



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

MAY 12 2005

REPLY TO THE ATTENTION OF  
(AE-17J)

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

Katharine E. Lazarski  
Foley & Lardner LLP  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5306

Re: **Administrative Consent Order**  
**Mercury Marine**  
**Fond du Lac, Wisconsin**

Dear Ms. Lazarski:

Enclosed is a copy of the executed Administrative Order regarding the above captioned case.

If you have any questions about the Order, please contact Tanya Boomer at (312)353-4145.

Sincerely yours,

A handwritten signature in cursive script that reads "Bonnie Bush".

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

Enclosure

cc: Imelda Stamm, Wisconsin DNR  
Northeast Region  
Oshkosh, Wisconsin

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: )  
)  
Mercury Marine, ) Administrative Consent Order  
Division of Brunswick Corp. )  
Fond du Lac, Wisconsin ) EPA-5-05-113(a) WI-03  
)  
)  
Proceeding Under )  
Section 113(a)(3) )  
of the Clean Air Act, )  
42 U.S.C. §§ 7413(a)(3) )

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Administrative Consent Order

1. The Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, is issuing this Order to Mercury Marine, Division of Brunswick Corporation (Mercury Marine) under Section 113(a)(3) of the Clean Air Act (Act), 42 U.S.C. § 7413(a)(3).

Statutory and Regulatory Background

2. The Administrator of U.S. EPA may promulgate regulations establishing National Emission Standards for Hazardous Air Pollutants (NESHAP) under Section 112 of the Act, 42 U.S.C. § 7412.

3. Under Section 112 of the Act, the Administrator promulgated the NESHAP for Secondary Aluminum Production at 40 C.F.R. Subpart RRR. The NESHAP for secondary aluminum applies to the owner or operator of each secondary aluminum production facility as defined at 40 C.F.R. § 63.1503.

4. 40 C.F.R. § 63.1503 defines a secondary aluminum production facility as any establishment using clean charge, aluminum scrap, or dross from aluminum production, as the raw material and performing one or more of the following processes: scrap shredding, scrap drying/delacquering/decoating, thermal chip drying, furnace operations (i.e., melting, holding, sweating, refining, fluxing, or alloying), recovery of aluminum from dross, in-line fluxing, or dross cooling.

5. Pursuant to the NESHAP, at 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 pollutants as defined in 40 C.F.R. § 63.2.

6. Under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), the Administrator of U.S. EPA may issue an order requiring compliance to any person who has violated or is violating the NESHAP regulations. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

### Findings

7. Mercury Marine owns and operates a secondary aluminum production facility at W6250 Pioneer Road in Fond du Lac, Wisconsin.

8. Mercury Marine's Fond du Lac facility is subject to the requirements at 40 C.F.R. Part 63. Mercury Marine is a major source for hazardous air pollutants (HAP). Mercury Marine uses clean charge, aluminum scrap, or dross from aluminum production, as the raw material and performs one or more of the following processes: scrap shredding, scrap drying/delacquering/decoating, thermal chip drying, furnace operations (i.e., melting, holding, sweating, refining, fluxing, or alloying), recovery of aluminum from dross, in-line fluxing, or dross cooling. Therefore, Mercury Marine is subject to the NESHAP for secondary aluminum at 40 C.F.R. Part 63, Subpart RRR.

9. On September 29, 2004, U.S. EPA issued to Mercury Marine a Finding of Violation alleging that Mercury Marine violated the NESHAP for secondary aluminum by, among other things, failing to submit a notification of compliance status pursuant to 40 C.F.R. § 63.1515(b), failing to prepare and implement an Operation, Maintenance, and Monitoring (OM&M) Plan pursuant to 40 C.F.R. § 63.1510(b), failing to develop and implement a Startup, Shutdown, and Malfunction (SSM) Plan pursuant to 40 C.F.R. § 63.1516(a), failing to conduct initial performance tests pursuant to 40 C.F.R. § 63.1511(b), and failing to submit excess emission/ summary reports pursuant to 40 C.F.R. § 63.1516(b).

10. On November 1, 2004, representatives of Mercury Marine and U.S. EPA discussed the September 29, 2004 Finding of Violation.

11. Mercury Marine violated the NESHAP for secondary aluminum at 40 C.F.R. §§ 63.1515(b), 1511(b) and 1516(b).

#### Compliance Program

12. This order applies to Mercury Marine's reverb furnace numbers 2, 3, 4, 5, 6, 7, and 8, new lost foam furnace, induction furnaces 1, 2 and 3, PRAB-chip dryer and aluminum scrap shredder. Except for compliance items specified in this order, by the effective date of this order, Mercury Marine must achieve, demonstrate and maintain compliance with the NESHAP for secondary aluminum at its Fond du Lac Wisconsin facility.

13. Within 60 days of the completion of performance testing on its thermal chip dryer, Mercury Marine must submit a notification of compliance status report as required by 40 C.F.R. § 63.1515(b).

14. Within 90 days of the effective date of this order, Mercury Marine must conduct performance testing on its thermal chip dryer, as required in the November 23, 2004, Section 114 Information Request. Pursuant to 40 C.F.R. §63.1512(k) and (m), prior to conducting the performance test, Mercury Marine must install and have fully operational, equipment to comply with the feed/charge weighing requirements of 40 C.F.R. §63.1510(e) and the temperature monitoring requirements of 40 C.F.R. § 63.1510(g) (2) (ii). Within 60 days of performance testing, Mercury Marine must submit an OM&M Plan, as required in 40 C.F.R. §63.1510(b).

15. Within 30 days of the effective date of this order, Mercury Marine must submit an SSM Plan, as required in 40 C.F.R. § 63.1516(a).

16. By the effective date of this order, Mercury Marine must process only unpainted/uncoated aluminum chips in its thermal chip dryer. Mercury Marine must operate its thermal chip dryer pursuant to the requirements at 40 C.F.R. §§ 63.1505, 63.1506, and 63.1510.

17. By the effective date of this order, Mercury Marine must operate its furnaces so that it melts, holds or processes only clean charge and that it performs no fluxing or performs fluxing using only nonreactive, non-HAP-containing/non-HAP-generating gases or agents. Clean charge means furnace charge materials including molten aluminum, T-bar, sow, ingot, billet, pig, alloying elements, aluminum scrap known by the owner or operator to be entirely free of paints, coatings, and lubricants; uncoated/unpainted aluminum chips that have been thermally dried

or treated by a centrifugal cleaner; aluminum scrap dried at 343 °C (650 °F) or higher; aluminum scrap delacquered/decoated at 482 °C (900 °F) or higher, and runaround scrap. Mercury Marine may continue to charge aluminum sows purchased from an outside vendor that may contain paint markings made by the outside vendor until U.S. EPA posts a response to the applicability determination request dated December 16, 2004, from the Briggs & Stratton Corporation on U.S. EPA's website's "CAA Applicability Determinations Index." Once such response has been posted by U.S. EPA, Mercury Marine will comply with the contents of the Determination.

18. Within 60 days of performance testing on its thermal chip dryer, and thereafter on the same twice annual schedule as Mercury Marine's Title V permit reporting obligations, Mercury Marine must submit an excess emission/ summary report pursuant to 40 C.F.R. § 63.1516(b).

19. If Mercury Marine intends to change its operation to use unclean charge in its furnaces or dryer, Mercury Marine must notify U.S. EPA and the State at least 120 days prior to implementing such a change in operations. Mercury Marine must comply with the requirements in 40 C.F.R. Part 63, Subpart RRR applicable to the change in operation.

20. Mercury Marine must send all reports required by this Order to:

Attention: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

#### General Provisions

21. This Order does not affect Mercury Marine's responsibility to comply with other local, State, and federal laws and regulations.

22. This Order does not restrict U.S. EPA's authority to enforce Section 112 of the Act, or any other section of the Act.

23. Nothing in this Order limits U.S. EPA's authority to seek appropriate relief, including penalties under Section 113 of the Act, 42 U.S.C. § 7413, for Mercury Marine's violations of the NESHAP for secondary aluminum.

24. Failure to comply with this Order may subject Mercury Marine to penalties of up to \$32,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413, and 69 Fed. Reg. 7121 (Feb. 13, 2004) (amending 40 C.F.R. Part 19).

25. The terms of this Order are binding on Mercury Marine, its assignees and successors. Mercury Marine must give notice of this Order to any successors in interest, prior to transferring ownership, and must simultaneously verify to U.S. EPA, at the above address, that Mercury Marine has given the notice.

26. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation. To aid in our electronic record keeping efforts, please provide your response to this Order without staples. Paper clips, binder clips, and 3-ring binders are acceptable.

27. U.S. EPA may use any information submitted under this Order in an administrative, civil or criminal action.

28. Mercury Marine agrees to the terms of this Order.

29. This Order is effective on the date of signature by the Director of the Air and Radiation Division. This Order will terminate five years from the effective date, provided that Mercury Marine has complied with all terms of the Order throughout its duration.

5-4-05  
Date

Mark Schwabero  
Mark Schwabero  
President-Outboard Business Unit  
Mercury Marine  
Division of Brunswick Corporation

5/23/05  
Date

Stephen Rothblatt  
Stephen Rothblatt, Director  
Air and Radiation Division

CERTIFICATE OF MAILING

I, Shanee Rucker, certify that I sent the Administrative Consent Order, EPA Order No. EPA-5-05-113(a)WI-03, by Certified Mail, Return Receipt Requested, to:

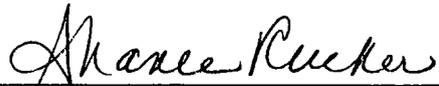
Tom Baumgartner, Director, Environmental Compliance  
Mercury Marine, Division of Brunswick Corporation  
W6250 Pioneer Road  
P.O. Box 1939  
Fond du Lac, WI 54936

I also certify that I sent a copy of the Administrative Consent Order, EPA Order No. EPA-5-05-113(a)WI-03, by First Class Mail to:

Imelda Stamm, Supervisor South Team  
Wisconsin DNR  
Northeast Region  
625 E. County Road Y, Ste 700  
Oshkosh, WI 54901-9731

Katherine Lazarski, Esq.  
Foley & Lardner LLP  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5306

on the 25<sup>th</sup> day of May 2005.

  
\_\_\_\_\_  
Shanee Rucker  
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 70010320 000615586196