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Ozaukee County, WI
Mary Lou Mueller CoCC
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Honorable Paul V. Malloy
Branch 1

STATE OF WISCONSIN CIRCUIT COURT OZAUKEE COUNTY

STATE OF WISCONSIN,
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857,

Plaintiff,

v.

Case No. 21-CX-____
Complex Forfeiture: 30109

VEOLIA ES TECHNICAL
SOLUTIONS, L.L.C.,
1275 Mineral Springs Drive
Port Washington, Wisconsin 53074,

Defendant.

THE AMOUNT CLAIMED IS
GREATER THAN THE AMOUNT
CLAIMED UNDER WIS. STAT.
§ 799.01(1)(d).

CIVIL COMPLAINT

The State of Wisconsin by its attorneys, Attorney General Joshua L. Kaul and Assistant Attorney General Bradley J. Motl, brings this Complaint against defendant Veolia ES Technical Solutions, L.L.C. at the request of the Wisconsin Department of Natural Resources (DNR) and alleges as follows:

1. Plaintiff State of Wisconsin is a sovereign state of the United States of America with its principal offices at the State Capitol in Madison, Dane County, Wisconsin.

2. The State of Wisconsin has enacted Wis. Stat. ch. 291, relating to hazardous waste management, and administers, through its DNR, regulations promulgated pursuant to those statutes to prevent and reduce hazardous waste mismanagement in the State, and the risks to the environment and public health and safety such waste mismanagement presents.

3. The State of Wisconsin has enacted Wis. Stat. ch. 285, governing sources of air contaminant emissions, to prevent and reduce air pollution. DNR administers regulations and issues permits authorized by these statutes.

4. Defendant Veolia ES Technical Solutions, L.L.C. (Veolia) is a foreign limited liability company with its principal office at 53 State Street, 14th Floor, Boston, Massachusetts 02109. Its registered agent is C T Corporation System, 301 South Bedford Street, Suite 1, Madison, Wisconsin 53703.

5. Veolia owns and operates a facility located at 1275 Mineral Springs Drive, Port Washington, Ozaukee County, Wisconsin (Facility).

6. The Facility is a hazardous waste treatment, storage, and disposal facility consisting of hazardous waste container storage units and mercury recovery/retort operations.

7. At all times relevant to the allegations in this Complaint, Veolia held a hazardous waste storage operating license (License # 6008) and a hazardous waste treatment operating license (License # 4585).

8. At the Facility, Veolia recycles universal waste including mercury-containing lamps and mercury-containing devices.

9. At the Facility, Veolia collects and stores household hazardous waste and hazardous waste generated at industrial facilities.

10. At the Facility, Veolia recovers mercury from several mercury-containing wastes, including phosphor powder from crushed lamps, mercury-containing devices (for example, thermometers, manometers, and thermostats), dental amalgam, and mercury-contaminated soils and debris.

11. On September 4, 2015, DNR conditionally approved Veolia's hazardous waste Feasibility and Plan of Operation Report submitted on August 6, 2013, December 6, 2013, January 27, 2014, September 6, 2014, and January 23, 2015 (2015 FPOR).

12. Pursuant to Wis. Stat. § 289.30(9), at all times relevant to the allegations in this Complaint, Veolia was required to comply with all the terms and conditions of the 2015 FPOR.

13. DNR issued Veolia Wisconsin Air Pollution Control Operation Permit No. 246076050-S01 on November 11, 2014 (Air Permit).

14. Pursuant to Wis. Stat. § 285.60(7), at all times relevant to the allegations in this Complaint, Veolia was required to comply with all the terms and conditions of the Air Permit.

MERCURY RECOVERY PROCESS

15. The Facility contains a room where Veolia unpacks, sorts, processes, and retorts mercury-containing devices, mercury-containing compounds and solutions, and mercury-contaminated debris (Retort Room).

16. The Retort Room contains three mercury retort ovens where mercury-containing waste is heated to approximately 1,100 degrees Fahrenheit and the mercury is vaporized, condensed, and recovered.

17. One of the retort ovens in the Retort Room is labeled as Process P14, the Wisconsin Oven Retort (WOR).

18. The WOR can hold four retort kettles.

19. Mercury-containing waste is spread out on trays and lowered into each kettle in the WOR. Each kettle is then loaded into the WOR by forklift.

20. Adjustable stainless-steel vacuum lines clamped to the top of each kettle connect the kettles to one main vacuum line that extends through the roof of the WOR.

21. The measurement of the vacuum applied to the kettles is taken from the main vacuum line.

22. The retort process begins by sealing the WOR and applying a vacuum to the kettles.

23. Combustion gas from a natural gas direct-fired heating unit is exhausted to the interior of the WOR and the hot gasses are circulated around the interior of the WOR and around the exterior of the kettles by recirculation fans.

24. The kettles are heated to approximately 1,100 degrees Fahrenheit, which causes the mercury in the mercury-containing waste to vaporize.

25. The boiling point of elemental mercury is 674 degrees Fahrenheit.

26. The vaporized mercury is pulled from the kettles by the vacuum and then converted to liquid mercury in a series of three condensers.

27. A sulfur-impregnated carbon adsorber control device (C11) collects the mercury vapor not trapped by the condensing system and then the gas is discharged through Stack S11.

28. After heating the interior of the WOR, the combustion gas from the natural gas direct-fired heating unit is exhausted to the atmosphere through Stack S17.

29. The combustion gas in the WOR is only exhausted to the atmosphere through Stack S17 when the natural gas direct-fired heating unit is operating. When the natural gas direct-fired heating unit is not operating, a damper is closed to keep the hot combustion gas in the WOR.

30. There is no control equipment on Stack S17 to control mercury emissions.

31. The door between the WOR and the Retort Room is not airtight, so some of the gases from the WOR may leak into the Retort Room while the WOR is on.

32. Air from the Retort Room passes through a sulfur-impregnated carbon adsorber control device (C10), which controls mercury emissions, before either being exhausted through Stack S14 or rerouted back to the Retort Room.

VIOLATION 1: CAUSING AN EXCEEDANCE OF THE MERCURY AMBIENT AIR STANDARD

33. Condition I.ZZZ.2.a.(1) of the Air Permit, which is applicable to the entire Facility, states that “[n]o owner or operator of a source may cause, allow or

permit emission of a hazardous air contaminant listed in Table A of s. NR 445.07, Wis. Adm. Code in such quantity or concentration or for such duration as to cause an ambient air concentration of the contaminant off the source property that exceeds the concentration in column (g) of Table A for the contaminant.”

34. Wisconsin Admin. Code § NR 445.07, Table A, lists the ambient air standard for mercury as 0.6 micrograms per cubic meter, averaged over 24 hours (0.6 micrograms per cubic meter is equal to 600 nanograms per cubic meter).

35. On or around July 1, 2017, Veolia loaded Kettle K3 into the WOR.

36. Kettle K3 contained dental amalgam sludge.

37. Dental amalgam sludge is made up of water, organic and non-metallic inorganic material, and mercury-containing dental amalgam.

38. When placed into the WOR on or around July 1, 2017, the dental amalgam sludge in Kettle K3 weighed approximately 474.5 pounds and contained approximately 11.70 pounds of mercury.

39. On July 1, 2017, Veolia started the dehydration cycle for the WOR, in which it heated the WOR to 675 degrees Fahrenheit.

40. On July 4, 2017, at around 11:00 a.m., Veolia finished the dehydration cycle for the WOR and started heating the WOR to 1,100 degrees Fahrenheit.

41. At some point between July 1, 2017 and July 4, 2017, the stainless-steel vacuum line connected to Kettle K3 became plugged with paper and ash/dust residue.

42. At some point between July 1, 2017 and July 4, 2017, an approximately 1-inch-long crack developed in the stainless-steel vacuum line connected to Kettle K3 between Kettle K3 and the plug in the vacuum line.

43. On July 4–5, 2017, an air monitoring station at a DNR office in Horicon, Wisconsin, located approximately 36 miles from the Facility, detected mercury concentrations as high as 541.83 nanograms per cubic meter. The highest concentration of mercury detected on July 3, 2017 at the station was 1.38 nanograms per cubic meter.

44. On July 5, 2017, an air monitoring station at a DNR office in Rhinelander, Wisconsin, located approximately 174 miles from the Facility, detected mercury concentrations as high as 25.17 nanograms per cubic meter. The highest concentration of mercury detected on July 3 or 4, 2017 at the station was 1.22 nanograms per cubic meter.

45. On July 5, 2017, at 5:35 a.m., Veolia employees performing air monitoring inside the Retort Room found mercury concentrations above the normal ambient levels.

46. On July 5, 2017, Veolia employees recorded mercury concentrations as high as 8.65 milligrams per cubic meter in the Retort Room.

47. On July 5, 2017, at approximately 6:00 a.m., Veolia shut down the WOR, which stopped the flow of gas in the WOR from being exhausted to the atmosphere through Stack S17.

48. From at least 11:00 a.m. on July 4, 2017 to at least 6:00 a.m. on July 5, 2017, Veolia emitted uncontrolled emissions of mercury through Stack S17.

49. After the WOR was shut down, 0.11 pounds of mercury were collected from Kettle K3.

50. Between July 7, 2017 and August 9, 2017, Veolia collected 7.07 pounds of mercury while cleaning and decontaminating equipment at the Facility that came into contact with mercury emitted from Kettle K3 between July 4 and 5, 2017.

51. From about 11:00 a.m. on July 4, 2017 to 6:00 a.m. on July 5, 2017, Veolia emitted approximately 4.52 pounds of mercury through Stack S17.

52. DNR Dispersion Modeling Team Leader John Roth completed a dispersion modeling analysis to assess the impact to ambient air of the mercury emissions from the Facility on July 4–5, 2017 (Dispersion Analysis).

53. The Dispersion Analysis took into account the amount of mercury emitted into the atmosphere from the Facility, information about Stack S14 and Stack S17, and observed meteorological data from July 4–5, 2017.

54. The Dispersion Analysis showed that the ambient air concentration of mercury along the southern property line of the Facility was 3.11 micrograms per cubic meter, averaged over 24 hours, on July 4, 2017.

55. Veolia violated Condition I.ZZZ.2.a.(1) of the Air Permit and Wis. Stat. § 285.60(7) on July 4, 2017 when it caused the ambient air concentration of mercury off of the Facility property to exceed 0.6 micrograms per cubic meter.

VIOLATION 2: FAILURE TO REPORT RELEASE

56. Condition 61 of the 2015 FPOR states that “[Veolia] shall implement Conditions 62 and 63 of this approval when any of the following conditions occur . . . a discharged substance has adversely impacted or threatens to adversely impact the air, lands or waters of the state; caused or threatens to cause acute or chronic human health impacts if immediate actions . . . are not taken”

57. Condition 62 of the 2015 FPOR states that “[Veolia] shall provide immediate telephone notification to the Division of Emergency Government (Spills Line – 800-943-0003) when a release is covered by Condition 61.”

58. A release of mercury has the potential to adversely impact the air, lands, and waters of the State of Wisconsin and the potential to cause acute or chronic human health impacts if immediate actions are not taken.

59. Due to elevated levels of mercury in the Retort Room, at around 6:00 a.m. on July 5, 2017 Veolia had evidence that there had been a release of mercury from the WOR to the atmosphere.

60. On July 6, 2017, around 10:40 a.m., DNR Waste Management Specialist Jennifer Pelczar called Veolia and talked to General Manager Kevin Shaver.

61. During her July 6, 2017 call with Mr. Shaver, Ms. Pelczar told Mr. Shaver that DNR air monitors had detected elevated levels of mercury in the ambient air near the Facility. Ms. Pelczar asked Mr. Shaver if there had been any equipment malfunctions at the Facility.

62. On July 6, 2017, at approximately 3:20 p.m., Mr. Shaver and Veolia Environmental, Health, and Safety Manager Phillip Ditter called Ms. Pelczar and

described to her what occurred at the WOR on July 4 and 5, 2017, and they told her that the Facility had a release of mercury to the atmosphere those days.

63. On July 6, 2017, at 3:49 p.m., Veolia notified the DNR Division of Emergency Government of the Facility's July 4–5, 2017 release of mercury to the atmosphere.

64. Veolia violated Conditions 61 and 62 of the 2015 FPOR and Wis. Stat. § 289.30(9) on July 5, 2017 for not immediately notifying the DNR Division of Emergency Government of the Facility's July 4–5, 2017 release of mercury to the atmosphere.

VIOLATION 3: FAILURE TO PROPERLY DOCUMENT AND REPORT INCIDENT

65. Condition 11 of the 2015 FPOR states that “[s]hould a fire, explosion or other incident that requires implementation of the contingency plan occur, [Veolia] shall do the following: a. Take colored photo documentation of incident. b. Identify the employees who have knowledge of, or were involved in the incident . . . d. Retain and secure any equipment and/or parts that were involved in the incident . . . [Veolia] shall obtain [DNR] concurrence prior to releasing any items obtained in 11.c–e.”

66. Section 8.4 of Veolia's June 8, 2017 Contingency Plan, which was effective on July 4–5, 2017, states that “[t]he Contingency Plan will be implemented if the following conditions occur on-site or off-site: . . . A release of toxic liquids or vapors.”

67. Mercury vapor is a toxic vapor.

68. Veolia's release of mercury vapor on July 4–5, 2017 required Veolia to implement its June 8, 2017 Contingency Plan.

69. As a result of the July 4–5, 2017 release of mercury from the Facility to the atmosphere, Veolia implemented its June 8, 2017 Contingency Plan.

70. Veolia did not take a photograph of the plugged and cracked stainless-steel vacuum line connected to Kettle K3 prior to removing it from the WOR and sending it to an off-site fabricator for evaluation of whether the piping could be repaired or used as a template for a new pipe.

71. Veolia did not photograph the plugged and cracked vacuum line until after it received it back from the fabricator on February 1, 2018.

72. The plugged and cracked vacuum line was not available for DNR to inspect when DNR staff met with Veolia at the Facility on October 10, 2017.

73. Veolia did not obtain DNR concurrence prior to sending the plugged and cracked vacuum line to the off-site fabricator.

74. In a letter dated January 24, 2018, DNR asked Veolia to identify all the employees who had knowledge of, or were involved in, the July 4–5 release of mercury from the Facility.

75. Veolia did not identify all the employees who had knowledge of, or were involved in, the July 4–5 release of mercury from the Facility until April 13, 2018.

76. Veolia violated Condition 11 of the 2015 FPOR and Wis. Stat. § 289.30(9) by not: photographing the plugged and cracked stainless-steel vacuum line prior to removing it from the WOR; identifying the employees who have knowledge of, or were

involved in the July 4–5, 2017 release of mercury; retaining and securing the vacuum line; and obtaining DNR concurrence before releasing the plugged and cracked stainless-steel vacuum line.

VIOLATION 4: OPERATING THE WOR WITHOUT A TRAINED OPERATOR

77. Condition 51 of the 2015 FPOR states that “[Veolia] retort operations shall be under the control of a trained operator. [Veolia] shall not allow employees to work unsupervised until they have been certified as being fully trained, in accordance with the facility’s personnel training plan.”

78. From around 11:00 p.m. on July 4, 2017 until 5:30 a.m. on July 5, 2017, Veolia did not have a trained retort operator at the Facility.

79. From around 11:00 p.m. on July 4, 2017 until 5:30 a.m. on July 5, 2017, the WOR was operating, but not under the control of a trained operator.

80. Veolia violated Condition 51 of the 2015 FPOR and Wis. Stat. § 289.30(9) on July 4, 2017 and July 5, 2017 for operating the WOR without a trained operator.

VIOLATION 5: UNAPPROVED HAZARDOUS WASTE STORAGE

81. Condition 18 of the 2015 FPOR states that “[w]aste received from off-site shall be processed or moved into a container storage area within twenty-four (24) hours of the hazardous waste arriving at the facility.”

82. On April 19, 2017, DNR staff inspected the Facility.

83. On April 19, 2017, Veolia had semi-trailers parked in the Facility’s parking lot.

84. On April 19, 2017, two of the semi-trailers parked in the Facility's parking lot contained approximately 4,568 used 4-foot lamps that were received from off-site.

85. The used 4-foot lamps stored in semi-trailers parked in the Facility's parking lot on April 19, 2017 were hazardous waste that was subject to Condition 18 of the FPOR.

86. The Facility's parking lot is not a container storage area.

87. On April 19, 2017, the approximately 4,568 used 4-foot lamps had been stored in the semi-trailers parked in the Facility's parking lot longer than 24 hours.

88. On April 21, 2017, Veolia processed the approximately 4,568 used 4-foot lamps stored in semi-trailers parked in the Facility's parking lot.

89. Veolia violated Condition 18 of the 2015 FPOR and Wis. Stat. § 289.30(9) on at least April 19, 20, and 21, 2017 when it failed to process, or move into a container storage area, used 4-foot lamps within 24 hours of receiving the lamps.

PENALTY PROVISIONS

90. Wisconsin Stat. § 299.95 authorizes the attorney general to enforce Wis. Stat. chs. 285 and 291 and all rules promulgated and permits and plan approvals issued under the authority of those chapters. Under Wis. Stat. § 299.95, the circuit court for Dane County or the county where the violation occurred has jurisdiction to enforce Wis. Stat. chs. 285 and 291 and all rules promulgated and permits issued under those chapters "by injunctive and other relief appropriate for enforcement."

91. Wisconsin Stat. § 285.87(1) states that any person who violates this chapter or any rule promulgated under this chapter or any permit issued under this chapter shall forfeit not less than \$10 nor more than \$25,000 for each violation. Each day of continued violation is a separate offense.

92. Wisconsin Stat. § 291.97(1) states that “[a]ny person who violates any provision of [Wis. Stat. ch. 291] or any rule promulgated or special order, plan approval or term or condition of a license or variance issued under this chapter shall forfeit not less than \$100 nor more than \$25,000 for each violation. Each day of a continuing violation is a separate offense.”

93. Wisconsin Stat. § 291.97(3) states that “the court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of the violation, including attorney fees and the costs of performing monitoring.”

RELIEF REQUESTED

WHEREFORE, Plaintiff asks the Court to enter judgment as follows:

1. Forfeitures as provided for in Wis. Stat. §§ 285.87(1) and 291.97(1);
2. The 26 percent penalty surcharge pursuant to Wis. Stat. § 814.75(18), the 20 percent environmental surcharge pursuant to Wis. Stat. § 814.75(12), the 1 percent jail surcharge pursuant to Wis. Stat. § 814.75(14), \$25.00 in court costs pursuant to Wis. Stat. § 814.63(1), the \$13.00 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.75(3), the \$68.00 court support

services surcharge under Wis. Stat. § 814.75(2), and the \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15);

3. The reasonable and necessary expenses of the prosecution, including attorney fees, under Wis. Stat. § 291.97(3); and

4. Any other relief the Court deems just and appropriate.

Dated this 17th day of June 2021.

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by Bradley J. Motl

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