



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

MAY 20 2019

REPLY TO THE ATTENTION OF:
LC-17J

VIA EMAIL @ pcomella@freeborn.com

Philip L. Comella
Attorney at Law
Freeborn & Peters LLP
311 South Wacker Drive, Suite 3000
Chicago, IL 60606

Consent Agreement and Final Order -In the Matter of:
Heritage Crystal Clean LLC; Indianapolis, Indiana Docket No. EPCRA-05-2019-0006

Dear Mr. Comella:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on May 20, 2019 with the Regional Hearing Clerk.

The civil penalty in the amount of \$38,221 is to be paid in the manner described in paragraphs 81-86. Please be certain that the docket number is written on the transmittal letter. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kendall Moore".

6/1 Kendall Moore
Pesticides and Toxics Compliance Section

Enclosure

cc: Maria Gonzales, (C-14J)

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. For the purposes of this proceeding, 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 a Standard Industrial Classification (SIC) code listed in 40 C.F.R. Part 372.23(a) or a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 C.F.R. Part 272.23(b) or (c); 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 exceeding an applicable threshold quantity of that chemical listed under Section 313(f) of EPCRA and 40 C.F.R. §§ 372.25, 372.27 and 372.28, during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of 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. § 372.25, except as provided in 40 C.F.R. §§ 372.27 and 372.28, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds for calendar years including and subsequent to 1989. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds for calendar years including and subsequent to 1987.

12. 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.

13. 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 polychlorinated biphenyl (PCB) manufactured, processed or otherwise used at a facility is 10 pounds for calendar years including and subsequent to 2001.

14. 40 C.F.R. § 372.10(a)(3) requires each person subject to reporting requirements under 40 C.F.R. Part 372 to retain documentation supporting the reports submitted under 40 C.F.R. § 372.30 for a period of 3 years from the date of the submission of the report under that section.

15. As set forth at 40 C.F.R. § 372.10(c), records retained under 40 C.F.R. § 372.10 must be maintained at the facility to which the report applies or from which a notification was provide and such records must be readily available for purposes of inspection by EPA.

16. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the Administrator of 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 may be assessed pursuant to each agency's statutes. EPA may assess a civil penalty of up to \$37,500 per day for each violation of Section 313 of EPCRA that occurred after January 12, 2009, 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

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

18. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 3970 West 10th Street, Indianapolis, Indiana (facility).

19. 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.

20. 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.

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

22. The facility has an NAICS code of 324191, an NAICS code that corresponds to covered SIC Codes 20-39 as defined at Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.23(b).

23. On October 7 and 8, 2014, EPA conducted an inspection of the facility to determine compliance with EPCRA.

Count 1

24. During calendar year 2013, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, 1,2,4-trimethylbenzene, CAS No. 95-63-6, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 372,135 pounds which is greater than 25,000 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. § 372.25.

25. Respondent was required to submit to the Administrator of EPA and to Indiana a Form R for 1,2,4-trimethylbenzene for calendar year 2013 by July 1, 2014.

26. Instead, Respondent submitted to the Administrator of EPA and to Indiana a Form R for 1,2,4-trimethylbenzene on October 8, 2014 for calendar year 2013.

27. Respondent's failure to timely submit a Form R for 1,2,4-trimethylbenzene to the Administrator of EPA and to Indiana for calendar year 2013 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 2

28. During calendar year 2013, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, ethylbenzene, CAS No. 100-41-4, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 30,474 pounds which is greater than 25,000 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. § 372.25.

29. Respondent was required to submit to the Administrator of EPA and to Indiana a Form R for ethylbenzene for calendar year 2013 by July 1, 2014.

30. Instead, Respondent submitted to the Administrator of EPA and to Indiana a Form R for ethylbenzene on October 8, 2014 for calendar year 2013.

31. Respondent's failure to timely submit a Form R for ethylbenzene to the Administrator of EPA and to Indiana for calendar year 2013 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 3

32. During calendar year 2013, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, toluene, CAS No. 108-88-3, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 32,788 pounds which is greater than 25,000 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. § 372.25.

33. Respondent was required to submit to the Administrator of EPA and to Indiana a Form R for toluene for calendar year 2013 by July 1, 2014.

34. Instead, Respondent submitted to the Administrator of EPA and to Indiana a Form R for toluene on October 8, 2014 for calendar year 2013.

35. Respondent's failure to timely submit a Form R for toluene to the Administrator of EPA and to Indiana for calendar year 2013 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 4

36. During calendar year 2013, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, xylene, CAS No. 1330-20-7, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 113,827 pounds which is greater than 25,000 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. § 372.25.

37. Respondent was required to submit to the Administrator of EPA and to Indiana a Form R for xylene for calendar year 2013 by July 1, 2014.

38. Instead, Respondent submitted to the Administrator of EPA and to Indiana a Form R for xylene on October 8, 2014 for calendar year 2013.

39. Respondent's failure to timely submit a Form R for xylene to the Administrator of EPA and to Indiana for calendar year 2013 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 5

40. During calendar year 2013, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, naphthalene, CAS No. 91-20-3, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount over 80,000 pounds which is greater than 25,000 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. § 372.25.

41. Respondent was required to submit to the Administrator of EPA and to Indiana a Form R for naphthalene for calendar year 2013 by July 1, 2014.

42. Instead, Respondent submitted to the Administrator of EPA and to Indiana a Form R for naphthalene on October 8, 2014 for calendar year 2013.

43. Respondent's failure to timely submit a Form R for naphthalene to the Administrator of EPA and to Indiana for calendar year 2013 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 6

44. During calendar year 2013, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, chlorobenzene, CAS No. 108-90-7, a chemical category or CAS No. listed

under 40 C.F.R. § 372.65, in the amount of 28,718 pounds which is greater than 25,000 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. § 372.25.

45. Respondent was required to submit to the Administrator of EPA and to Indiana a Form R for chlorobenzene for calendar year 2013 by July 1, 2014.

46. Instead, Respondent submitted to the Administrator of EPA and to Indiana a Form R for chlorobenzene on November 8, 2017 for calendar year 2013.

47. Respondent's failure to timely submit a Form R for chlorobenzene to the Administrator of EPA and to Indiana for calendar year 2013 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 7

48. During calendar year 2013, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, lead, CAS No. 7439-92-1, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 8,426 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.

49. Respondent was required to submit to the Administrator of EPA and to Indiana a Form R for lead for calendar year 2013 by July 1, 2014.

50. Instead, Respondent submitted to the Administrator of EPA and to Indiana a Form R for lead on November 8, 2017 for calendar year 2013.

51. Respondent's failure to timely submit a Form R for lead to the Administrator of EPA and to Indiana for calendar year 2013 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 8

52. During calendar year 2013, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, polychlorinated biphenyl (PCB), CAS No. 1336-36-3, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 41 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, after receiving one shipment of used oil contaminated with PCBs and treating it at the Facility.

53. Complainant alleges Respondent was required to submit to the Administrator of EPA and to Indiana a Form R for PCB for calendar year 2013 by July 1, 2014.

54. Instead, Respondent submitted to the Administrator of EPA and to Indiana a Form R for PCB on November 8, 2017 for calendar year 2013.

55. Respondent's failure to timely submit a Form R for PCB to the Administrator of EPA and to Indiana for calendar year 2013 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 9

56. During calendar year 2013, Respondent's facility otherwise used, as that term is defined at 40 C.F.R. § 372.3, molybdenum trioxide, CAS No. 1313-27-5, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 46,994 pounds which is greater than 10,000 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. § 372.25.

57. Respondent was required to submit to the Administrator of EPA and to Indiana a Form R for molybdenum trioxide for calendar year 2013 by July 1, 2014.

58. Instead, Respondent submitted to the Administrator of EPA and to Indiana a Form R for molybdenum trioxide on November 8, 2017 for calendar year 2013.

59. Respondent's failure to timely submit a Form R for molybdenum trioxide to the Administrator of EPA and to Indiana for calendar year 2013 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 10

60. During calendar year 2013, Respondent's facility otherwise used, as that term is defined at 40 C.F.R. § 372.3, nickel compounds, Chemical Category N495, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 16,110 pounds which is greater than 10,000 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. § 372.25.

61. Respondent was required to submit to the Administrator of EPA and to Indiana a Form R for nickel compounds for calendar year 2013 by July 1, 2014.

62. Instead, Respondent submitted to the Administrator of EPA and to Indiana a Form R for nickel compounds on November 8, 2017 for calendar year 2013.

63. Respondent's failure to timely submit a Form R for nickel compounds to the Administrator of EPA and to Indiana for calendar year 2013 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 11

64. In calendar years 2012 and 2013, Respondent manufactured, processed or otherwise used 1,2,4-trimethylbenzene, ethylbenzene, toluene, xylene, and naphthalene in excess of threshold amounts at 40 C.F.R. § 372.25.

65. Respondent submitted Form R reports for 1,2,4-trimethylbenzene, ethylbenzene, toluene, xylene, and naphthalene for calendar year 2012 on July 4, 2013.

66. Respondent submitted Form R reports for 1,2,4-trimethylbenzene, ethylbenzene, toluene, xylene, and naphthalene for calendar year 2013 on October 8, 2014.

67. 40 C.F.R. § 372.10(a) and (c) required Respondent to retain documentation supporting the Form R reports it submitted for a period of 3 years from the date of submission of the reports, and to maintain them at the facility and make them readily available for inspection by EPA

68. During the October 2014 inspection, the EPA inspector requested to see the supporting documentation behind the Form R reports submitted in FY 2012 and 2013, such as threshold calculations, and release estimates.

69. Respondent's representative indicated the documentation was located offsite with a consultant, and that consultant indicated that they had been lost and he did not keep files electronically.

70. There were no threshold calculations or release estimate records for the FY 2012 and FY 2013 Form R reports maintained at the facility and readily available for inspection; and they were not retained for a period of three years.

71. Respondent's failure to retain records, maintain them at the facility and make them readily available for inspection as prescribed by 40 C.F.R. § 372.10(a) and (c) constitutes a failure to comply with Section 313 of EPCRA, 42 U.S.C. § 11023, and with 40 C.F.R. 372.10(a) and (c).

Civil Penalty

72. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined

that an appropriate civil penalty to settle this action is \$38,221. 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 its agreement to perform a supplemental environmental project, and any other matters as justice may require. Complainant also considered 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) (amended) (April 12, 2001).

73. Within 30 days after the effective date of this CAFO, Respondent must pay a \$38,221 civil penalty for the EPCRA violations by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Heritage-Crystal Clean, LLC and the docket number of this CAFO.

74. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Kendall Moore (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Maria Gonzalez (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

76. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 89, below, 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.

77. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. 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, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

78. Respondent will provide funding for and ensure the satisfactory completion of a supplemental environmental project (SEP) designed to protect the public health by replacing windows suspected to present lead-based paint hazards in a number of either child-occupied facilities as defined at 40 C.F.R. § 745.83 and/or owner-occupied residential properties in

Environmental Justice (EJ) communities located in Marion County, Indiana. Respondent will consult with the Indiana Health Department to identify the child-occupied facilities and owner-occupied residences with the highest potential risk of childhood lead exposure, based on building age, last replacement of windows, reported elevated blood lead levels in children, where children age 16 and under or pregnant women reside or regularly visit, with priority given to locations where children age 6 and under reside or regularly visit. The SEP will fund the replacement of windows at the identified locations as discussed below. Such funding will not be used on federally owned properties or for activities that qualify for other sources of federal funding, including HUD funding.

79. Respondent must ensure the SEP is completed as follows: the Respondent will contract with a local not-for-profit organization (NFP) with experience in lead abatement work to promptly undertake and complete such work in or about environmental justice areas in Marion County, Indiana. Respondent shall ensure the NFP conducts the SEP according to all applicable federal and state work practice and notification requirements including, but not limited to, the United States Department of Housing and Urban Development's (HUD's) Guidelines for the Evaluation and Control of Lead-Based Paint hazards in Housing and the State of Indiana, HUD's Guidelines for Windows, and EnergyStar Program Requirements for Residential Windows, Doors, and Skylights, unless otherwise specifically provided in this CAFO. The Indiana Health Department will be consulted on the implementation of the guidance, including assessments, evaluations, inspections and clearance.

80. Within 90 days of the effective date of this CAFO, Respondent must contract with the NFP and provide at least \$186,799 for use by the NFP to complete the window lead abatement SEP as set forth in this CAFO.

81. The SEP must be completed within one year of the effective date of this document, provided this and/or any other schedules for the SEP may be extended in writing by mutual agreement of the parties.

82. Respondent certifies as follows:

a. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement or as injunctive relief as of the date it signs this CAFO.

b. Respondent certifies that the SEP is not a project Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO.

c. Respondent certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

d. Respondent certifies that it will not receive reimbursement for any portion of the SEP from another person or entity.

e. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP.

f. Respondent certifies that it has inquired of its NFP whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the recipient and/or the NFP that it is not a party to such a transaction.

83. EPA may inspect activities conducted as part of this SEP at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

84. Respondent must submit a SEP completion report to EPA no later than 60 days after Respondent receives a report from the NFP that the SEP is complete. This report must contain the following information:

a. Detailed description of the SEP as completed;

b. Description of any problems implementing the SEP and the actions taken to correct the problems;

- c. Itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO;
- e. Certification that the SEP has not been conducted at child-occupied facilities or residential properties outside of EPA recognized EJ areas.
- f. Certification that the SEP has not been conducted at facilities or properties eligible to receive federal funding for this work.
- g. General description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible). Include the number of properties from which windows were replaced under the SEP; the number of windows replaced; the number of owner-occupied residences; the number of child-occupied facilities; photographs; the number of children age 16 and under, children 6 and under, and pregnant women; and the number, income ranges, and ethnicity of the families impacted.

85. Respondent must submit the SEP Completion Report by first class mail to Kendall Moore at the address provided in Paragraph 74, above, with a copy to gonzalez.maria@epa.gov.

86. In the SEP Completion Report, Respondent must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

87. Within 90 days following receipt of the SEP completion report described in paragraph 84, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 89, below.

88. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 89, below.

89. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent does not provide the funding, contract with the NFP, consult with the Health Department, and/or ensure completion of the SEP as described in paragraphs 78-81, Respondent must pay a penalty of \$186,799 (in addition to the civil penalty at paragraph 73).
- b. If the SEP was not completed satisfactorily, but EPA determines that Respondent made good faith and timely efforts to ensure completion of the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 80, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If the SEP was completed satisfactorily, but Respondent spent less than 90 percent of the amount set forth in paragraph 80, Respondent must pay a penalty of \$37,340.
- d. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$50	1 st through 14 th day
\$500	15 th through 30 th day
\$1,000	31 st day and beyond

90. EPA's determinations of whether the SEP was completed satisfactorily and whether Respondent made good faith and timely efforts to ensure completion of the SEP will bind Respondent.

91. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 73, above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts.

92. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

93. Any public statement that Respondent makes referring to the SEP must include the following language, "Heritage-Crystal Clean, LLC undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Heritage-Crystal Clean, LLC for violations of EPCRA Section 313, 42 U.S.C. § 11023."

94. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify

Respondent in writing of its decision and any delays in completing the SEP will not be excused.

- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above.

95. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

96. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: gonzalez.maria@epa.gov (for Complainant), and pcomella@freeborn.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

97. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations alleged in this CAFO.

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

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

100. This CAFO is a “final order” for purposes of EPA’s Enforcement Response Policy for Section 313 of EPCRA.

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

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

103. Each party agrees to bear its own costs and attorneys fees in this action.

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

Heritage-Crystal Clean, LLC, Respondent

5/7/19

Date



Anita Decina
Vice President, Environment, Health & Safety, DOT
Heritage-Crystal Clean LLC

United States Environmental Protection Agency, Complainant

5/14/2019

Date



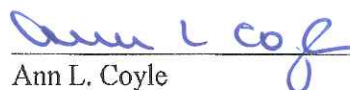
Michael D. Harris
Acting Director
Enforcement and Compliance Assurance Division

In the Matter of:
Heritage-Crystal Clean, LLC
Docket No. **EPCRA-05-2019-0006**

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.

5/17/19
Date _____



Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Expedited Settlement Agreement and Final Order
In the Matter of: Heritage Crystal Clean LLC;
Docket Number: **EPCRA-05-2019-0006**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on May 20, 2019, in the following manner to the following addresses:

Copy by Certified Mail
Return Receipt Requested to:

Mr. Philip L. Comella
Freeborn & Peters LLP
311 South Wacker Drive, Suite 3000
Chicago, IL 60606

Copy by E-Mail to
Attorney for Respondent:

Philip L. Comella
pcomella@freeborn.com

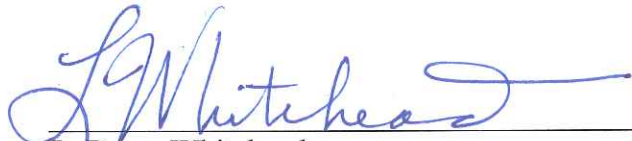
Copy by E-Mail to
Attorney for Complainant:

Maria Gonzalez
gonzalez.maria@epa.gov

Copy by E-Mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: May 20, 2019



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): N/A