

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 4

In the Matter of:

Heritage-Crystal Clean, LLC

Respondent.

Docket No. **TSCA-04-2021-3201(b)**

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 16(a) of the Toxic Substances Control Act (TSCA or the Act), 15 U.S.C. § 2615(a) and Sections 22.13(b) and 22.18 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 Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 4, who has been delegated the authority on behalf of the Administrator of the United States Environmental Protection Agency to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 16(a) of TSCA, 15 U.S.C. § 2615(a).
5. Respondent is Heritage-Crystal Clean, LLC, a limited liability company doing business in the Commonwealth of Kentucky. This proceeding pertains to Respondent's facility located at 3235 Coral Ridge Road, Brooks, Kentucky 40109 (Facility).

III. GOVERNING LAW

6. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605, the Administrator of the EPA promulgated regulations in 40 C.F.R. Part 761 pertaining to Polychlorinated Biphenyls (PCBs). Failure to comply with any such rule constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614. Any person who violates Section 15 of TSCA, 15 U.S.C. § 2614 may be assessed a civil penalty in accordance with Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. Part 19, as amended. Each day a violation continues may constitute a separate violation.
7. The term “PCB waste” is defined in 40 C.F.R. § 761.3, as those PCBs and PCB Items that are subject to the disposal requirements of subpart D of this part.
8. The term “PCB items” is defined in 40 C.F.R. § 761.3, as any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.
9. The term “Commercial storer of PCB waste” is defined in 40 C.F.R. § 761.3, as the owner or operator of each facility that is subject to the PCB storage unit standards of § 761.65(b)(1) or (c)(7) or meets the alternate storage criteria of § 761.65(b)(2), and who engages in storage activities involving either PCB waste generated by others or that was removed while servicing the equipment owned by others and brokered for disposal. The receipt of a fee or any other form of compensation for storage services is not necessary to qualify as a commercial storer of PCB waste. A generator who only stores its own waste is subject to the storage requirements of § 761.65, but is not required to obtain approval as a commercial storer. If a facility's storage of PCB waste generated by others at no time exceeds a total of 500 gallons of liquid and/or non-liquid material containing PCBs at regulated levels, the owner or operator is a commercial storer but is not required to seek EPA approval as a commercial storer of PCB waste. Storage of one company's PCB waste by a related company is not considered commercial storage. A “related company” includes, but is not limited to: a parent company and its subsidiaries; sibling companies owned by the same parent company; companies owned by a common holding company; members of electric cooperatives; entities within the same Executive agency as defined at 5 U.S.C. 105; and a company having a joint ownership interest in a facility from which PCB waste is generated (such as a jointly owned electric power generating station) where the PCB waste is stored by one of the co-owners of the facility. A “related company” does not include another voluntary member of the same trade association. Change in ownership or title of a generator's facility, where the generator is storing PCB waste, does not make the new owner of the facility a commercial storer of PCB waste.
10. Pursuant to 40 C.F.R. § 761.65(d), commercial storers of PCB waste are prohibited from storing any PCB waste at their facilities after August 2, 1990, unless they have submitted by August 2, 1990, a complete application for a final storage approval under 40 CFR§ 761.65(d)(2).
11. PCBs at concentrations ≥ 50 ppm and PCB Items with PCB concentrations of ≥ 50 ppm that are being stored for disposal must comply with 40 C.F.R. § 761.65.

IV. FINDINGS OF FACTS

12. Respondent owns/operates the Facility, and at all times pertinent to this action operated as a commercial storer of PCB waste in the Commonwealth of Kentucky. Respondent is a "person" as defined in 40 C.F.R. § 761.3.
13. On June 29, 2020, Respondent voluntarily self-reported to the EPA's Region 5 office that it had collected 260 gallons of used oil containing 403 parts per million (ppm) of PCBs from Cetina Mechanic and Auto Body (Cetina) at 230 Driscoll Street in Lexington, Kentucky on June 1, 2020. The collected oil was mixed into Respondent's 2,000 gallon tanker truck and taken to Respondent's facility in Louisville, Kentucky where most of the contents of the truck were transferred along with other used oil at its facility into a 26,000 gallon railcar for transport to Respondent's Indianapolis, Indiana facility.
14. Respondent first suspected a problem after having sampled the combined load of used oil in the railcar on June 17, 2020. An initial sample indicated the presence of 3 ppm PCBs, and the re-test of that sample showed 4.7 ppm PCBs.
15. Upon receipt of the PCB results, Respondent notified the EPA Region 5 of the problem and created a PCB cleanup and disposal plan which it presented to the EPA for review. The EPA Region 4's PCB program reviewed the plan and advised the Respondent's consultant that it had no objections to the plan. Pursuant to that plan, Respondent analyzed all retained samples from all the customers whose used oil had been placed into the 26,000-gallon railcar load and determined that Cetina's used oil contained 403 ppm PCBs.
16. In connection with these proceedings, Respondent advised the EPA that it acted quickly to implement the cleanup and disposal plan by taking the following steps: Respondent locked out the 26,000 gallon railcar that was filled with the used oil containing PCBs and transported from Louisville to Indianapolis. Respondent also locked out the branch route truck that picked up the oil, as well as an additional railcar that oil could have been in contact with, both of which remained in Louisville. Both units were locked out until confirmation testing demonstrated there were no PCBs present in those units. All PCB-containing waste in the rail car, their residuals and the clean up debris were managed as TSCA-regulated waste. Respondent has further advised the EPA that the costs incurred to address the PCB-contaminated used oil was approximately \$130,000.00.
17. At the time that the Respondent notified the EPA about the PCBs in the used oil, the Respondent was operating as a commercial storer of PCB wastes by receiving and storing PCB waste without an Approval as required by 40 C.F.R. § 761.65(d) and Section 15 of TSCA, 15 U.S.C. § 2614.

V. ALLEGED VIOLATION

18. The EPA alleges that the Respondent operated as a commercial storer of PCB wastes by receiving and storing PCB waste without an Approval, in violation of 40 C.F.R. § 761.65(d) and Section 15 of TSCA, 15 U.S.C. § 2614.

VI. STIPULATIONS

19. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

20. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
- b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the conditions specified in this CAFO;
- e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
- f. waives its rights to appeal the Final Order accompanying this CAFO.

21. For the purpose of this proceeding, Respondent:

- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c. waives any rights it may possess at or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- d. by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected; and
- e. agrees to comply with the terms of the CAFO.

22. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

23. Based on the foregoing findings of facts and alleged violation, and Respondent's voluntary disclosure of the alleged violation, its timely response to properly dispose of the PCB contaminated used oil, and its cooperation with the EPA in this matter, the EPA assesses and

Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **FOUR THOUSAND-NINE HUNDRED DOLLARS (\$4,900.00)**, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.

24. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Code: SL-MO-C2-GL
St. Louis, Missouri 63101
Contact number: (314) 425-1819

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency" If

paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking Physical
location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

Contact: John Schmid, (202) 874-7026
REX (Remittance Express): 1-866-234-5681

25. Respondent shall send proof of payment within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk
U.S. EPA Region 4
61Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
R4_Regional_Hearing_Clerk@epa.gov

and

Kris Lippert
Chemical Safety and Land Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
lippert.kristin@epa.gov

26. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and "Docket No. TSCA-04-2021-3201(b)."
27. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require the Respondent to pay the following amounts on any amount overdue:
- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 30 days of the Effective Date of this CAFO, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a).
 - b. Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may

accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).

- c. Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. 31 C.F.R. § 901.9(c), and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.

28. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:

- a. refer the debt to a credit reporting agency or a collection agency. 40 C.F.R. §§ 13.13 and 13.14;
- b. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H;
- c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, in accordance with the requirements in 40 C.F.R. § 13.17; and/or
- d. request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed, in addition to the amounts described above. In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review. Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

29. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

30. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violation and facts specifically alleged above.

31. Full payment of the civil penalty resolves Respondent's liability for the facts and violation alleged in this CAFO in Sections IV and V above. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).

32. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 16(a) of the Act, 42 U.S.C. § 2615(a), as well as criminal sanctions as provided in Section 16(b) of the Act, 42 U.S.C. § 2615(b). the EPA may use any information submitted by

the Respondent to the EPA in connection with this enforcement proceeding and development of the settlement and CAFO in an administrative, civil judicial, or criminal action.

33. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes; nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
34. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
35. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
36. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns.
37. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
38. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential information under Section 14 of TSCA, 42 U.S.C. § 2613, and 40 C.F.R. Part 2 and the Freedom of Information Act, 5 U.S.C. § 552 *et. seq.*, or personally identifiable information.
39. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
40. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
41. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
42. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any

and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

43. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
44. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

IX. EFFECTIVE DATE

45. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

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Complainant and Respondent will Each Sign on Separate Pages]

The foregoing Consent Agreement In the Matter of **Heritage-Crystal Clean, LLC**, Docket No. TSCA-04-2021-3201(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:



Signature



Date

Printed Name: Anita Decina

Title: Vice President, Operational, Safety & Environmental Compliance

Address: 2175 Point Blvd, Suite 375 | Elgin, IL 60123

The foregoing Consent Agreement In the Matter of **Heritage-Crystal Clean, LLC**, Docket No. **TSCA-04-2021-3201(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Heritage-Crystal Clean, LLC

Respondent.

Docket No. TSCA-04-2021-3201(b)

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of **Heritage-Crystal Clean, LLC**, Docket No. **TSCA-04-2021-3201(b)**, were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondent:

Anita Decina, Vice President
Operational, Safety & Environmental Compliance
Heritage-Crystal Clean, LLC
2175 Point Blvd, Suite 375
Elgin, Illinois 60123
Anita.Decina@Crystal-Clean.com
(877) 938-7948

David Chameli, General Counsel
Heritage-Crystal Clean, LLC
2175 Point Blvd, Suite 375
Elgin, Illinois 60123
David.Chameli@Crystal-Clean.com
(877) 938-7948

Gwen Keyes Fleming, Attorney
Van Ness Feldman
1050 Thomas Jefferson Street
Washington, D.C. 20007
gfleming@vnf.com
O:(202) 298-1928 | C: (202) 594-7481

To EPA:

Kris Lippert, Senior Enforcement Specialist
lippert.kristin@epa.gov
(404) 562-8605

Robert Caplan, Senior Attorney
caplan.robert@epa.gov
(404) 562-9520

U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Shannon L. Richardson
Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960