



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

SEP 27 2007

REPLY TO THE ATTENTION OF:  
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0185 8429

Mike Brewers, Operations Manager  
Mercury Displacement Industries, Inc.  
25028 U.S. 12 East  
Edwardsburg, MI 49112

Consent Agreement and Final Order, Docket No. EPCRA-05-2007-0035

Dear Mr. Brewers:

I have enclosed an original signed copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on September 27, 2007, with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,984.00 is to be paid in the manner prescribed in paragraphs 30 and 31. Please be certain that the number **BD** 2750744E032 and the docket number are written on both the transmittal letter and on the check. The payment is due by October 29, 2007.

Thank you for your cooperation in resolving this matter.

Sincerely,

Kenneth Zolnierczyk  
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)  
James Morris, ORC/C-14J (w/Encl.)  
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. EPCRA-05-2007-0035</b>
	)	
<b>Mercury Displacement Industries, Inc.</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Edwardsburg, MI,</b>	)	<b>Under Section 325(c) of the Emergency</b>
	)	<b>Planning and Community Right-to-Know</b>
<b>Respondent.</b>	)	<b>Act of 1986, 42 U.S.C. § 11045(c)</b>
<hr/>	)	

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REGIONAL OFFICE  
U.S. ENVIRONMENTAL PROTECTION AGENCY

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c), 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, United States Environmental Protection Agency (U.S. EPA), Region 5. The authority to settle this matter has been delegated to the Director of the Land and Chemicals Division, U.S. EPA, Region 5.
3. Respondent is Mercury Displacement Industries, Inc., a corporation doing business in the State of Michigan.
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.

6. 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**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. 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, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with Section 313 of EPCRA, 42 U.S.C. § 11023.

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

10. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that has 10 or more full-time employees; is covered by certain Standard Industrial Classification (SIC) codes; meets one of the criteria set forth in 40 C.F.R. § 372.22(b)(1)-(3); and manufactured, processed, or otherwise used a toxic chemical in an amount in excess of an applicable threshold quantity of that chemical listed under Section 313(f) of EPCRA and 40 C.F.R. § 372.28 during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of U.S. EPA and to the state in which the subject facility is located by July 1 for each toxic chemical manufactured, processed, or otherwise used in quantities exceeding the established threshold during the preceding calendar year.

11. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28, the reporting threshold amount for lead manufactured, processed, or otherwise used at a facility is 100 pounds for calendar years including and subsequent to 2001. The reporting threshold amount for mercury manufactured, processed, or otherwise used at a facility is 10 pounds for calendar years including and subsequent to 2001.

12. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the Administrator of U.S. EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that can be imposed pursuant to each agency's statutes. The U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Section 313 of EPCRA that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day for each violation of Section 313 of EPCRA that occurred after March 15, 2004, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

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

13. Respondent is a “person” as that term is defined at Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

15. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 25028 U.S. 12 East, Edwardsburg, Michigan (“facility”).

16. At all times relevant to this CAFO, Respondent had “10 or more full-time employees,” as defined at 40 C.F.R. § 372.3, and was an employer at the facility.

17. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

18. Respondent's facility is a “facility” as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

19. The facility has a SIC code of 3625, a covered SIC code as defined at Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22.

#### **Count 1**

20. During calendar year 2005, Respondent’s facility processed, as that term is defined at 40 C.F.R. § 372.3, lead, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 353 pounds, which is greater than 100 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

21. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Michigan a Form R for lead for calendar year 2005 by July 1, 2006.

22. Respondent did not submit to the Administrator of U.S. EPA a Form R for lead for calendar year 2005 by July 1, 2006.

23. Respondent submitted a Form R for lead to the Administrator of U.S. EPA on July 10, 2006, for calendar year 2005.

Respondent's failure to submit timely a Form R for lead to the Administrator of U.S. EPA for calendar year 2005 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

### **Count 2**

24. During calendar year 2005, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, mercury, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 35,991 pounds, which is greater than 10 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

25. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Michigan a Form R for mercury for calendar year 2005 by July 1, 2006.

26. Respondent did not submit to the Administrator of U.S. EPA a Form R for mercury for calendar year 2005 by July 1, 2006.

27. Respondent submitted a Form R for mercury to the Administrator of U.S. EPA on July 10, 2006, for calendar year 2005.

28. Respondent's failure to submit timely a Form R for mercury to the Administrator of U.S. EPA for calendar year 2005 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

### **Civil Penalty**

29. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$ 1,984.00. In determining the 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 any other matters as justice may require. Complainant also considered U.S. EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)* (August 10, 1992).

30. Within 30 days after the effective date of this CAFO, Respondent must pay a \$1984.00 civil penalty for the EPCRA violations. Respondent may pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

For checks sent by regular U.S. Postal Service mail:

U.S. EPA, Region 5  
P.O. Box 371531  
Pittsburgh, PA 15251 - 7531

For checks sent by express mail:

Mellon Client Service Center  
Attn: Shift Supervisor  
Lockbox 371531  
500 Ross Street  
Pittsburgh, PA 15262 - 0001

The cashier's or certified check must note the following: *In the Matter of: Mercury Displacement Industries, Inc.*, the docket number of this CAFO, and the billing document number.

31. For payments by check, a transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

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

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

James Morris (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604]

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

33. If Respondent does not pay the civil penalty timely, U.S. 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.

34. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a six percent per year penalty on any principal amount ninety days past due.

#### **General Provisions**

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



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

37. This CAFO does not affect Respondent's responsibility to comply with EPCRA and other applicable federal, state, and local laws, and regulations.

38. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 313 of EPCRA.

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

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

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

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

**In the Matter of:**  
**Mercury Displacement Industries, Inc.**  
**Docket No. EPCRA-05-2007-0035**

**SIGNATORIES**

**Mercury Displacement Industries, Inc., Respondent**

9-4-07  
Date

Michael Brewers  
Michael Brewers, Operations Manager  
Mercury Displacement Industries, Inc.

**United States Environmental Protection Agency, Complainant**

9/21/07  
Date

Margaret M. Guerriero  
Margaret M. Guerriero, Director  
Land and Chemicals Division

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REGIONAL OFFICE OF CLEAN AIR AND WATER  
U.S. ENVIRONMENTAL PROTECTION AGENCY

**In the Matter of:**  
**Mercury Displacement Industries, Inc.**  
**Docket No. EPCRA-05-2007-0035**

**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      9/29/07

\_\_\_\_\_  
Walter W. Korte for  
Mary A. Gade  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

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REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Mercury Displacement Industries, Inc., was filed on , with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0185 8429, a copy of the original to the Respondents:

Mike Brewers, Operations Manager  
Mercury Displacement Industries, Inc.  
25028 U.S. 12 East  
Edwardsburg, MI 49112

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
James Morris, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

*Elizabeth Lytle*

Elizabeth Lytle  
Pesticides and Toxics Compliance Section  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Docket No. **EPCRA-05-2007-0035**

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