.
  - c. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the date for which the payment was required hereto to have been made.
  - d. The effective date of this Consent Agreement and Final Order shall be the date it is filed with the Regional Hearing Clerk.
4. Complainant shall mail to Respondent (to the representative designated below) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk
  5. Except as provided in Paragraph 3, above, in this section (and except as the parties may otherwise in writing agree), all documentation and information required to be submitted in accordance with the terms and conditions of this Consent Agreement shall be sent to:

John Wilk  
Compliance Officer  
Division of Enforcement and Compliance  
US Environmental Protection Agency  
290 Broadway

21st Floor  
New York, New York 10007

and

Jeannie M. Yu  
Assistant Regional Counsel  
Office of Regional Counsel  
US Environmental Protection Agency  
290 Broadway  
16th Floor  
New York, New York 10007

EPA shall address any written communications to Respondent at the following address:

Patricia Duft  
Vice President, Legal Chief EHS Counsel  
Covidien  
675 McDonnell Blvd.  
Hazelwood, MO 63042

6. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement, consents to making full payment of the civil penalty in accordance with the terms and conditions set forth above, consents to the stipulated penalties set forth below and consents to implement and complete a Supplemental Environmental Project (the "SEP") in accordance with the terms of this Consent Agreement.
7. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal and state rules, laws and regulations governing the generation, handling, treatment, storage, transport and disposal of hazardous waste, nor is it intended or is it to be construed as a ruling on, or determination of, any issues related to any federal, state, or local permit.
8. As a SEP, Respondent will implement a chemical vapor recovery program at its facility by installing/adding vapor return lines to its tanks to return isopropanol and ethyl acetate vapors, displaced during the filling of respective tanks at Mallinckrodt's facility, back into the supplier's chemical delivery device (i.e., tank truck, railcar, etc.) (Currently these volatile organic chemical vapors are released into the atmosphere.) This SEP will result in the recovery and reuse of isopropanol and ethyl acetate vapors.
9. The total expenditure for the SEP shall be not less than **SEVENTY-THREE THOUSAND DOLLARS (\$73,000)**.



10. MBI agrees to commence the implementation of the above SEP within sixty (60) calendar days from the date of the signature of the Final Order and shall complete the installation of the vapor return lines within three hundred and sixty-five (365) calendar days after the effective date of the CA/FO. Respondent shall ensure that the vapor recovery system is operated for at least two years after installation of the return lines, (time in which the system is not operational shall not be counted.) The SEP will be considered completed after the vapor recovery system has been operated for two years and upon EPA's acceptance of the SEP Completion Report (as discussed in Paragraph 13, below).
11. Respondent shall submit a progress report to EPA in a form mutually agreeable to both parties (e.g. email) one hundred and eighty (180) calendar days after the effective date of the CA/FO and every 180 days thereafter until both vapor recovery systems have been operated for two years. In each progress report, Respondent shall document all expenditures made in connection with the SEP, identify any issues or problems that have arisen in connection with Respondent's implementation of the SEP or any of its components, and discuss how any such issues or problems were addressed. Unless otherwise agreed, the progress reports for using the vapor recovery system should include for each reporting period the amount of solvent pumped into the tank(s), the quantity of vapor recovered, confirmation that the systems are working and not leaking, identification of any period when the system was not in use and the reason for this non usage, summary of any problems encountered (leaks, blockages, human error - e.g., forgetting to open a valve) and the steps taken to correct the problem and to prevent future reoccurrence.
12. Respondent shall submit a SEP Completion Report within 90 days from the date when the vapor recovery systems have been operated two years. This report shall contain at least the following information:
  - a. a detailed description of the SEP as implemented;
  - b. itemized costs incurred (i.e. materials, labor and/or other costs) which Respondent feels are eligible for SEP credit accompanied by copies of invoices, purchase orders, cancelled checks, receipts and/or other documentation that specifically identifies and itemizes the individual cost of the goods and services for which payment was made (if the itemization and documentation have been previously provided with the progress report, it will suffice to refer to the prior submittal);
  - c. a description of any installation or operating problems encountered and the solutions thereto;
  - d. certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and

- e. a description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible). Unless otherwise agreed, the final report should give, at a minimum, the amount of isopropanol and ethyl acetate that is recovered during the two year period (if it is feasible to quantify this information), and a description of what the potential environmental benefits (i.e. prevention of smog formation, minimizing exposure of employees to vapors, etc.) are from the recovery.
13. Following receipt of the Completion Report described in the paragraph above, EPA will notify MBI in writing that it:
    - a. accepts the Completion Report;
    - b. rejects the Completion Report, with identification of any questions it has and/or deficiencies in the report, and EPA will grant MBI an additional thirty (30) calendar days to answer any questions, to correct any deficiencies in the Completion Report, and to resubmit an amended report if required; or
    - c. reject the report and seek stipulated penalties in accordance with Paragraph 27, below.
  14. Respondent agrees that failure to submit any report required by this Consent Agreement in a timely manner shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties for such violation pursuant to the provisions set forth below, unless an extension has been granted as set forth in Paragraph 25.
  15. If EPA elects to exercise option 13(c) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to that paragraph within 10 business days of receipt of such notification. EPA and Respondent shall have an additional 30 days from the due date of Respondent's notification of objection to reach agreement. If agreement cannot be reached within this 30-day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Consent Agreement and Final Order. In the event the SEP is not completed as contemplated herein, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 27 below.
  16. Delays:
    - a. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Consent Agreement, Respondent shall notify EPA

in writing within 14 business days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken by Respondent to prevent or minimize delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular event involved and may constitute a waiver of Respondent's right to request an extension of its obligation under this Consent Agreement based on such incident.

- b. If the parties agree that the delay or anticipated delay in the completion of the SEP under this Consent Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.
  - c. In the event that EPA does not agree that a delay in completing the SEP in compliance with the requirements of this Consent Agreement has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in completion of the SEP shall not be excused.
  - d. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased cost or expenses associated with the implementation of the SEP required under this Consent Agreement shall not, in any event, be a basis for changes in this Consent Agreement or extensions of time under section ii of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.
17. Respondent shall maintain in one central location legible copies of documentation concerning the development, implementation and financing of its SEP, and documentation supporting information in reports submitted to EPA pursuant to this CA/FO. Respondent shall grant EPA access to such documentation and shall provide copies of such documentation to EPA within ten (10) business days of Respondent's receipt of a request by EPA for such information or within such additional time as approved by EPA in writing. The provisions of this paragraph shall remain in effect for five (5) years from the effective date of this CA/FO.
18. In all documents or reports, including, without limitation, any Progress Report and SEP Completion Report, submitted to EPA pursuant to this CA/FO, Respondent shall, by its officials, officers, directors or agents, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”

19. If in the future EPA believes that any of the information certified to, pursuant to Paragraphs 18, 22 and 23, was inaccurate, EPA will so advise the Respondent of its belief and its basis, and will afford Respondent an opportunity to submit comments to EPA. If EPA later determines that Respondent was already required to perform the SEP, Respondent shall pay a stipulated penalty in the amount of \$30,000. This payment shall not preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. § 1001 *et seq.*, or any other applicable law.
20. Nothing in this document is intended or construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent has made any material misrepresentations or has provided materially false information in any document submitted in compliance with the terms and conditions of this Consent Agreement.
21. The SEP to be implemented by Respondent has been accepted by Complainant solely for purposes of settlement of this administrative proceeding. Nothing in this document is intended or shall be construed to be a ruling on or determination of any issue related to a federal or state permit.
22. Respondent hereby certifies that, as of the date of its signature on this Consent Agreement, it is not required to implement or complete the aforementioned SEP pursuant to any federal, state or local law, regulation or other requirement; that with the exception of this Consent Agreement, Respondent is not required to implement or complete the SEP as set forth herein by any agreement, grant, or as injunctive relief in this or any other case; and that Respondent had not planned before March 2008 to perform any of the work that is part of this SEP.
23. Respondent further certifies that it has not received and is not presently negotiating to receive, credit in any other enforcement action for the actions that constitute the SEP, and that Respondent in good faith believes that the SEP is in accordance with EPA's 1998 Final Supplemental Environmental Projects policy set forth at 63 *Federal Register* 24796 (May 5, 1998).
24. Respondent shall not use or expend any money received from the federal government, as a grant or otherwise, to directly finance, implement or perform any aspect or portion of the aforementioned SEP.

25. EPA, Region 2, may grant an extension of the date(s) of performance or such other dates as are established in this CA/FO with regard to any of the SEP components, if Respondent has first demonstrated in writing good cause for such extension. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and be submitted to EPA no later than fourteen (14) calendar days prior to any due date set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. EPA may grant such extension in its discretion, and any such extension (or denial thereof) shall be in writing.
26. The determination of whether the SEP has been satisfactorily completed, whether Respondent has made a good faith, timely effort to implement the SEP, whether Respondent has complied with all the terms of the CA/FO and whether costs are creditable to the SEP shall be in the sole discretion of EPA.
27. Stipulated penalties will be calculated as follows:
- a. In the event that Respondent fails to comply with any of the terms or provisions of this CA/FO relating to the performance of the SEP described in Paragraph 8 above, and/or to the extent that the actual allowable expenditures for the SEP do not equal or exceed the required minimum expenditure for the SEP described in Paragraph 9 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
    - (i) Except as provided in subparagraphs (ii) and (iii) immediately below, for a SEP which has not been completed satisfactorily, Respondent shall pay a stipulated penalty in the amount of **Thirty Thousand Dollars (\$30,000)**. Payment shall be transmitted using the same procedure specified in Paragraph 3 above.
    - (ii) If installation of the vapor return lines is completed but the SEP is not operated for two years, and Respondent:
      - a. made good faith and timely efforts to complete the project; and
      - b. certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, and EPA accepts that such expenditures are creditable to the SEP, Respondent shall not pay any stipulated penalty.
    - (iii) If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty in the amount determined as follows:

$$\text{Stipulated penalty} = \left[ \frac{\$ 73,000 - \$ \text{allowable SEP expenditures}}{\$ 73,000} \right] \times \$ 24,375$$

- b. Stipulated penalties shall accrue for failure to timely submit any Progress Report or SEP Completion Report. Respondent shall pay a stipulated penalty in the amount of \$200 per day for the first ten days, \$500 per day for days 11-30, and \$1000 per day after 30 days. Such penalties shall begin to accrue on the day after the Progress Report or Completion Report is due and shall continue to accrue until the report is submitted.
  - c. Unless Respondent writes EPA pursuant to Paragraph 27(d) below, Respondent shall pay stipulated penalties within 30 days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 3, herein. Interest and late charges shall be paid as stated in Paragraph 3, herein.
  - d. After receipt of a demand from EPA for stipulated penalties pursuant to the preceding paragraph, Respondent shall have twenty (20) calendar days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not appropriate for the cited violation(s) of this Consent Agreement (including any technical, financial or other information that Respondent deems relevant).
  - e. Failure of Respondent to pay any stipulated penalty demanded by EPA pursuant to this Consent Agreement may result in referral of this matter to the United States Department of Justice or the Department of the Treasury for collection.
28. The Director, may, in his/her sole discretion, reduce or eliminate any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action by EPA or for good cause as independently determined by the Complainant. If, after review of Respondent's submission pursuant to the preceding paragraph, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within twenty (20) calendar days of its receipt of such written notice from EPA.
29. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP has been installed and is being maintained and/or operated properly and in conformity with the representations made herein. The provisions of this paragraph shall remain effective for three and a half (3 ½) years from the effective date of this CA/FO or from one (1) year from satisfactory completion of the SEP (including submittal of SEP Completion Report), whichever is later.

30. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
31. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (upon full payment of the civil penalty herein) the civil and administrative claims alleged in the Complaint in this matter. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
32. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.
33. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.
34. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.
35. Respondent waives its right to request a hearing on the Complaint, this Agreement, or the Final Order included herein, including any right to contest any allegations or findings of fact or conclusions of law contained within these documents.
36. Respondent voluntarily waives any right it might have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and reply to any memorandum or other communication addressed to, the Regional Administrator of EPA, Region 2, or the Deputy Regional Administrator of EPA, Region 2, where the purpose of such discussion, memorandum or other communication is to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
37. The signatory for the Respondent certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.
38. Each party hereto shall bear its own costs and fees in this matter.
39. Pursuant to 40 C.F.R. § 22.31(b), the effective date of the Final Order herein shall be the date when this CA/FO is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

In the Matter of Mallinckrodt Baker, Inc., Docket Number RCRA-02-2008-7104

RESPONDENT: **MALLINCKRODT BAKER, INC.**

BY: Ron J. Harding  
Authorizing Signature

NAME: RON J. HARDING  
(PLEASE PRINT)

TITLE: PRESIDENT

DATE: 9/21/09

COMPLAINANT: **UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY REGION 2**

Dore LaPosta  
Dore LaPosta, Director  
Division of Enforcement  
and Compliance Assistance  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway  
New York, New York 10007

DATE: SEPTEMBER 24, 2009



In the Matter of Mallinckrodt Baker, Inc., Docket Number RCRA-02-2008-7104

**FINAL ORDER**

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement. Said Consent Agreement having been duly accepted and entered into by the parties, is hereby ratified, incorporated by reference herein, and issued pursuant to Section 3008 of RCRA and 40 C.F.R. § 22.18(b) (3), as an Order, effective immediately upon filing with the Regional Hearing Clerk of EPA, Region 2.

*Barbara A. Pinazzo for September 25, 2009*

George Pavlou  
Acting Regional Administrator  
U.S. Environmental Protection Agency -  
Region 2  
290 Broadway  
New York, New York 10007-1866

In the Matter of Mallinckrodt Baker, Inc., Docket Number RCRA-02-2008-7104

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

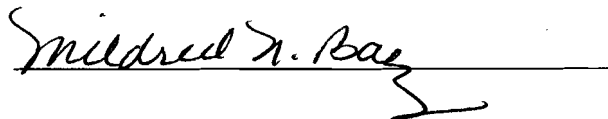
Original and One Copy  
By Hand:

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
- Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866

Copy by Certified Mail,  
Return Receipt Requested:

Patricia Duft, Esq  
Attorney for Mallinckrodt Baker Inc.  
Covidien Ltd  
675 McDonnell Blvd  
St. Louis, MO 63042

Dated: SEP 29, 2009

  
Mildred N. Bae