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U.S. EPA REGION 5
HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In The Matter Of:	)	**Docket No. CWA-05-2024-0008**
	)	
Heritage-Crystal Clean, LLC	)	**Proceeding to Assess a Class II Civil Penalty**
Indianapolis, Indiana,	)	**Under Section 311(b)(6) of the Clean Water**
	)	**Act, 33 U.S.C. § 1321(b)(6)**
Respondent.	)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(A)(i) and/or (ii) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(A)(i) and/or (ii), and Sections 22.1(a)(6), 22.13(b) and 22.18(b)(2) and (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. Part 22.

2. Complainant is the Director of the Superfund and Emergency Management Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Heritage-Crystal Clean LLC (HCC), an Indiana limited liability company doing business in Indiana.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an 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).

5. 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.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Judicial Review and Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 311(b)(6)(B)(ii), 33 U.S.C. § 1321(b)(6)(B)(ii); its right to seek federal judicial review under Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G), and Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and its right to appeal this CAFO.

Statutory and Regulatory Background

Prohibition of oil or hazardous substance discharges

9. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances into or upon, among other things, the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

Spill prevention, control and countermeasure plan requirements

10. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore and offshore facilities, and to contain such discharges. The authority to

promulgate these regulations for non-transportation-related onshore facilities has been delegated to EPA by Executive Order 12777 (Oct. 18, 1991).

11. The oil pollution prevention regulations at 40 C.F.R. Part 112 implement the requirements of Section 311(j)(1)(C) of the CWA, and set forth procedures, methods, equipment, and other requirements to prevent the discharge of oil and hazardous substances from non-transportation-related onshore facilities into or upon, among other things, the navigable waters of the United States and adjoining shorelines. *See* 40 C.F.R § 112.1(a)(1).

12. The oil pollution prevention regulations at 40 C.F.R. Part 112 apply to, among other things, owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in 40 C.F.R. § 110.3, into or upon the navigable waters of the United States or adjoining shorelines, and have an aboveground oil storage capacity of more than 1,320 U.S. gallons or a completely buried oil storage capacity greater than 42,000 U.S. gallons. *See* 40 C.F.R. §§ 112.1(b) and (d)(2).

13. 40 C.F.R. § 112.3 requires the owner or operator of a subject facility to prepare in writing and implement a Spill Prevention Control and Countermeasure Plan ("SPCC Plan") in accordance with the requirements of 40 C.F.R. Part 112.

14. 40 C.F.R. § 112.3(a)(1) requires the owner or operator of a subject facility in operation prior to November 10, 2011, to prepare and implement a SPCC Plan for the facility on or before November 10, 2011.

15. 40 C.F.R. § 112.7 requires the SPCC Plan to have full approval of management at a level of authority to commit the necessary resources to fully implement the SPCC Plan.

16. 40 C.F.R. § 112.7(a)(3) requires the owner or operator of a subject facility to describe in the SPCC Plan the physical layout of the facility and include a facility diagram, which must mark the location and contents of each fixed fuel container and the storage area where mobile or portable containers are located.

17. 40 C.F.R. § 112.7(a)(3)(i) requires the owner or operator of a subject facility to address in the SPCC Plan the type of oil in each fixed container and its storage capacity and, for mobile or portable container, to either provide the type of oil and storage capacity for each container or to provide an estimate of the potential number of mobile or portable containers, the types of oil, and anticipated storage capabilities.

18. 40 C.F.R. § 112.7(a)(3)(iii) requires the owner or operator of a subject facility to address in the SPCC Plan discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge.

19. 40 C.F.R. § 112.7(b) requires the owner or operator, where experience indicates a reasonable potential for equipment failure (such as loading or unloading equipment, tank overflow, rupture, or leakage, or any other equipment known to be a source of a discharge), to include in its Plan a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.

20. 40 C.F.R. § 112.7(c) requires the owner or operator of a subject facility to provide appropriate containment and/or diversionary structures or equipment as set forth therein.

21. 40 C.F.R. § 112.7(e) requires the owner or operator of a subject facility to conduct inspections and tests required by Part 112 in accordance with written procedures and records that the owner or operator or the certifying engineer develop for the facility. The owner or operator

must keep these written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan for a period of three years.

22. 40 C.F.R. § 112.8(a) requires the owner or operator of a subject facility to meet the general requirements for the SPCC Plan in 40 C.F.R. § 112.7 and the specific discharge prevention and containment procedures listed in 40 C.F.R. § 112.8.

23. 40 C.F.R. § 112.8 requires the owner or operator of a subject facility to, among other things, restrain drainage from diked storage areas, provide a secondary means of containment for bulk storage container installations for the entire capacity of the largest single container and sufficient freeboard to contain precipitation, and ensure that diked areas are sufficiently impervious to contain discharged oil.

24. 40 C.F.R. § 112.8(b)(1), among other things, requires the owner or operator of an onshore facility to restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system, except where facility systems are designed to control such discharge.

25. 40 C.F.R. § 112.8(b)(2), among other things, requires the owner or operator of an onshore facility whose facility drainage drains directly into a watercourse and not into an on-site wastewater treatment plant to inspect and allows the owner or operator to drain uncontaminated retained stormwater as provided in 40 C.F.R. § 112.8(c)(3(ii), (iii) and (iv).

26. 40 C.F.R. § 112.8(b)(3) requires the owner or operator of a subject facility to design facility drainage systems from undiked areas with a potential for a discharge (such as where piping is located outside containment walls or where tank truck discharges may occur outside the loading area) to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the

facility; and prohibits the owner or operator from locating catchment basins in areas subject to periodic flooding.

27. 40 C.F.R. § 112.8(c)(2) requires the owner or operator of a subject facility to construct all bulk storage tank installations to provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation, and to ensure that diked areas are sufficiently impervious to contain discharged oil.

28. 40 C.F.R. § 112.8(c)(6) requires the owner or operator of a subject facility to test or inspect each aboveground container for integrity on a regular schedule and whenever it makes material repairs; determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections, the frequency and type of testing and inspections, which take into account container size, configuration, and design; keep comparison records; inspect the container's supports and foundations; and frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas.

Facility response plan requirements

29. Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), provides that the President shall issue regulations requiring the owner or operator of an onshore facility that, because of its location could reasonably be expected to cause substantial harm to the environment by discharging into or upon the navigable waters or adjoining shorelines, to submit a plan for responding, to the maximum extent practicable, to a worst case discharge and to a substantial threat of such a discharge of oil or a hazardous substance. The authority to promulgate these regulations for non-transportation-related onshore facilities has been delegated to EPA by Executive Order 12777 (Oct. 18, 1991).

30. The oil pollution prevention regulations at 40 C.F.R. Part 112, Subparts A and D, implement the requirements of Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), and require owners and operators of subject facilities to prepare and submit a facility response plan ("FRP") to EPA in accordance with the requirements of 40 C.F.R. §§ 112.20 and 112.21.

31. The regulations at 40 C.F.R. § 112.20(a) and (f) provide that an owner or operator of a subject facility must determine whether, because of its storage capacity and location, the facility could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines pursuant to criteria established by EPA in Appendix C to 40 C.F.R. Part 112, Substantial Harm Criteria.

32. A facility is a substantial harm facility if: (1) the facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or (2) the facility's total oil storage capacity is greater than or equal to 1,000,000 gallons and one of the following is true: (a) the facility does not have sufficient secondary containment to contain the capacity of the largest above-ground oil storage tank plus freeboard for precipitation with each storage area; (b) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments; (c) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility would shut down a public drinking water intake; or (d) the facility has had a reportable oil spill of at least 10,000 gallons within the last five years. *See* 40 C.F.R. § 112.20(f)(1); Substantial harm criteria in Attachment C-I of Appendix C to 40 C.F.R. Part 112.

33. If a facility is a substantial harm facility under the criteria described in 40 C.F.R. § 112.20(f)(1) and Appendix C to 40 C.F.R. Part 112, the owner or operator of the facility is required

to prepare and submit to EPA an FRP that details the facility's emergency plans for responding to an oil spill. *See* 40 C.F.R. § 112.20(a).

34. Each owner or operator of a substantial harm facility that commences operation after August 30, 1994, is required to submit a FRP, along with a completed version of the response plan cover sheet contained in Appendix F of 40 C.F.R. Part 112, to EPA prior to the start of operations. 40 C.F.R. § 112.20(a)(2).

35. The regulation at 40 C.F.R. § 112.2 defines "fish and wildlife and sensitive environments" as areas that may be identified by their legal designation or by evaluations of Area Committees (for planning) or members of the Federal On-Scene Coordinator's spill response structure (during responses). These areas may include wetlands, critical habitats for endangered or threatened species, wilderness and natural resource areas, wild and scenic rivers, and recreational areas.

36. The regulation at 40 C.F.R. § 112.2 defines "injury" as a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to a discharge, or exposure to a product of reactions resulting from a discharge.

37. 40 C.F.R. § 112.20(d)(1) requires the owner or operator of a facility for which a response plan is required to revise and resubmit revised portions of the response plan within 60 days of each facility change that materially may affect the response to a worst case discharge.

38. Appendix C to Part 112, Substantial Harm Criteria, provides criteria to identify whether a facility could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines.

39. The oil pollution prevention regulations provide that a FRP shall meet the requirements of 40 C.F.R. § 112.20(h), including addressing the minimum elements set forth in that section and further described in Appendix F of Part 112.

General provisions and enforcement of the CWA

40. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), and Executive Order 11735 (Aug. 3, 1973), EPA determined by regulation the quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or environment of the United States, which are codified at 40 C.F.R. Part 110. Under 40 C.F.R. § 110.3, discharges of oil which may be harmful include discharges of oil that: (a) violate applicable water quality standards; or (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

41. Appendix A to 40 C.F.R. Part 112, Memorandum of Understanding between the Secretary of Transportation and EPA, defines "non-transportation-related" facility to include: oil production facilities including all equipment and appurtenances related thereto; oil refining facilities including all equipment and appurtenances related thereto; oil storage facilities including all equipment and appurtenances related thereto, as well as fixed bulk plant storage and terminal oil storage facilities; industrial, commercial, agricultural or public facilities which use and store oil; and waste treatment facilities, including in-plant pipelines, effluent discharge lines, and storage tanks.

42. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as the waters of the United States, including the territorial seas. The regulations at 40 C.F.R. § 112.2 further define "navigable waters."

43. Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2, define "onshore facility" as any facility of any kind located in, on, or under any land within the United States, other than submerged land.

44. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2, define "oil" as oil of any kind and in any form, including but not limited to: petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

45. Section 311(a)(6)(B) of the CWA, 33 U.S.C. § 1321(a)(6)(B), and 40 C.F.R. § 112.2, define "owner or operator" in the case of an onshore facility as any person owning or operating such onshore facility.

46. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2, define "person" as including an individual, firm, corporation, association, and a partnership.

47. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. § 112.2 define "discharge" to include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

48. EPA may assess a class II civil penalty against any owner, operator, or person in charge of any onshore facility from which oil is discharged in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and/or who fails or refuses to comply with any regulations issued under Section 311(j) of the CWA, 33 U.S.C. 1321(j), pursuant to Section 311(b)(6)(A)(i) and/or (ii) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(i) and/or (ii).

49. For violations of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and/or 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA has authority, under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), as amended by the Debt Collection Improvement Act and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and implemented by 40

C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, to file an Administrative Complaint seeking a civil penalty of $23,048 per violation, or seeking $23,048 per day for each day during which a violation continues, up to a maximum of $288,080 for violations occurring after November 2, 2015 and penalties assessed after December 27, 2023.

Factual Allegations and Alleged Violations

50. Respondent owns and/or operates a bulk oil processing, storage, and distribution facility located at 3970 West 10th Street, Indianapolis, Indiana ("the Facility").

51. Respondent HCC is an association and therefore a "person" as defined in Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

52. Respondent is an "owner or operator" of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

53. Respondent engages in storing, processing, refining, transferring, distributing or consuming oil or oil products at the Facility.

54. The Facility is located on land within the United States, and is therefore an "onshore facility" as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

55. The Facility is an oil storage facility and is therefore an onshore "non-transportation-related" facility within the meaning of 40 C.F.R. Part 112, Appendix A.

56. The Facility has a total oil storage capacity greater than 1 million gallons.

57. The Facility began operating in 1999, and increased operational capacity in November of 2006, with the addition of two 1,000,000-gallon tanks.

58. A discharge from the Facility, of oil that Respondent stores, handles, processes, distributes and/or consumes at the Facility, due to its location, could reasonably be expected to

flow west from the Facility to Little Eagle Creek which would flow south into the White River which flows into the Wabash River.

59. The Wabash River is a traditional navigable water, and is therefore a "navigable water" within the meaning of 40 C.F.R. § 112.2.

60. The White River is a traditional navigable water, and is therefore a "navigable water" within the meaning 40 C.F.R. § 112.2.

61. The Wabash River contains fish, and other wildlife and is a "sensitive environment" within the meaning of Appendix C to 40 C.F.R. Part 112.

62. The Facility is a non-transportation-related onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines within the meaning of Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), and 40 C.F.R. § 112.20(f)(1) ("an FRP-regulated facility").

63. Respondent is an owner or operator of a non-transportation-related onshore facility engaged in storing, processing, transferring, using or distributing oil and oil products, which, due to its location, could reasonably be expected to discharge oil in quantities that may be harmful as described in 40 C.F.R. Part 110 into or on the navigable waters or adjoining shorelines within the meaning of Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), and 40 C.F.R. § 112.1, and is therefore subject to the oil pollution prevention regulations at 40 C.F.R. Part 112.

64. Respondent is subject to the spill prevention, control and countermeasure plan regulations and is therefore required to prepare and implement a SPCC Plan in accordance with the requirements of 40 C.F.R. Part 112.

65. Respondent is an owner or operator of non-transportation-related onshore facility engaged in storing, processing, transferring, using or distributing oil and oil products, which, due to its location, could reasonably be expected to discharge oil in quantities that may cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines within the meaning of Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), and 40 C.F.R. § 112.20(f)(1), and is therefore subject to the facility response plan regulations and must prepare, submit and maintain an FRP in accordance with the requirements of 40 C.F.R. Part 112, Subparts A and D.

66. On October 19, 2012, EPA issued the Respondent a request for information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318. On February 8, 2013, Respondent submitted a response to EPA's information request. Respondent included a copy of a SPCC Plan with a cover date of December 2012 and a PE certification dated January 2013.

67. Respondent included in this response a copy of Respondent's FRP dated January 2013.

68. On April 15, 16, and 17, 2013, EPA conducted an inspection at the Facility ("the facility inspection".) The Respondent provided the inspectors with an updated 2012 SPCC Plan at the time of the inspection.

69. During the 2013 inspection, inspectors, among other things, noted areas where portable containers were stored with no secondary containment or diversionary systems as required by 40 C.F.R. § 112.7(c).

70. During the April 2013 inspection, the inspectors noted several diked areas with significant erosion and holes. No containment was present for containers stored in the warehouse or for the tanker truck unloading areas in the warehouse.

71. During the April 2013 inspection, the inspectors asked to review the records of all inspections and tests required by 40 C.F.R. Part 112; and Respondent was unable to produce all records required by Part 112.

72. The inspection indicated Respondent was not keeping records of required integrity tests for a period of three years. During the April 2013 inspection, facility records reviewed by the inspectors did not include the required integrity testing for Tanks 1 – 6; 18 - 25; and 31. Management stated that visual inspections were routinely performed, but were unable to provide written documentation of these inspections.

73. On or about May 16, 2014, EPA approved an FRP for the Facility based on the information Respondent provided to U.S. EPA, reserving U.S. EPA's right to reconsider the approval of this FRP if additional information warranting reconsideration becomes available.

74. At all times relevant to this Complaint, Respondent's SPCC Plan for the Facility was an update of the 2012 SPCC Plan ("2012 Plan") given to the inspectors at the time of the inspection.

75. Respondent failed to identify in their 2012 SPCC Plan the qualifications of the personnel performing tests and that such personnel's qualifications had been assessed according to industry standards.

76. Respondent's 2012 SPCC Plan did not discuss drainage from undiked areas.

77. During the 2013 Inspection, the inspectors noted that facility drainage from undiked areas, such as the asphalt lot east of the main building and south of Tank Area A, would flow off the Facility property. The inspectors also noted that drainage from undiked areas would flow across the concrete and off the Facility property. These areas have a potential for discharge.

78. On or around April 1, 2016, a discharge of oil from the Facility caused a film or sheen upon or discoloration of the surface of the Little Eagle Creek, a navigable water.

79. Under 40 C.F.R. § 110.3, discharges of oil in such quantities that the Administrator has determined may be harmful to the public health or welfare or the environment of the United States for the purposes of Section 311(b)(4) of the CWA include discharges of oil that causes a film or sheen upon or discoloration of the surface of the water or adjoining shoreline.

80. Respondent submitted a signed and certified revised SPCC Plan to EPA dated April 13, 2018, that was signed by management. Among other things, the April 13, 2018 SPCC Plan described the physical layout of the Facility and included a facility diagram which marked the location and contents of each fixed oil storage container and the storage area where mobile or portable containers are located, described discharge or drainage controls such as secondary containment for storage areas outside the building at the Facility, and included a prediction of the direction of flow, rate of flow and total quantity of oil which could be discharged for each type of major equipment failure.

81. The April 13, 2018 revised SPCC Plan noted that the volume of Containment Area I was not sufficient to contain the entire volume of Tank 7 and recommended maintaining a volume in Tank 7 that is less than or equal to 60,000 gallons until Containment Area I is expanded to provide secondary containment. The Management of Change in Appendix H indicated the facility would lower the safe height gauge on tank 7 to maintain a volume less than 60,000 gallons; and the plan said this was implemented on March 2, 2018.

82. Tank 7 is a Vertical Steel Above-Ground Storage Tank (AST) with a calculated shell capacity of 69,322 gallons that was constructed in 1971, is located north of the Mineral Spirit Unit in Area I of the Facility, and holds spent mineral spirits.

83. On or about September 13, 2018, EPA issued the Respondent a request for information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318. Respondent submitted a response to EPA's information request on or about September 28, 2018, that, among other things, indicated the volumes reflected in the HCC FRP EPA approved on or about May 16, 2014, and in the HCC SPCC Plan dated April 13, 2018, needed to be updated to reflect information from a subsequent land survey that indicated containment volumes at the Facility; and identified work the Respondent planned to conduct to comply with the requirement to restrain drainage from diked storage areas, provide a secondary means of containment for bulk storage container installations for the entire capacity of the largest single container and sufficient freeboard to contain precipitation, and ensure that diked ares are sufficiently impervious to contain discharged oil. It said volumes at the Facility previously had been calculated based on construction drawings; indicated that all containment areas of the Facility were surveyed on July 31 through August 2, 2018, to verify containment volumes, determine spill overflow direction, and benchmark elevations to Mean Sea Level (msl); and said the Facility planned to revise its FRP and SPCC Plan to incorporate the survey results.

84. The Facility submitted draft revisions to the FRP for EPA review beginning in August of 2019; and EPA approved a new FRP from HCC, dated November 25, 2019, on November 26, 2019, reserving EPA's right to reconsider its approval of the FRP if additional information warranting reconsideration becomes available.

85. According to the November 25, 2019 FRP, the Facility's total oil storage capacity is greater than 1 million gallons, and the Facility is located at a distance (as calculated using the appropriate formula in appendix C to this part or a comparable formula) such that a discharge from the Facility could cause injury to fish and wildlife and sensitive environments.

86. The November 25, 2019 FRP also indicated Tanks 7, 34 and 35 lacked adequate secondary containment; and said Respondent had determined that the potential exists for a petroleum discharge that "could cause injury to fish and wildlife and sensitive environments" as defined in 40 C.F.R. Part 112 Attachment C.

87. Respondent submitted SPCC Plans for the Facility to EPA dated April 2020 and October 2020 (the April 2020 SPCC Plan and the October 2020 SPCC Plan, respectively) that updated volumes but were not signed by management nor certified by a PE. These drafts reflected that secondary containment remained an issue and recommended maintaining a volume in Tank 7 that is less than or equal to 60,000 gallons until Containment Area I at the Facility is expanded to provide adequate secondary containment. Respondent also provided records of tank integrity inspections on or about October 7, 2020.

88. Respondent submitted an SPCC Plan dated November 2022 (the November 2022 SPCC Plan) that was signed by management and certified by a PE and reflected the current storage capacity of the facility. Appendix F provided revised secondary containment calculations.

89. The November 2022 SPCC Plan reflected that the volume of secondary containment in Area I of the Facility is not sufficient to contain the entire volume of Tank 7. It indicated Area I was surveyed in September 2018 and a design has been prepared to expand secondary containment and place a liner to decrease the permeability of the containment area. It said the design had been submitted for approval to IDEM in December of 2018, as a condition of the facility solid waste plan. At Appendix E, the November 2022 SPCC Plan indicated an internal inspection of Tank 7 conducted on September 17, 2018, resulted in Tank 7 being taken out of service the week of September 24, 2018, to repair the bottom plate; and that a Petroguard liner was placed under the tank and the tank was returned to service. It also indicated that inspection records

recommend excavating around the tank to prevent water from collecting around the tank and running under the tank bottom and says HCC shall perform the necessary repairs when secondary containment in the area is expanded or document the MOC.

90. The November 2022 SPCC Plan recognized that Area I does not have sufficient storage capacity to contain a spill of 110% of the largest tank and that erosion is present in Area I such that the original design containment capacity may not be achieved. A Management of Change included in Appendix I states:

> As part of the SPCC audit that was held in November 2017 the audit team recommended expansion of the containment around TK7. Currently the containment is not large enough to hold 110% of the contents of a full tank (~70,000 GAL). The projects team is working on a project to enlarge the containment to cover at least 80,000 GAL capacity to comply with the 110% requirement. In the interim the max tank volume will be maintained below 60,000 GAL to comply with the SPCC requirement.

91. Respondent installed a radar-based overfill alarm to alert the Facility if the contents of Tank 7 reach 25.8 feet.

92. The November 2022 SPCC Plan reflects Respondent also undertook steps to address secondary containment at other areas of the Facility. It noted significant erosion around Tanks 34 and 35 was observed in a draft audit report delivered to HCC on September 19, 2016; and indicated Respondent added inspecting diked and bermed areas for erosion to the monthly inspection checklist in March 2018, regraded the inside area of containment and installed a new tank 39 in the North Tank Farm in November 2019, and installed erosion control mats in April 2020. Appendix E indicated inspection of diked and bermed areas for erosion was added to the monthly inspection checklist in March 2018; the North Tank Farm was surveyed in November

2018; the secondary containment in that area was expanded to contain the volume of Tank 35 in 2019, a new Tank 39 was constructed in November 2019, as a swing tank in the North Tank Farm; and that erosion control mats were placed in the area in April 2020, and were inspected in June 2022, and found to be sufficiently established to control erosion. The November 2022 SPCC Plan, at Appendix E, also reflected HCC added a berm and curbing in the upper (Drum) Warehouse and Lower Warehouse in 2019, installed curbs at bay entrances, surveyed the Drum Warehouse in June 2022, and added additional secondary containment in 2022, with a 3-inch roll over curb around operations.

93. The November 2022 SPCC Plan indicates that most undiked areas are designed to drain towards curbing, a drainage trench and two oil water separators the Facility has installed in the undiked area along the southern fence line of the facility, that one oil water separator was installed in the southwest corner near the empty tanker parking area and a second along the southeast boundary in the employee parking area. HCC indicates that the oil/water separators were installed in March 2018 and the curbing installation was completed in June/July 2018.

94. Table of 11 of the November 2022 SPCC plan discusses integrity testing conducted on the tanks at the Facility. It indicates that external STI SP001 Inspection Method testing was conducted on Tanks 1 through 6, 10 through 19, 21 through 33, and 40 through 49 in December 2021. It indicates that external API-6533 Testing Method testing was conducted on tanks 1 through 6, 10 through 16, 18, 19, 20 through 31, 40 through 45, 48 and 49 in October 2013, on Tank 7 in September 2018, on Tank 34 in October 2020, on Tank 35 in January 2021, on Tank 39 in July 2021, and on Tank 37 in February 2022. It indicates that API-653 Testing Method internal testing was conducted on Tank 7 in September 2018, on tanks 10 through 16,18, 19, and 21 through 31 in

October 2013; on Tank 34 in Oct 2020, on Tank 35 in January 2021, on Tank 37 in February 2022, on Tank 38 in July 2021, and on Tank 39 in November 2019.

95. Information EPA has reviewed indicates the Facility continues to lack adequate secondary containment and Respondent is seeking State approval of plans to expand secondary containment.

96. The November 2022 SPCC Plan said that following approval from IDEM, HCC will regrade Area I to meet secondary containment requirements for Tank 7, and the entire area will be lined with a Petroguard liner to meet IDEM solid waste permit requirements.

97. Respondent indicates it has provided information on material and proposed grading for Area I to IDEM on July 13, 2018, April 3, 2019, April 30, 2019, and February 25, 2020.

98. Complainant alleges that from at least April 17, 2013 to April 13, 2018, Respondent failed to sign the certification page of the Facility's SPCC Plan specifying that management had the approval to commit the necessary resources in violation of 40 C.F.R. § 112.7.

99. Complainant alleges that from at least April 17, 2013 until April 13, 2018, Respondent failed to provide and include in the Facility's SPCC Plan discharge or drainage controls such as secondary containment for storage areas outside the building at the Facility in violation of 40 C.F.R. §112.7(a)(3)(iii).

100. Complainant alleges that from at least April 17, 2013 to April 13, 2018, Respondent failed to describe in the Facility's SPCC Plan the physical layout of the Facility and include a facility diagram, which marked the location and contents of each fixed oil storage container and the storage area where mobile or portable containers are located in violation of 40 C.F.R. § 112.7(a)(3).

101. Complainant alleges that from at least April 17, 2013 until April 13, 2018, Respondent failed to include a prediction of the direction of flow, rate of flow and total quantify of oil which could be discharged for each type of major equipment failure in the Facility's SPCC Plan in violation of 40 C.F.R. § 112.7(b).

102. Complainant alleges that from at least April 17, 2013 until October 7, 2020, Respondent failed to keep written records for all inspections and tests required by Part 112 with the Facility's SPCC Plan for a period of three years in violation of 40 C.F.R. §112.7(e).

103. Complainant alleges that Respondent has failed to provide appropriate secondary containment and/or diversionary systems for Tank 7 to prevent a discharge in violation of 40 C.F.R. §112.7(c) from at least April 17, 2013, and will remain in violation of that requirement until the work required under the Administrative Order on Consent, EPA Docket No. CWA-1321-5-24-002 (the AOC), is complete.

104. Complainant alleges that from at least April 17, 2013 until June/July 2018, Respondent failed to design facility drainage systems from undiked areas with a potential for a discharge (such as where piping is located outside containment walls or where tank truck discharges may occur outside the loading area) to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the Facility in violation of 40 C.F.R. § 112.8(b)(3).

105. Complainant alleges that Respondent has failed to construct all bulk storage tank installations at the Facility to provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation; and to ensure that diked areas are sufficiently impervious to contain discharged oil in violation of 40 C.F.R. § 112.8(c)(2) from at least April 17, 2013 until the present, as the secondary containment for the

bulk storage installation that includes Tank 7 still does not meet this criteria; and will remain in violation of that requirement until the work required under the AOC is complete.

106. Complainant alleges that from at least April 17, 2013 until June 19, 2019, Respondent's failed to test or inspect each aboveground container for integrity on a regular schedule and whenever it makes material repairs; determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspection; and/or to keep comparison records as required in violation of 40 C.F.R. § 112.8(c)(6).

107. Complainant alleges that from at least April 17, 2013 until November 25, 2019, Respondent failed to prepare and submit to EPA a FRP that met the requirements of 40 C.F.R. § 112.20(h), including addressing the minimum elements set forth in that section and further described in Appendix F of Part 112.

Civil Penalty

108. Based on analysis of the factors specified in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the facts of this case, and the *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act*, dated August 1998, Complainant has determined that an appropriate civil penalty to settle this action is $96,600.

109. Within 30 days of the effective date of this CAFO, Respondent must pay a $96,600 civil penalty by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent's name, "OSLTF – 311," and the docket number of this CAFO.

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

Silvia Palomo (SC-5J)
Environmental Engineer
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
palomo.silvia@epa.gov

Maria Gonzalez (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604
gonzalez.maria@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604
R5HearingClerk@epa.gov

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

112. If Respondent does not pay timely the civil penalty, Complainant may request the United States Department of Justice to 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 under Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

113. Respondent must pay the following on any amount overdue under this CAFO: the interest accrued on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for

collection proceedings; a nonpayment penalty each quarter during which the assessed penalty is overdue, which shall be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. See 33 U.S.C. § 1321(b)(6)(H).

114. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, $50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at https://www.irs.gov/pub/irs-pdf/fw9.pdf;

b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

115. Respondent must submit all notices and reports required by this CAFO to Silvia Palomo, Environmental Engineer, at the address provided in paragraph 110, above.

116. In each report that Respondent submits as provided by this CAFO, it 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.

General Provisions

117. The parties consent to service of this CAFO by email at the following email addresses: gonzalez.maria@epa.gov (for Complainant) and PComella@taftlaw.com (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

118. Full payment of the penalty as described in paragraph 109, above, and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

119. Full payment of a penalty described in paragraph 109, above, and full compliance with this CAFO shall not in any case affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

120. This CAFO does not address or resolve violations related to spills not described in this CAFO.

121. This CAFO does not affect Respondent's responsibility to comply with the CWA, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., ("RCRA"), and other applicable federal, state, or local laws and permits.

122. Respondent certifies, as set forth in Paragraph 123, by signing this CAFO that, to the best of its knowledge, as of the date of execution by Respondent of this CAFO, and except as provided in the Administrative Order on Consent, Docket No. CWA-1321-5-24-002, entered into between EPA and Respondent on March 20, 2024, it is in compliance with Section 311 of the CWA, 33 U.S.C. § 1321, and the implementing oil pollution prevention regulations at Part 112.

123. Respondent's signatory certifies under penalty of law that this certification of compliance with the requirements of Section 311 of the CWA, the implementing oil pollution prevention regulations at Part 112, is, to the best of the signatory's knowledge, based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

124. This CAFO constitutes a "prior violation" as that term is used in EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* to determine Respondent's "history of prior violations" under Section 311(b)(8) of the CWA 33 U.S.C. § 1321(b)(8).

125. This CAFO shall apply to and be binding upon Respondent and its agents, successors, and assigns, and upon all persons acting under or for Respondent, until such time as the civil penalty required under Paragraph 108 has been paid in accordance with Paragraph 109,

and any delays in performance have been resolved. At such time as those matters are concluded, this CAFO shall terminate and constitute full settlement of the violations alleged herein as set forth in paragraph 118.

126. 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 the terms of this CAFO.

127. Each party agrees to bear its own costs and attorney fees in this action.

128. This CAFO and the AOC constitute the entire agreement between the parties.

129. The parties acknowledge and agree that final approval by EPA of this CAFO is subject to Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i), which provides, among other procedural requirements, public notice and a reasonable opportunity to comment on any proposed penalty order.

130. The parties acknowledge and agree that final approval by EPA of this CAFO is subject to 40 C.F.R. § 22.45(c)(4) which sets forth requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

131. Unless an appeal for judicial review is filed in accordance with Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G), or 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance, which is the date that the Final Order contained in this CAFO is signed by the Regional Judicial Officer or Regional Administrator. The effective date for this CAFO is thirty days after it is filed with the Regional Hearing Clerk, which is after completion of the notice and comment requirements of Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. §§ 22.38, 22.45.

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Consent Agreement and Final Order
In the Matter of: Heritage-Crystal Clean, LLC

Docket No. CWA-05-2024-0008

Heritage-Crystal Clean, LLC, Respondent

3-11-24

Date

Name, Title Brian Recatto, CEO
Heritage-Crystal Clean, LLC

United States Environmental Protection Agency, Complainant

March 21, 2024

Date

DOUGLAS BALLOTTI
Digitally signed by DOUGLAS BALLOTTI
Date: 2024.03.21 14:43:16 -05'00'

Douglas Ballotti
Director
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Heritage-Crystal Clean, LLC

Docket No. CWA-05-2024-0008

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective 30 days after 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.

By: ________________________________ Date: ________________________

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5