



**Request for City Council Committee Action  
From the Department of Public Works**

**Date:** January 17, 2006

**To:** Honorable Sandra Colvin Roy, Chair Transportation & Public Works Committee

**Referral to:** Honorable Paul Ostrow, Chair Ways & Means/Budget Committee

**Subject:** De Minimus Settlement for the Mercury Refining Superfund Site

**Recommendation:** That the City Council approve the settlement of this case by payment of \$2,889.90 payable to "EPA Hazardous Substance Superfund" and authorize appropriate City officials to execute any documents necessary to effectuate settlement.

**Prepared by:** Steven Kotke, Deputy Director of Public Works for Internal Services, 673-2402  
Corey M. Conover, Assistant City Attorney, 673-2182

**Approved by:** \_\_\_\_\_  
Klara A. Fabry, P.E., City Engineer, Director of Public Works

**Presenters:** Steven Kotke, Deputy Director of Public Works for Internal Services

Permanent Review Committee (PRC)	Approval _____	Not applicable	<u>  X  </u>
Policy review Group (PRG)	Approval _____	Not applicable	<u>  X  </u>

**Financial Impact** (Check those that apply)

- No financial impact - or - Action is within current department budget (If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Business Plan:  Action is within the plan.  Action requires a change to plan.
- Other financial impact (Explain):
- Request provided to department's Finance Dept. contact when provided to the Committee Coordinator

**Community Impact**

- Neighborhood Notification: Not Applicable
- City Goals: Not Applicable
- Comprehensive Plan: Not Applicable
- Zoning Code: Not Applicable

## **Background/Supporting Information**

We have received notice from United States Environmental Protection Agency (U.S.E.P.A.) that they consider us to be a responsible party at the Mercury Refining Superfund Site located at 26 Railroad Avenue in the Towns of Guilderland and Colonie in Albany County, NY. From the 1950s through 1998, the site was used by the Mercury Refining Company, Inc. as a mercury reclamation facility for liquid mercury and mercury bearing materials that were brought to the site. Through the mercury reclamation process, hazardous substances came to be disposed of at the site. U.S.E.P.A. Region II has identified the City of Minneapolis as a potentially responsible party and has sent us copies of shipping documents signed by City of Minneapolis officials in the early to mid 1990s showing that we shipped products containing mercury to the site. This would have been from appliances recycled as part of the recycling program of the Department of Public Works, Solid Waste and Recycling Division. As part of our recycling program, parts, such as switches that contain mercury are removed from fixtures and appliances and shipped for disposal. As far as we know, everything was done properly by the Division of Solid Waste & Recycling and by the employees of the Property Services Division that did the actual work in removing and shipping the items containing mercury.

Nonetheless, the Comprehensive Environmental Response Compensation and Liability Act of 1980 as amended (CERCLA) provides that those that generate hazardous substances are liable for any subsequent release of those substances into the environment which requires cleanup. It is not necessary to prove fault. It is a strict liability statute. We have no facts to dispute the claim that our substances were shipped to the site or that there was a release of mercury at the site and that a cleanup is required. U.S.E.P.A. has estimated that we have contributed 1,170 pounds of hazardous waste to the site, which represents .0226 percent of the hazardous substances contributed to the site. They are seeking \$2,889.90 to settle our liability pursuant to a "de minimus settlement". The terms of this proposed settlement are set out in a draft "Administrative Order on Consent". This is a standard form document which is essentially nonnegotiable and established by rule. It contains a standard "covenant not to sue by United States" which assures us the United States will not order us to undertake a cleanup action at the site or pursue us further for payment at the site, with the exceptions noted in the document. Most importantly, entering into this agreement will provide us contribution protection against liability from other parties that are liable at the site. Those who pass up this early opportunity to participate in the de minimus settlement can be exposed later to significantly more liability. As a theoretical matter, absent a settlement agreement, we could be liable for the entire cleanup of the site and the burden of chasing down other liable parties could be shifted to us.

With a settlement amount in this range, the Minneapolis City Attorney's Office believes that it would be both appropriate and prudent to enter into this proposed settlement agreement. Accordingly, the City Attorney and the Department of Public Works recommend that the proper City officials be authorized to enter into the "Administrative Order on Consent" and any other documents that are necessary to complete the settlement for this site.