



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

JAN 20 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Arthur F. Green  
Radiac Research Group  
261 Kent Avenue  
Brooklyn, NY 11211

RE: Change in Status from *De Minimis* Party to Major Party; Mercury Refining Company Superfund Site

Dear Mr. Green:

This letter is written to inform you of the change in status of your company from a *de minimis* party to a major party at the Mercury Refining Superfund Site ("Site") located at 26 Railroad Avenue, on the border of the Towns of Guilderland and Colonie, Albany County, New York. On October 26, 2005, EPA sent your company notice of liability as a potentially responsible party ("PRP") at the Site. Included in that notice letter was an offer to enter into a *de minimis* settlement with EPA pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. 9622(g). A total of 292 parties, including your company, agreed to settle with EPA and signed the settlement agreement. On August 23, 2006, EPA published notice of the settlement for public comment. EPA received significant comments on the settlement. As discussed below, that settlement was not finalized and has been withdrawn.

Enclosed herewith as Attachment 1 is EPA's response to the comments received during the public comment period on the original *de minimis* settlement. The majority of comments centered around 1) EPA's decision to use the weight of the item sent to the Site, and not the amount of mercury contained therein, as the basis for creating the waste-in list upon which the *de minimis* settlement was based, and 2) the relative liability of parties that sent mercury and/or mercury-containing materials to the Site after new retorts were installed and operated at the Site. As more fully explained in Attachment 1, EPA has decided to continue to base its waste-in list on the weight of the item shipped to the Site rather than the mercury content of the shipment as the commentors have requested. On the other hand, EPA agrees generally with the commentors that a change in operations at the Site limits the contribution of those parties who sent shipments of mercury and/or mercury-containing material to the Site after February 15, 1994 (not 1993 as stated by the commentors), when the new state-of-the-art retorts were operational.

EPA has also reconsidered its decision to exclude mercury-containing batteries from the waste-in

list. As discussed more fully in the Updated Questions & Answers ("Updated Q&A") attached hereto as Attachment 2, EPA has re-evaluated its position on batteries and has now included as waste, batteries containing mercury which were sent to the Site from locatable parties before May 11, 1995 when the Universal Waste Rule, 40 CFR Part 273, which specifically regulated the recycling of batteries, was enacted.

As a result of the comments, for settlement purposes only, in addition to including batteries containing mercury sent to the Site prior to May 11, 1995, EPA is providing an 85% discount for all mercury and/or mercury containing materials sent to the Site after February 15, 1994 (and as to batteries, between February 15, 1994 and May 11, 1995), thereby reducing the post-February 15, 1994 shares attributable to such parties by 85%. EPA has made this adjustment to the waste-in list for all parties, not just the *de minimis* parties.

Simultaneous to the issuance of this letter, EPA is sending a letter withdrawing the previous *de minimis* settlement offer and issuing a revised *de minimis* settlement offer which provides an 85% discount for all mercury and/or mercury containing materials sent to the Site after February 15, 1994. EPA considers all viable and locatable parties that sent 200 lbs. or more but less than 1% of the total waste to the Site (adjusted for post-1994 shipments) to be *de minimis*.<sup>1</sup> The *de minimis* parties account for 23% of the total adjusted weight sent to the Site.<sup>2</sup> Due to the inclusion of batteries in the waste-in list and a correction that was made to the database on one of the shipments made to the Site by your company, your company's adjusted percentage share increased to above the 1% *de minimis* cut-off. As such, your company is no longer considered a *de minimis* party at the Site and is therefore not being offered the revised *de minimis* settlement offer. Attachment 3, hereto, is your company's individual Transaction Summary Report for your review.

Enclosed, as Attachment 4, is a copy of the revised waste-in list for the Site. (Note that the major parties are parties that sent greater than 1% of the mercury contaminated material to the Site.). Copies of a letter to the *de minimis* parties withdrawing the original settlement and offering the revised settlement, the revised *De Minimis* Administrative Order on Consent

---

<sup>1</sup>Parties that sent less than 200 lbs. to the Site are considered *de micromis* and are exempt from liability under Section 107(o) of CERCLA, 42 U.S.C. §9607(o). If a party's post-1994 adjusted weight falls below 200 lbs. that party is still considered *de minimis* and has been sent a settlement offer because the adjustment that reduces their share below 200 lbs. was performed by EPA for settlement purposes only and these parties are not *de micromis* under the statutory definition.

<sup>2</sup> Since the original 2005 settlement offer was made, EPA learned that numerous parties were unlocatable, bankrupt, insolvent or defunct. Additionally, 53 parties which sent batteries to the Site were deleted from the waste-in list because EPA can no longer find the documentation for their transactions in our files. These 53 parties account for a combined 13,484.52 lbs. or 0.17% of the total waste to the Site.

("AOC"), and the Updated Q&A can be found on EPA's website by using the following link:  
<http://epa.gov/region02/superfund/npl/mercuryrefining/>.

Once the AOC has been signed, EPA will publish notice of the settlement in the Federal Register. You will receive a letter when such notice is published. EPA will accept comments on the revised settlement in accordance with Section 122(i) of CERCLA, 42 U.S.C. §9622(i). Finally, on March 28, 2008, EPA published a Proposed Plan for the Site and requested public comment. On March 28, 2008, EPA mailed you a letter informing you of the issuance of the Proposed Plan and providing you with a link to EPA's website where a copy of the Plan could be obtained. EPA received public comments on the Proposed Plan through May 28, 2008. On September 30, 2008, EPA published the Record of Decision ("ROD") with accompanying responsiveness summary. In the near future, EPA will send "special notice" letters to the major PRPs, including your company, inviting you to enter into settlement negotiations with EPA to fund and perform the remedy selected in the ROD.

If you have any questions, please call Sharon Kivowitz, Assistant Regional Counsel at 212-637-3183 or Leilani Davis, Assistant Regional Counsel at 212-637-3249 or Tom Taccone, the Remedial Project Manager at 212-637-4281.

Sincerely yours,



Raymond Basso  
Strategic Integration Coordinator  
Emergency and Remedial Response Division

cc: Brian Davidson, NYSDEC  
David P. Rosenblatt (Lead PRP Group Counsel), Burns & Levinson LLP

Enclosures:

- Attachment 1- Response to Comments
- Attachment 2- Updated Q&A
- Attachment 3- Individual Transaction Summary Report
- Attachment 4 - Revised Waste-in List

