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

OCT - 4 2017

CERTIFIED MAIL 7009 1680 0000 7669 2366
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

Ms. Winde Hamrick
Executive Vice President
Heritage Environmental Services, LLC
7901 West Morris Street
Indianapolis, Indiana 46231

Re: Consent Agreement and Final Order
Heritage Environmental Services, LLC
Docket No: **RCRA-05-2018-0001**

Dear Ms. Hamrick,

Enclosed please find a copy of the signed, fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed with the Regional Hearing Clerk on October 4, 2017.

Please pay the civil penalty in the amount of $77,385 in the manner prescribed in paragraphs 61 through 66 of the CAFO, and reference all checks with the docket number **RCRA-05-2018-0001**. Your payment is due within 30 calendar days of the effective date of the CAFO. Also, enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings.* Thank you for your cooperation in resolving this matter.

If you have any questions or concerns regarding this matter, please contact Jamie L. Paulin, of my staff, at 312-886-1771.

Sincerely,

Gary J. Victorine, Chief
RCRA Branch

Enclosures

cc: Mr. Michael T. Scanlon, Barnes & Thornburg LLC (michael.scanlon@btlaw.com)
Ms. Nancy Johnston, Indiana Department of Environmental Management
(njohnsto@idem.in.gov)

NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

A. Such proceeding is material to the business or financial condition of the registrant;
B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than $100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

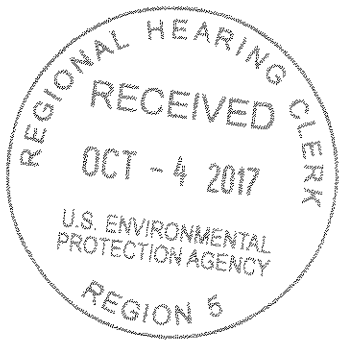
You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	**Docket No. RCRA-05-2018-0001**
Heritage Environmental Services, LLC	)	
7901 West Morris Street	)	
Indianapolis, Indiana 46231	)	**Proceeding to Commence and Conclude an Action to Assess a Civil Penalty Under Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a)**
U.S. EPA ID #: IND 093 219 012	)	
Respondent.	)	



CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. U.S. EPA provided notice of commencement of this action to the State of Indiana pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. Respondent is Heritage Environmental Services, LLC (Heritage Environmental), a corporation doing business in the State of Indiana.

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. 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

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. 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.

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901-6992k and the regulations at 40 C.F.R. Parts 260-279.

Statutory and Regulatory Background

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, or dispose of hazardous waste or used oil, pursuant to Sections 3001-3007, 3013, and 3014, among others, of RCRA, 42 U.S.C. §§ 6921-6927, 6934, and 6935.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the

federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e), or any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Under Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Indiana final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. *See* 51 Fed. Reg. 3,953 (Jan. 31, 1986). The Administrator of U.S. EPA granted Indiana final authorization to administer certain HSWA and additional RCRA requirements effective January 19, 1988, 53 Fed. Reg. 128 (Jan. 5, 1988); September 11, 1989, 54 Fed. Reg. 29,557 (July 13, 1989); September 23, 1991, 56 Fed. Reg. 33,717 (July 23, 1991); September 23, 1991, 56 Fed. Reg. 33,866 (July 24, 1991); September 27, 1991, 56 Fed. Reg. 35,831 (July 29, 1991); September 30, 1991, 56 Fed. Reg. 36,010 (July 30, 1991); October 21, 1996, 61 Fed. Reg. 43,018 (Aug. 20, 1996); October 21, 1996, 61 Fed. Reg. 43,009 (Aug. 20, 1996); November 30, 1999, 64 Fed. Reg. 47,692 (Sept. 1, 1999); January 4, 2001, 66 Fed. Reg. 733 (Jan. 4, 2001); December 6, 2001, 66 Fed. Reg. 63,331 (Dec. 6, 2001); October 29, 2004, 69 Fed. Reg. 63,100 (Oct. 29, 2004); November 23, 2005, 70 Fed. Reg. 70,740 (Nov. 23, 2005); and on June 6, 2013, 78 Fed. Reg. 33,986 (June 6, 2013). The U.S. EPA-authorized Indiana regulations are codified at 329 Indiana Administrative Code (IAC) 3.1-7-1 *et seq*. *See also* 40 C.F.R. § 272.750 *et seq*.

15. Sections 3002 and 3004 of RCRA, 42 U.S.C. §§ 6922 and 6924, directed U.S. EPA to promulgate regulations governing generators of hazardous waste and facilities that treat, store or dispose of hazardous waste, and governing the owners and operators of such facilities.

Pursuant to Sections 3002 and 3004 of RCRA, 42 U.S.C. §§ 6922 and 6924, U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, respectively governing generators of hazardous waste, and facilities that treat, store or dispose of hazardous waste, and governing the owners and operators of such facilities. The federally-authorized Indiana regulations that govern generators of hazardous waste are codified at 329 IAC § 3.1-7-1 *et seq.* The federally-authorized Indiana regulations that govern facilities that treat, store or dispose of hazardous waste, and that govern the owners and operators of such facilities, are codified at 329 IAC §§ 3.1-9-1 *et seq.* (Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities), and 329 IAC §§ 3.1-10-1 *et seq.* (Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities).

16. Section 3005 of RCRA, 42 U.S.C. § 6925, directed U.S. EPA to promulgate regulations prohibiting the treatment, storage, or disposal of hazardous waste except in accordance with a permit, and requiring each person owning or operating a facility at which hazardous waste is treated, stored or disposed (TSD facility) to have a permit issued by U.S. EPA or the authorized state, or to have interim status under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).

17. Pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), U.S. EPA has promulgated regulations at 40 C.F.R. Part 270 that establish permitting requirements and procedures.

18. The federally-authorized Indiana regulations that govern (in lieu of analogous federal regulations) the issuance of hazardous waste permits are codified at 329 IAC §§ 3.1-13-1 *et seq.*

19. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an

order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both. The Administer of U.S. EPA may issue a civil penalty of up to $37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009 through November 2, 2015 pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19.

20. The Indiana regulations at 329 IAC §§ 3.1-4-1 and 3.1-4-1(b) and 40 C.F.R. § 260.10 define the term "generator" as any person, by site, whose act or process produces hazardous waste identified or listed in 329 IAC §§ 3.1-6-1 and 3.1-6-2 or whose act first causes a hazardous waste to become subject to regulation.

21. 329 IAC §§ 3.1-4-1 and 3.1-4-1(b) and 40 C.F.R. § 260.10 define the term "facility" as, *inter alia*, all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste.

22. 329 IAC § 3.1-6-1 and 40 C.F.R. § 261.2 define the term "solid waste" as any discarded material that is not excluded by 40 C.F.R. § 261.4(a) or that is not excluded by variance granted under 40 C.F.R. §§ 260.30 and 260.31.

23. Under 40 C.F.R. § 261.3 and 329 IAC § 3.1-6-1, a solid waste is a hazardous waste if, *inter alia,* (1) it is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b), and (2) it exhibits any of the characteristics of hazardous waste identified in 40 C.F.R. Part 261, Subpart C, §§ 261.20 to 261.24 (i.e., the characteristics of ignitability, corrosivity, reactivity, or toxicity), or it is listed under 40 C.F.R. Part 261, Subpart D, and has not been excluded from the lists in Subpart D by virtue of 40 C.F.R. §§ 260.20 and 260.22.

Factual Allegations and Alleged Violations

At all times relevant to this CAFO, except as noted:

24. Respondent was and is the "owner" or "operator," as those terms are defined under 329 IAC § 3.1-4-1 [40 C.F.R. § 260.10], of a facility located at 7901 West Morris Street, Indianapolis, Indiana (Facility) with operations that include the treatment and storage of hazardous waste.

25. Respondent's Facility consisted and consists of land and structures, other appurtenances, and improvements on the land, used for treating or storing hazardous waste.

26. Respondent owned and operated, and continues to own and operate, a treatment and storage facility located at 7901 West Morris Street, Indianapolis, Indiana (herein referred to as "Respondent's Facility"), with operations that include the treatment and storage of hazardous waste.

27. Respondent operated and operates a Subtitle C Landfill (the Landfill) located at 4370 West CR 1275 North, Roachdale, Indiana.

28. Respondent's Facility has been in operation since at least December 20, 1980.

29. Respondent is, and was at all times relevant to this Complaint, a corporation incorporated under the laws of the State of Indiana.

30. Respondent was and is a "person" as defined by 329 IAC §§ 3.1-4-1 and 3.1-4-1(b), 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

31. Respondent is, and was at all times relevant to this Complaint, the owner and operator of a "facility" as defined by 329 IAC §§ 3.1-4-1 and 3.1-4-1(b), and 40 C.F.R. § 260.10, which is located at 7901 West Morris Street, Indianapolis, Indiana.

32. Respondent is, and was at all times relevant to this Complaint, a "generator" of hazardous waste as defined in 329 IAC §§ 3.1-4-1 and 3.1-4-1(b), and 40 C.F.R. § 260.10.

33. Respondent is, and was at all times relevant to this Complaint, a treatment, storage, and/or disposal facility (TSDF), with a hazardous waste permit, number IND093219012.

34. During calendar year 2012, Respondent treated hazardous waste in batches from a stabilization/LDR treatment process (characteristic and/or listed).

35. Respondent currently generates more than 1,000 kilograms of hazardous waste per month. Respondent is, and was at all times relevant to this Complaint, a "large quantity generator" of hazardous wastes within the meaning of 329 IAC §§ 3.1-4-1, 3.1-4-1(b), 3.1-7-1, and 3.1-7-2 [40 C.F.R. § 260.10 and 40 C.F.R. § 262.34].

36. As a TSDF, Respondent is, and was at all times relevant to the Complaint, subject to permit IND093219012 (the "Permit" or "Facility Permit").

37. On July 17, 2012 through July 26, 2012, U.S. EPA conducted a Compliance Evaluation Inspection of the Heritage Environmental facility (the Inspection).

38. On September 26, 2014, U.S. EPA issued a Notice of Intent to File Civil Administrative Complaint to Respondent alleging certain violations of RCRA discovered during the Inspection.

Failure to Meet LDR Requirements

39. Under 329 IAC § 3.1-12-1 [40 C.F.R. § 268.40(a)(2)], a generator must comply with all applicable self-implementing requirements of 40 C.F.R. Part 268 and all applicable land disposal requirements which become effective by federal statute.

40. During the Inspection, two batches of hazardous waste were treated at Respondent's Facility in Indianapolis.

41. Respondent then disposed of both treatment batches in the Landfill, a RCRA Subtitle C hazardous waste landfill, located in Roachdale, Indiana.

42. U.S. EPA sampled both treated batches after they were placed in the active face of the Landfill. Ten samples were collected from the treatment group 9000-431 batch, and ten samples were collected from the treatment group 9000-236 batch. Respondent was provided with split samples from the samples collected by U.S. EPA.

43. All ten grab samples collected from the 9000-431 batch exceeded the land disposal restriction (LDR) treatment standard for lead. Four out of ten samples collected from the 9000-236 batch exceeded the LDR treatment standard for zinc, and one of the samples exceeded the LDR treatment standard for nickel.

44. Following receipt of the analytical results from the split samples and prior to U.S. EPA notifying Respondent regarding the results from the samples it analyzed, Respondent performed the following activities. First, Respondent verbally notified U.S. EPA and the State of Indiana regarding the results. Second, it submitted a written notification of the results to the State of Indiana and copied U.S. EPA on that written notification. Third, Respondent voluntarily removed the wastes at issue from the Landfill, shipped those wastes to Respondent's Facility for further treatment, verified the further treatment resulted in the wastes satisfying the LDR treatment standards, and re-disposed of the wastes at the Landfill.

45. Respondent failed to keep all hazardous constituents in the extract of its treated waste or in the extract of the treatment residue at or below the values found in the table in 40 C.F.R. § 268.40 ("waste extract standards"). Therefore, Respondent violated the above-referenced LDR requirement of the Permit, Facility Permit, Section II, General Facility Conditions, item Q, and the above-referenced regulation, 40 C.F.R. § 268.40(a)(2), by land disposing hazardous waste that did not meet the requirements found in the table in a permitted Subtitle C landfill constructed to meet the technical requirements specified in 40 C.F.R. Part 264.

Failure to Test Waste According to Frequency Specified

46. The Permit requires that the Respondent, the Permittee, shall comply with all testing, tracking and recordkeeping requirements for treatment facilities described in 40 C.F.R. § 268.7. *See* Facility Permit, Section II. General Facility Conditions, item Q. Treatment facilities must test their wastes according to the frequency specified in their waste analysis plans (WAPs) as required by 40 C.F.R. § 264.13 (for permitted TSDs). *See* 40 C.F.R. § 268.7(b).

47. Treatment Facility WAP Condition 9.4 LDR Stabilization Verification Sampling and Analysis states that Respondent will sample and analyze wastestreams generated from each stabilization/LDR treatment process (characteristic and/or listed) prior to disposal on a weight basis to verify compliance with the applicable Land Disposal Restrictions treatment standards. The wastestream from each stabilization/LDR treatment process will be sampled on a quarterly basis for a maximum of four sampling events per calendar year.

48. At the time of the inspection, Respondent was conducting monthly post-treatment verification sampling and analysis of wastestreams generated from two of their stabilization/LDR treatment processes (treatment groups 9000-236 and 9000-431). However, Respondent never conducted this verification sampling and analysis on some wastestreams or on certain combinations of wastestreams. To resolve this allegation, Respondent conducted research to identify improvements to the methodology related to stabilization of metal-bearing wastestreams. Following the research, Respondent developed and implemented an improved methodology. Following U.S. EPA approval of the improved methodology, Respondent submitted a Class I Permit Modification to the Indiana Department of Environmental Management dated August 2, 2017 that incorporated the improved methodology into its WAP.

49. Respondent violated the above-referenced requirement of the Permit and the above-referenced regulation, 40 C.F.R. § 268.7(b), by not testing all of their wastestreams as required by their permit and not testing them according to the frequency specified in their WAP.

Failure to Obtain a Detailed Chemical and Physical Analysis

50. Before an owner or operator treats, stores, or disposes of any hazardous wastes, or nonhazardous wastes if applicable under 40 C.F.R. § 264.113(d), he must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with this part and part 268 of this chapter. *See* 40 C.F.R. § 264.13(a)(1) and Facility Permit, Section II. General Facility Conditions, item C, General Waste Analysis.

51. At the time of the inspection, Respondent was conducting monthly post-treatment verification sampling and analysis of wastestreams generated from two of their stabilization/LDR treatment processes (treatment groups 9000-236 and 9000-431). However, Respondent never conducted this verification sampling and analysis on some wastestreams or on certain combinations of wastestreams. To resolve this allegation, Respondent conducted research to identify improvements to the methodology related to stabilization of metal-bearing wastestreams. Following the research, Respondent developed and implemented an improved methodology. Following U.S. EPA approval of the improved methodology, Respondent submitted a Class I Permit Modification to the Indiana Department of Environmental Management dated August 2, 2017 that incorporated the improved methodology into its WAP.

52. Respondent violated the above-referenced testing requirement of the Permit (Facility Permit, Section II. General Facility Conditions, item C) and the above-referenced

regulation, 40 C.F.R. § 264.13(a)(1), by not obtaining a detailed chemical and physical analysis of a representative sample of the wastes.

Failure to Follow Quality Assurance Method

53. The Permit requires that Respondent, the Permittee, follow the Acceptable Analytical Methods, located in Appendix A of the WAP. The WAP also specifies the use of EPA SW-846 Method 1311 (Toxicity Characteristic Leaching Procedure, TCLP). *See* Facility Permit, Appendix A.

54. At the time of the inspection, the Respondent's on-site laboratory was using X-ray fluorescence (XRF) as a screening instrument to measure the concentrations of certain regulated constituents, such as chlorine in incoming waste and mercury in liquids from the mercury treatment process. (XRF is used to screen used oil for chlorine, and mercury is measured to verify that its concentration is less than 100 ppm.) Respondent was only calibrating the XRF instrument one time per year. In addition, a quality control standard was not analyzed with each batch of samples to verify instrument performance.

55. According to information provided by Respondent, neither the chlorine screening nor the mercury screening for internally generated mercury wastes is addressed in the WAP. Furthermore, Respondent alleges that an XRF can maintain an acceptable calibration over an extended period of time, and that a calibration performed on the XRF following EPA's 2012 Inspection indicated the calibration previously performed remained acceptable.

56. Respondent was not following the method to ensure quality assurance, which the WAP requires under Facility Permit, Appendix A, by not processing a minimum of one quality control check standard and by not evaluating a quality control sample with each batch of analyzed samples.

Failure to Determine the Proper Extraction Fluid

57. Respondent's on-site laboratory performed TCLP analysis on sales pre-approval samples. The results of this analysis were used to determine if a given treatment recipe can be used for candidate wastes. Section 7.1.4 of EPA's SW-846 Method 1311 specifies that a pre-test be conducted to determine the extraction fluid to use to extract the waste.

58. At the time of the inspection, Respondent's on-site laboratory was not conducting the pre-test required to determine the proper extraction fluid for the TCLP analysis.

59. Respondent alleges that based on the alkaline stabilization process, extraction fluid #2 is required for 100% of the samples. Furthermore, Respondent alleges that because of the pH of extraction fluid #2, it is expected to more aggressively leach metal-bearing wastes than extraction fluid #1.

60. The on-site laboratory did not conduct this fluid determination pre-test step, therefore Respondent violated the above-reference WAP requirement of the Permit, under Facility Permit, Appendix A.

Civil Penalty

61. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is seventy-seven thousand, three hundred and eighty-five dollars and no cents ($77,385.00). In determining the penalty amount, Complainant took into account the seriousness of the violation and Respondent's agreement to perform a supplemental environmental project (SEP) (described at paragraphs 67 to 85, below). Complainant also considered U.S. EPA's RCRA Civil Penalty Policy (June 23, 2003).

62. Within 30 days after the effective date of this CAFO, Respondent must pay a seventy-seven thousand, three hundred and eighty-five dollars and no cents ($77,385.00) civil

penalty for the RCRA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

For checks sent by regular U.S. Postal Service mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For checks sent by express mail:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must state the case title and the docket number of this CAFO.

63. A transmittal letter stating Respondent's name, the case title and the case docket number must accompany the payment if payment is made by check. Respondent must send a copy of the check and transmittal letter to:

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

Jamie Paulin (LR-17J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
paulin.jamie@epa.gov

Robert M. Peachey (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
peachey.robert@epa.gov

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

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

66. 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 payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). 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

67. Respondent will provide funding for a SEP designed to protect human health and the environment by conducting fluorescent light fixture replacements, retrofits, or upgrades at selected local public schools within EPA, Region 5. This SEP will involve the replacement, retrofit, or upgrade of fluorescent light fixtures (including capacitors and interior potting material) that may have formerly contained PCBs, and their replacement with newer, more energy efficient fixtures, at all schools selected by Respondent.

68. Respondent will provide funding for a SEP designed to protect human health and the environment that allows a selected public school to acquire upgraded drinking fountain equipment with point of use filtering systems as a preventive measure to mitigate the potential for exposure to lead in drinking water.

69. As of the effective date of this CAFO, Respondent has selected School City of East Chicago (East Chicago) as a local public school for both SEP projects.

70. Respondent will pay a contractor $281,972.00 to complete the fluorescent light fixture upgrade project and East Chicago $8,223.00 to acquire drinking water fountain equipment and accessories for installation by East Chicago. The total amount of the two SEPs will be $290,195.00. East Chicago will direct the fluorescent light fixture work performed by a contractor selected by Respondent.

71. The specific details of the SEPs as well as the responsibilities of Respondent, East Chicago, and the contractor will be set out in a Memorandum of Understanding to be negotiated between Respondent and East Chicago within thirty (30) days after the effective date of this CAFO. The Memorandum of Understanding must require that East Chicago approve the work performed by the contractor to retrofit fixtures that may have formerly contained PCBs within school buildings where children may be present prior to the release of SEP funds to the contractor.

72. Respondent has selected Huston Electric as a contractor to assist with implementation of the fluorescent light fixture retrofit, replacement, or upgrade for East Chicago.

73. Within 30 days of the date that both SEPs are completed, Respondent shall submit a SEP completion report to EPA. This report must contain the following information:

a. Invoices and completion report prepared by Huston Electric (including the total number of fluorescent light fixtures replaced, the total number of fluorescent light ballasts replaced, a summary of the information contained on the shipping documents for the removed used lamps and fixtures, as well as the price for each new fixture);

b. Description of any problems executing the SEPs by Huston Electric or East Chicago and the actions taken to correct the problems;

c. Respondent must also provide documentation from East Chicago approving the payment of fluorescent light fixture SEP invoices;

d. A copy of the check provided to East Chicago for the drinking water fountain upgrade;

e. Certification that Respondent has completed the SEPs in compliance with this CAFO.

74. Following receipt of the SEP completion report described in paragraph 73, EPA must notify Respondent in writing that:

a. Respondent has completed the SEP projects and the SEP report;

b. There are deficiencies in the SEPs 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 SEPs and the SEP report, and EPA will seek stipulated penalties under paragraph 76.

75. If EPA exercises options b or c in paragraph 74, Respondent may object in writing to the deficiency or determination 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. This 30 day period can be extended by mutual agreement of the Parties. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection.

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

a. Except as provided in paragraph 77 below, if Respondent does not pay $290,195.00 to complete the SEPs, enter into a Memorandum of Understanding with East Chicago, and select a contractor to assist with the fluorescent light fixture SEP, Respondent must pay a penalty of $300,000 (in addition to the civil penalty at paragraph 61);

b. If Respondent does 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:

Penalty per violation per day	Period of violation
$0	1st through 14th day
$250	15th through 30th day
$500	31st day and beyond

77. If there are any funds remaining from the original $290,195.00 as of the date that Respondent submits the SEP completion report, but EPA determines that Respondent made good faith and timely efforts to provide funding for the SEPs, Respondent must pay an amount (in addition to the civil penalty at paragraph 61) which is the difference between $290,195.00 and the amount that Respondent certifies it spent for the SEPs (demonstrated by supporting documentation).

78. Respondent must pay any stipulated penalties under paragraph 76 within 30 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in in paragraphs 62 and 63 and will pay interest and nonpayment penalties on any overdue amounts.

79. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEPs under this CAFO, from the date of its execution, shall include the following language: "This project was undertaken in connection with the settlement of the enforcement action In the Matter of Heritage Environmental Services, LLC, taken on behalf of the U.S. Environmental Protection Agency to enforce federal laws."

80. Respondent certifies as follows:

> I certify that, as of the date of executing this CAFO, Heritage Environmental Services, LLC is not required to perform or develop the SEPs by any federal, state, or local law or regulation and is not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum. I further certify that the SEPs are not projects that Heritage Environmental Services, LLC was planning or intending to perform or implement other than in settlement of the counts resolved in this CAFO, and that Heritage Environmental Services, LLC has not received and will not receive credit for the SEPs in any other enforcement

action.

> I certify that Heritage Environmental Services, LLC will not receive reimbursement for any portion of the SEPs from another person or entity. I also certify that Heritage Environmental Services, LLC 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 SEPs. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEPs, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

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

82. Respondent shall submit all notices and reports pursuant to the SEPs by first class mail or electronic mail to Ms. Paulin and Mr. Peachey, at the addresses listed in paragraph 63, as well as to:

> Kendall Moore (LC-8J)
> Pesticides and Toxics Compliance Section
> U.S. EPA, Region 5
> 77 West Jackson Blvd.
> Chicago, Illinois 60604
> moore.kendall@epa.gov

83. In each report that Respondent submits as provided by these SEPs, 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.

84. If an event occurs which causes or may cause a delay in completing one or both SEPs 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. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

85. Any requirement of the SEPs may be modified in writing by mutual agreement of the parties, including selecting an alternative or additional local public school for a fluorescent light fixture retrofit under paragraph 69 or an alternate use of remaining funds under paragraph 77.

General Provisions

86. Pursuant to 40 C.F.R. § 22.5, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: peachey.robert@epa.gov (for Complainant), and Winde.Hamrick@heritage-enviro.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

87. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO and the September 26, 2014 Notice of Intent to File Civil Administrative Complaint.

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

89. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

90. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

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

92. Each person signing this CAFO 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.

93. Each party agrees to bear its own costs and attorney's fees in this action.

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

In the Matter of:
Heritage Environmental Services, LLC
Docket No. RCRA- RCRA-05-2018-0001

Heritage Environmental Services, LLC, Respondent

9/29/17
Date

Winde Hamrick
Executive Vice President
Heritage Environmental Services, LLC

United States Environmental Protection Agency, Complainant

10/4/17
Date

Brigid Lowery
Acting Division Director
Land and Chemicals Division

In the Matter of:
Heritage Environmental Services, LLC
Docket No. RCRA-RCRA-05-2018-0001

FINAL ORDER

The foregoing 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.

October 4, 2017
Date

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

Consent Agreement and Final Order
In the matter of: Heritage Environmental Services, LLC
Docket Number: **RCRA-05-2018-0001**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **RCRA-05-2018-0001**, which was filed on October 4, 2017, in the following manner to the following addressees:

Copy by Certified Mail to Respondent:	Ms. Winde Hamrick Executive Vice President Heritage Environmental Services, LLC 7901 West Morris Street Indianapolis, Indiana 46231
Copy by E-mail to Attorney for Complainant:	Robert Peachey peachey.robert@epa.gov
Copy by E-mail to EPA enforcement staff contact:	Jamie Paulin Paulin.jamie@epa.gov
Copy by E-mail to Attorney for Respondent:	Michael T. Scanlon Michael.Scanlon@btlaw.com
Copy by E-mail to Regional Judicial Officer:	Ann Coyle coyle.ann@epa.gov

Dated: October 4, 2017 LaDawn Whitehead

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

CERTIFIED MAIL RECEIPT NUMBER(S): 7009 1680 0000 7669 2366