



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

January 26, 2011

REPLY TO THE ATTENTION OF
E-19J

Honorable Susan L. Biro
Office of Administrative Law Judges
U. S. Environmental Protection Agency
Ariel Rios Building, Mailcode: 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

RE: In The Matter of: Heritage-WTI, Inc.
Docket No.: CAA-05-2011-0012
Complaint Date: December 22, 2010
Total Proposed Penalty: \$151,800

Dear Judge Biro:

Enclosed is a copy of the Respondent's Answer to an Administrative Complaint for *Heritage-WTI, Inc.* in East Liverpool, Ohio.

Please assign an Administrative Law Judge for this case.

If you have questions contact me at (312) 886-3713.

Sincerely,

A handwritten signature in black ink, appearing to read "La Dawn Whitehead", written in a cursive style.

La Dawn Whitehead
Regional Hearing Clerk

Enclosure

cc: Michael T. Scanlon, Esquire
Barnes & Thornburg LLP
Counsel for Hertiage-WTI, Inc.
11 South Meridian Street
Indianapolis, Indiana 46204-3535
(317) 236-1313

John Matson, Esquire
Associate Regional Counsel
Office Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd., C-14J
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BARNES & THORNBURG LLP

Michael T. Scanlon
(317) 231-7387
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January 26, 2011

VIA HAND DELIVERY

Regional Hearing Clerk (E-19J)
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Re: In the Matter of Heritage-WTI, Inc.
Docket No. CAA-05-2011-0012

Dear Regional Hearing Clerk:

Enclosed for filing are the original and one copy of Heritage-WTI, Inc.'s Answer to Complaint in the case In the Matter of Heritage-WTI, Inc., Docket No. CAA-05-2011-0012. Also enclosed is an additional copy of Heritage-WTI, Inc.'s Answer to Complaint. Please file-stamp the additional copy and provide it to the person hand delivering these documents who will return the file-stamped additional copy to me.

Thank you. If you have any questions, please contact me at 317/231-7387.

Sincerely,



Michael T. Scanlon, Esq.
Barnes & Thornburg LLP
Counsel for Heritage-WTI, Inc.

Enclosures

cc: John Matson, Associate Regional Counsel, EPA Region 5 (via certified mail)
Mr. John Peterka, Heritage-WTI, Inc. (via regular mail)
Ms. Carrie Beringer, Heritage-WTI, Inc. (via regular mail)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. CAA-05-2011-0012
)
Heritage-WTI, Inc.)
East Liverpool, Ohio,) Complaint to Assess a Civil Penalty under Section
) 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)
)
Respondent _____)

Heritage-WTI, Inc.'s Answer to Complaint

Heritage-WTI, Inc. (hereinafter "WTI"), by counsel, hereby files its answer to the complaint issued by the United States Environmental Protection Agency, Region 5 ("EPA"). WTI received the complaint on December 27, 2010. Therefore, this answer has been timely filed.

1. WTI admits the factual allegations in paragraph 1.
2. WTI admits the factual allegations in paragraph 2.
3. WTI admits the factual allegations in paragraph 3.
4. The statute speaks for itself. To the extent paragraph 4 contains factual allegations, WTI admits the factual allegations in paragraph 4.
5. The statute speaks for itself. To the extent paragraph 5 contains factual allegations, WTI admits the factual allegations in paragraph 5.
6. The statute speaks for itself. To the extent paragraph 6 contains factual allegations, WTI admits the factual allegations in paragraph 6.
7. The statute speaks for itself. To the extent paragraph 7 contains factual allegations, WTI admits the factual allegations in paragraph 7.
8. The statute and regulation speak for themselves. To the extent paragraph 8 contains factual allegations, WTI admits the factual allegations in paragraph 8.

General Allegations

9. WTI admits the factual allegations in paragraph 9.
10. WTI admits the factual allegations in paragraph 10.
11. WTI admits the factual allegations in paragraph 11.
12. WTI admits the factual allegations in paragraph 12.

13. WTI admits the factual allegations contained in paragraph 13 except as follows. WTI denies the factual allegation in paragraph 13 regarding the “April 19, 1996” construction date as the applicable date to determine if a source is an “existing source” because that date is incorrect based on the language in 40 C.F.R. § 63.1206(a)(1)(ii)(B). The correct construction date pursuant to 40 C.F.R. § 63.1206(a)(1)(ii)(B) to determine if a source is an “existing source” is April 20, 2004.

14. The regulations speak for themselves. To the extent paragraph 14 contains factual allegations, WTI admits the factual allegations in paragraph 14.

15. The regulations speak for themselves. To the extent paragraph 15 contains factual allegations, WTI admits the factual allegations in paragraph 15.

16. WTI admits the factual allegations in paragraph 16.

17. WTI admits the factual allegations in paragraph 17.

18. WTI admits the factual allegations in paragraph 18.

19. WTI admits the factual allegations in paragraph 19.

20. WTI admits the factual allegations in paragraph 20.

21. WTI admits the factual allegations in paragraph 21.

22. WTI admits the factual allegations in paragraph 22.

23. WTI admits the factual allegations in paragraph 23.

24. WTI admits the factual allegations in paragraph 24 except as follows. Because the Spring CPT as that term was defined in the complaint (hereinafter “Spring CPT”) was not conducted on April 2, 2010 and the run performed on March 30, 2010 was aborted and not included as part of the Spring CPT, WTI denies that March 30, 2010 and April 2, 2010 should be included as dates during which the Spring CPT occurred.

25. WTI admits the factual allegations contained in paragraph 25.

26. WTI admits the factual allegations contained in paragraph 26.

27. WTI admits the factual allegations contained in paragraph 27.

28. WTI admits the factual allegations contained in paragraph 28.

29. WTI admits the factual allegations contained in paragraph 29.

Count I

30. WTI incorporates paragraphs 1 through 29 of this answer as if they were set forth fully in this paragraph.

31. The regulation speaks for itself. To the extent paragraph 31 contains factual allegations, WTI admits the factual allegations contained in paragraph 31.
32. WTI admits the factual allegations contained in paragraph 32.
33. WTI admits the factual allegations contained in paragraph 33.
34. WTI admits the factual allegations contained in paragraph 34.
35. WTI denies the factual allegations contained in paragraph 35 for the reasons provided in the portion of this answer titled “Disputed Facts and Circumstances and Arguments that are Alleged to Constitute Grounds of any Defense.”

Count II

36. WTI incorporates paragraphs 1 through 29 of this answer as if they were set forth fully in this paragraph.
37. The regulation speaks for itself. To the extent paragraph 37 contains factual allegations, WTI admits the factual allegations contained in paragraph 37.
38. WTI admits the factual allegations contained in paragraph 38.
39. WTI denies the factual allegations contained in paragraph 39. The average mercury emission concentration during the Spring CPT was 290.6 µg/dscm @ 7% O₂, not 290.7 µg/dscm @ 7% O₂ as alleged in paragraph 39 of the complaint.
40. WTI admits the factual allegations contained in paragraph 40.
41. WTI admits the factual allegations contained in paragraph 41.
42. WTI denies the factual allegations contained in paragraph 42 for the reasons provided in the portion of this answer titled “Disputed Facts and Circumstances and Arguments that are Alleged to Constitute Grounds of any Defense.”

Proposed Civil Penalty

43. The statute speaks for itself. To the extent paragraph 43 contains factual allegations, WTI admits the factual allegations in paragraph 43.
44. To the extent paragraph 44 contains factual allegations, WTI has no information to admit or deny the factual allegations in paragraph 44 except as follows. WTI admits that it was provided with a copy of the penalty policy referenced in paragraph 44 of the complaint.
45. For the reasons contained in the portions of this answer titled “Disputed Facts and Circumstances and Arguments that are Alleged to Constitute Grounds of any Defense” and “Basis for Opposing any Proposed Relief,” WTI denies that the civil penalty amount identified in paragraph 45 of the complaint is appropriate. To the extent paragraph 45 contains other factual

allegations, WTI has no information to admit or deny the remaining factual allegations in paragraph 45.

46. To the extent paragraph 46 contains factual allegations, WTI has no information to admit or deny the factual allegations in paragraph 46.

Rules Governing This Proceeding

47. The regulations speak for themselves. To the extent paragraph 47 contains factual allegations, WTI admits the factual allegations contained in paragraph 47.

Remaining Portions of the Complaint

48. The remaining paragraphs in the complaint do not contain factual allegations for which a response is required.

Disputed Facts and Circumstances and Arguments that are Alleged to Constitute Grounds of any Defense

49. On June 18, 2004, WTI submitted a Notice of Compliance (hereinafter "2004 NOC") containing Operating Parameter Limits (hereinafter "2004 OPLs") to EPA. The 2004 NOC and the 2004 OPLs were based on the results of a 2004 comprehensive performance test ("CPT") which demonstrated compliance with the emission limits, including the dioxin/furan and mercury emission limits, contained in the HWC MACT as that term is defined in the complaint. The 2004 NOC and the 2004 OPLs, as revised by the interim OPLs discussed below, remained in effect until WTI submitted a new NOC on November 19, 2010 containing the results of the September CPT as that term is defined in the complaint (hereinafter "September CPT").

50. The 2004 OPL for chlorine feed rate was 2,828 pounds per hour. The 2004 OPL for carbon injection feed rate was 28 pounds per hour. The 2004 OPL for mercury feed rate was 0.82 pounds per hour which was extrapolated from the 2004 CPT test feed rate of 0.15 pounds per hour. At the time of the 2004 CPT as well as today, EPA allowed facilities like WTI to extrapolate metal feed rates based on the incinerator's removal efficiency.

51. Chlorine feed rate and carbon injection feed rate are two of the primary mechanisms used by WTI to ensure dioxin/furan emissions do not exceed the dioxin/furan emission limit.

52. Mercury feed rate and carbon injection feed rate are two of the primary mechanisms used by WTI to ensure mercury emissions do not exceed the mercury emission limit.

53. On September 2, 2008, WTI requested an extension of the October 2009 deadline to conduct its next CPT.

54. On October 14, 2008, EPA granted WTI's request for an extension and established a new deadline of April 14, 2010 for WTI to conduct its next CPT.

55. As part of the comments provided by EPA on WTI's proposed CPT plan for the Spring CPT, EPA Region 5 made two significant changes to what had been allowed for an acceptable

CPT plan in 2004. First, EPA Region 5 informed WTI that it would no longer allow extrapolation for mercury based on test results demonstrating removal efficiency. According to EPA, Region 5 had established a policy that it no longer would allow extrapolation for mercury based on demonstrated removal efficiencies. Therefore, WTI was forced to use a mercury feed rate during the Spring CPT that was higher than the mercury feed rate used during the 2004 CPT in an effort to compensate for the loss of the extrapolation option. Second, EPA required WTI to perform mercury spiking for 21 hours prior to performing the mercury portion of the CPT. EPA informed WTI that the basis for requiring mercury spiking was due to allegations that WTI's incineration technology might entrap mercury thereby skewing the CPT results. The mercury spiking required by EPA consisted of adding mercury to the incinerator waste feed stream at an amount equal to 75% of the planned mercury test feed rate for 18 hours and then adding mercury to the incinerator waste feed stream at an amount equal to 100% of the planned mercury test feed rate for 3 hours before the mercury portion of the CPT was performed. WTI objected to the mercury spiking because neither EPA nor the Ohio Environmental Protection Agency ("OEPA") had required mercury spiking for any prior CPT performed by WTI, including the 2004 CPT, and the spiking did not reflect the variability of mercury feed over time at WTI.

56. During the Spring CPT, the chlorine feed rate was 2,828 pounds per hour; carbon injection feed rate was 28 pounds per hour; and mercury feed rate, after the mercury spiking was performed, was 0.25 pounds per hour.

57. On June 14, 2010, WTI received, among other results, the dioxin/furan and mercury results for the Spring CPT.

58. On June 14, 2010, WTI immediately ceased feeding hazardous waste to the incinerator pursuant to the requirements for a failed CPT.

59. After ceasing the feeding of hazardous waste to the incinerator, WTI had a conference call on June 14, 2010 with EPA and OEPA to notify them of the Spring CPT results.

60. During the June 14, 2010 conference call, WTI proposed new interim OPLs which would voluntarily restrict the chlorine feed rate to 700 pounds per hour and increase the carbon injection feed rate to 44 pounds per hour to prevent dioxin/furan emissions in excess of the dioxin/furan emission limit. To prevent mercury emissions in excess of the mercury emission limit, WTI also proposed to voluntarily restrict the mercury feed rate to 0.15 pounds per hour in conjunction with the previously identified increase in carbon injection feed rate.

61. EPA and OEPA verbally approved these revised feed rates and WTI modified its OPLs to implement these revised feed rates on June 14, 2010 prior to resuming the incineration of hazardous waste. WTI documented these revised feed rates in a June 14, 2010 letter to EPA and updated its operating records with a revised Document of Compliance as required by the applicable regulations.

62. On June 17, 2010, in response to concerns raised by EPA concerning the revised mercury feed rate, WTI agreed to further restrict the mercury feed rate to 0.06 pounds per hour to prevent mercury emissions in excess of the mercury emission limit.

63. EPA verbally approved this further revised feed rate and WTI modified its OPLs to incorporate this revised mercury feed rate. WTI documented this revised feed rate in a June 23, 2010 letter to EPA and updated its operating records with a revised Document of Compliance as required by the applicable regulations.

64. Based on issues raised during the June 30, 2010 meeting discussed in paragraph 28 of the complaint concerning interim operating limits, WTI submitted another letter to EPA on July 2, 2010 requesting approval to operate under interim OPLs to prevent emissions in excess of applicable emission limits, including the dioxin/furan and mercury emission limits.

65. The OPLs identified in the July 2, 2010 letter contained the revised feed rates included as part of the OPLs identified in the June 23, 2010 letter and identified all of the interim OPLs for the incinerator. The OPLs for chlorine feed rate, carbon injection feed rate, and mercury feed rate identified in the July 2, 2010 letter remained at the previously agreed to 700 pounds per hour, 44 pounds per hour, and 0.06 pounds per hour respectively. WTI also updated its operating records with a revised Document of Compliance as required by the applicable regulations

66. The July 2, 2010 letter also requested an extension of the deadline to submit the Notice of Compliance for the 2010 CPT.

67. On July 16, 2010, EPA approved in writing the interim OPLs identified in WTI's July 2, 2010 letter and WTI updated its operating records with a revised Document of Compliance as required by the applicable regulations.

68. On August 12, 2010, EPA approved in writing the request to extend the deadline to submit the Notice of Compliance.

69. To demonstrate compliance with the interim mercury feed rate OPL, WTI submitted to EPA an initial report that identified mercury feed rates from May 11 through August 1, 2010 and weekly mercury feed rate reports thereafter until November 22, 2010. These weekly reports were required pursuant to EPA's July 16, 2010 letter.

70. During the September CPT which demonstrated compliance with the dioxin/furan and mercury emission limits, the chlorine feed rate was 2,032 pounds per hour; the carbon injection feed rate was 44 pounds per hour; and the mercury feed rate was 0.14 pounds per hour. Prior to performing the mercury portion of the September CPT, mercury spiking again was performed as discussed in paragraph 55 of this answer prior to performing the mercury portion of the September CPT.

71. From the date of the Spring CPT until receipt of the Spring CPT results on June 14, 2010, WTI continued to operate under the terms of its 2004 NOC and 2004 OPLs for chlorine feed rate and carbon injection feed rate. However, the actual chlorine feed rate during that time period was less than the chlorine feed rate used during the Spring CPT. In addition, the carbon injection feed rate during that same time period exceeded the carbon injection feed rate used during the Spring CPT.

72. Because the chlorine feed rate was less than the chlorine feed rate used during the Spring CPT and the carbon injection feed rate exceeded the carbon injection feed rate used during the

Spring CPT, there is no evidence dioxin/furan emissions exceeded the dioxin/furan emission limit during the time period between the Spring CPT and June 14, 2010.

73. From June 14, 2010 until the September CPT, WTI restricted the chlorine feed rate and increased the carbon injection feed rate as required by the interim agreed to OPLs. As identified above, the chlorine feed rate under the interim OPLs was approximately one-third of the chlorine feed rate at which WTI demonstrated compliance with the dioxin/furan emission limit and the carbon injection feed rate was the same as the carbon injection feed rate used during the September CPT. Therefore, there is no evidence dioxin/furan emissions exceeded the dioxin/furan emission limit during the time period between June 14, 2010 and the September CPT.

74. Consequently, there is no evidence to support EPA's allegation in paragraph 35 of the complaint that WTI exceeded the dioxin/furan emission limit after the Spring CPT.

75. From the date of the Spring CPT until receipt of the Spring CPT results on June 14, 2010, WTI continued to operate under the terms of its 2004 NOC and 2004 OPLs for mercury feed rate. However, the actual mercury feed rate during that time period was less than the mercury feed rate used during the Spring CPT and less than the mercury feed rate used to demonstrate compliance with the mercury emission limit during the September CPT. In addition, the carbon injection feed rate during that same time period exceeded the carbon injection feed rate used during the Spring CPT.

76. Because the mercury feed rate was less than the mercury feed rate used during the Spring CPT, less than the mercury feed rate used during the September CPT, and the carbon injection feed rate exceeded the carbon injection feed rate used during the Spring CPT, there is no evidence mercury emissions exceeded the mercury emission limit during the time period between the Spring CPT and June 14, 2010.

77. From June 14, 2010 until the September CPT, WTI restricted the mercury feed rate and increased the carbon injection feed rate as required by the interim agreed to OPLs. In fact, the actual mercury feed rate during this time period also was below these interim OPLs. Therefore, there is no evidence mercury emissions exceeded the mercury emission limit during the time period between June 14, 2010 and the September CPT.

78. WTI believes the mercury emission limit exceedance observed during the Spring CPT was an artifact of the mercury spiking and the loss of the extrapolation option and not actual operating conditions because: (a) the mercury spiking required during the Spring CPT did not reflect the variability of mercury feed over time at WTI; (b) the mercury spiking was accepted by WTI to obtain EPA's approval of the CPT plan; (c) the mercury spiking was not required for the 2004 CPT during which WTI demonstrated compliance with the mercury emission limit; and (d) the Spring CPT had to be performed at a higher mercury feed rate than was used during the 2004 CPT in an effort to compensate for the loss of the extrapolation option.

79. Therefore, there is no evidence to support EPA's allegation in paragraph 42 of the complaint that WTI exceeded the mercury emission limit from May 11, 2010 through September 15, 2010.

Basis for Opposing any Proposed Relief

80. As demonstrated in the portion of this answer titled “Disputed Facts and Circumstances and Arguments that are Alleged to Constitute Grounds of any Defense,” the proposed civil penalty is excessive, unreasonable, and not supported by the facts.

Request for a Hearing

81. WTI respectfully requests that U.S. EPA, Region 5, withdraw the complaint in this matter based on the information provided in the portion of this answer titled “Disputed Facts and Circumstances and Arguments that are Alleged to Constitute Grounds of any Defense.” Otherwise, WTI respectfully requests a hearing in this matter regarding the period of time WTI allegedly failed to comply with the mercury and dioxin/furan emission limits and the proposed civil penalty. In addition, WTI intends to work with the U.S. EPA, Region 5, to determine if informal settlement of this matter is a possibility.

Respectfully submitted,



Michael T. Scanlon, Esq.
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, Indiana 46204

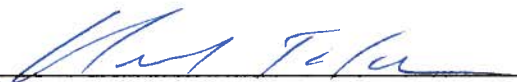
Counsel for Heritage-WTI, Inc.

CERTIFICATE OF SERVICE

I, Michael T. Scanlon, certify that the original and one copy of Heritage-WTI, Inc.'s Answer to Complaint, Docket No. CAA-05-2011-0012, was hand delivered to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that a correct copy of Heritage-WTI, Inc.'s Answer to Complaint was mailed by first class, postage prepaid, certified mail, return receipt requested, to the following individual who was identified as the U.S. EPA, Region 5, counsel authorized to receive this answer in paragraph 49 of the complaint by placing it in the custody of the United States Postal Service addressed as follows:

John Matson, Associate Regional Counsel
Office of Regional Counsel
EPA, Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3511

on the 26th day of January 2011.



Michael T. Scanlon, Esq.
Barnes & Thornburg LLP

CERTIFIED MAIL RECEIPT NUMBER: 7160 3901 9845 7345 3054

BARNES & THORNBURG LLP

Michael T. Scanlon
(317) 231-7387
mscanlon@btlaw.com

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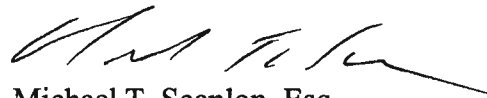
Re: In the Matter of Heritage-WTI, Inc.
Docket No. CAA-05-2011-0012

Dear Regional Hearing Clerk:

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Thank you. If you have any questions, please contact me at 317/231-7387.

Sincerely,



Michael T. Scanlon, Esq.
Barnes & Thornburg LLP
Counsel for Heritage-WTI, Inc.

Enclosures

cc: John Matson, Associate Regional Counsel, EPA Region 5 (via certified mail)
Mr. John Peterka, Heritage-WTI, Inc. (via regular mail)
Ms. Carrie Beringer, Heritage-WTI, Inc. (via regular mail)

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