



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

MAY 23 2008

REPLY TO THE ATTENTION OF:
AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Hubbard, Vice President and Chief of Staff
Mercury Marine Division
Brunswick Corporation
W6250 Pioneer Road
P.O. Box 1939
Fond du Lac, Wisconsin 54936

Dear Mr. Hubbard:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Mercury Marine, CAA Docket No. CAA-05-2008-0019. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on JUN 02 2008.

Pursuant to paragraph 22 of the CAFO, Mercury Marine must pay the civil penalty within 30 days of JUN 02 2008. We appreciate your prompt payment, which we have already received.

Please direct any questions regarding this case to Deborah Carlson, Associate Regional Counsel, (312) 353-6121.

Sincerely,

BD# 2750803AD17

Bonnie Bush, Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

Cc: Dave Hildreth, Northeast Region,
Wisconsin Department of Natural Resources

William Baumann, Compliance and Enforcement,
Wisconsin Department of Natural Resources

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	
)	
Brunswick Corporation)	Docket No. CAA-05-2008-0019
Mercury Marine Division)	
Fond du Lac, Wisconsin,)	Proceeding to Assess a Civil Penalty
)	Under Section 113(d) of the Clean Air
Respondent.)	Act, 42 U.S.C. § 7413(d)
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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) 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. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5.

3. Respondent is Brunswick Corporation, Mercury Marine Division (Mercury Marine), a corporation doing business in Wisconsin.

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

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

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DIVISION
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6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Mercury Marine admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and violations in this CAFO.

8. Mercury Marine 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, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Under Section 112 of the Act, the Administrator of EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Production facilities at 40 C.F.R. Part 63, Subpart RRR.

10. The NESHAP, at 40 C.F. R. § 63.1500, applies to the owner or operator of each secondary aluminum production facility as defined in Section 63.1503.

11. The NESHAP for Secondary Aluminum Production applies to Mercury Marine.

12. Pursuant to 40 C.F.R. § 63.1500(b), the requirements of Subpart RRR pertaining to dioxin and furan (D/F) emissions and the associated operating, monitoring, reporting and recordkeeping requirements apply to affected sources, located at each new and existing facility that is a major source of hazardous air pollutants as defined in 40 C.F.R. § 63.2; including among other things, group two furnaces.

13. Effective May 23, 2005, EPA and Mercury Marine entered into an Administrative Consent Order, requiring Mercury Marine's compliance with the secondary aluminum production NESHAP.

14. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

15. Mercury Marine owns and operates a Secondary Aluminum Production facility at W6250 Pioneer Road in Fond du Lac, Wisconsin. Mercury Marine's Fond du Lac facility includes a thermal chip dryer, a shredder and seven group two furnaces.

16. Mercury Marine's Fond du Lac facility is subject to the requirements at 40 C.F.R. Part 63, Subpart RRR. Mercury Marine is a major source for Hazardous Air Pollutants (HAP).

17. On or about July 6, 2007, Mercury Marine submitted a letter to EPA voluntarily disclosing a potential violation of Subpart RRR and the Act at its Fond du Lac facility.

18. Mercury Marine's July 6, 2007 letter disclosed that on June 20, 2007, Mercury Marine discovered that the company had charged its group two furnace(s) with non-clean charge.

19. EPA has determined that Mercury Marine's voluntary disclosure did not meet the elements of EPA's April 11, 2000 "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" Final Policy Statement, 65 *Fed. Reg.* 19618, to qualify for penalty mitigation under that policy.

20. Mercury Marine failed to operate all new and existing affected sources and control equipment according to the operating requirements in Subpart RRR in violation of 40 C.F.R. § 63.1506(a)(1) and the May 23, 2005 Administrative Consent Order.

Civil Penalty

21. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C.

§ 7413(e), the facts of this case, and Mercury Marine's cooperation, EPA has determined that an appropriate civil penalty to settle this action is \$25,000.

22. Within 30 days after the effective date of this CAFO, Mercury Marine must pay the \$25,000 civil penalty by sending a cashier's or certified check payable to the "Treasurer, United States of America," as follows.

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

23. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case name, docket number of this CAFO and the billing document number on the face of the check. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Deborah Carlson, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

24. This civil penalty is not deductible for federal tax purposes.

25. If Mercury Marine does not pay timely 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 under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

26. Pursuant to 31 C.F.R. § 901.9, Mercury Marine must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Mercury Marine must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Mercury Marine must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

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

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

29. This CAFO does not affect Mercury Marine's responsibility to comply with the Act and other applicable federal, state and local laws. Except as provided in paragraph 27 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

30. Mercury Marine certifies that it is complying fully with the Secondary Aluminum Production NESHAP.

31. This CAFO constitutes an "enforcement response" as that term is used in EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Mercury Marine's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

32. The terms of this CAFO bind Mercury Marine, and its successors, and assigns.

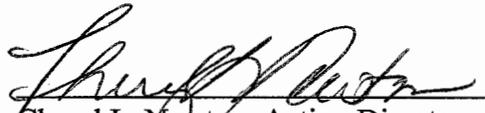
33. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

34. Each party agrees to bear its own costs and attorneys' fees in this action.

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

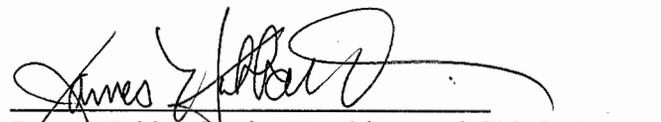
U.S. Environmental Protection Agency, Complainant

5/21/08
Date


Cheryl L. Newton, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5

**Brunswick Corporation,
Mercury Marine Division, Respondent**

5-2-08
Date


James Hubbard, Vice President and Chief of Staff
Mercury Marine Division
Brunswick Corporation

CAA-05-2008-0019

CONSENT AGREEMENT AND FINAL ORDER
Brunswick Corporation, Mercury Marine Division
Docket No. CAA-05-2008-0019

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

5/23/08
Date



Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5

In the Matter of:
Brunswick Corporation, Mercury Marine Division
Docket No. ~~CAA-05-2008-0019~~

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order in this matter with the Regional Hearing Clerk (E-13J), United States Environmental Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that mailed by Certified Mail, Receipt No. _____, the second original to Respondent and to Respondent's Counsel, addressed as follows:

James Hubbard, Vice President and Chief of Staff
Mercury Marine Division
Brunswick Corporation
W6250 Pioneer Road
P.O. Box 1939
Fond du Lac, Wisconsin 54936

Mark Thimke, Esq.
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-5306

RECEIVED
REGIONAL HEARING CLERK
US E.A. ENVIRONMENTAL AGENCY
2008 JUN 2 AM 11:40

on the 02 day of JUNE 2008.


Tracy Jamison
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0185 8986