



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

JUL 26 2016

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL:
RETURN RECEIPT REQUESTED

Mr. Phillip L. Comella
Attorney for Respondent
Heritage-Crystal Clean, LLC.
311 S. Wacker Drive, Suite 3000
Chicago, Illinois 60606

Consent Agreement and Final Order In the Matter of: Heritage-Crystal Clean,
LLC.
Docket Number: TSCA-05-2016-0008

Mr. Comella:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on July 26, 2016 with the Regional Hearing Clerk.

The civil penalty in the amount of \$100,000 is to be paid in the manner described in paragraphs 58 & 59. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,


Kendall Moore
Pesticides and Toxics Compliance Section

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. TSCA-05-2016-0008
)	
Heritage-Crystal Clean, LLC)	Proceeding to Assess a Civil Penalty
Indianapolis, Indiana,)	Under Section 16(a) of the Toxic
Respondent.)	Substances Control Act, 15 U.S.C.
)	§ 2615(a)
<hr/>)	



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and Section 22.1(a)(5), 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. § 22.1(a)(5), 22.13(b), and 22.18(b)(2) and (3).
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. The Respondent is Heritage-Crystal Clean, LLC (Respondent), an Indiana limited liability company with its principal office at 2175 Point Boulevard, Suite 375, Elgin, Illinois 60123-9211.
4. Where the parties agree to settle one or more causes of action before the filing of an administrative complaint, the 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 assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations 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 or petition for judicial review under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and under 40 C.F.R. § 22.15(c), its right to seek federal judicial review of the CAFO pursuant to 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. Respondent also consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

9. The Polychlorinated Biphenyls (PCBs) Disposal and Marking regulations were lawfully promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605. *See* 43 Fed. Reg. 7,150 (Feb. 17, 1978). The PCBs Manufacturing, Processing, Distribution in Commerce and Use Prohibitions (PCB rule) incorporated previous disposal and marking regulations. *See* 44 Fed. Reg. 31,514 (May 31, 1979). The PCB rule was subsequently amended and partially re-codified at 40 C.F.R. Part 761.

10. Under 40 C.F.R. § 761.3, PCB waste is defined as those PCBs and PCB Items that are subject to the disposal requirements of 40 C.F.R. Part 761, Subpart D.

11. Under 40 C.F.R. § 761.3, a person is defined, in pertinent part, as any natural or judicial person including any individual, corporation, partnership, or association.

12. No person may avoid any provision in 40 C.F.R. Part 761 specifying a PCB concentration by diluting the PCBs, unless otherwise specifically provided. *See* 40 C.F.R. § 761.1(b)(5).

13. Under 40 C.F.R. § 761.3, a transporter of PCB waste means, for the purposes of Subpart K of 40 C.F.R. Part 761, any person engaged in the transportation of regulated PCB waste by air, rail, highway, or water for a purposes other than consolidation by a generator.

14. Under 40 C.F.R. § 761.211(a)(1) (with one exception not applicable here), a transporter shall not accept PCB waste from a generator unless it is accompanied by a manifest signed by the generator in accordance with 40 C.F.R. § 761.210(a)(1).

15. A commercial storer of PCB waste is defined at 40 C.F.R. § 761.3, in pertinent part, as someone who engages in storage activities involving PCB waste generated by others.

16. Under 40 C.F.R. § 761.205(a)(2), a commercial storer of PCB waste must notify EPA of its PCB waste activities by filing EPA Form 7710-53 prior to engaging in those activities.

17. Under 40 C.F.R. § 761.3 and 761.65(d), no person may commercially store more than 500 gallons of liquid containing PCBs at regulated levels without first receiving approval from EPA to commercially store PCB waste.

18. Under 40 C.F.R. § 761.60, where a person has not received approval for an alternative method of destroying PCBs under 40 C.F.R. § 761.60(e), PCB liquids at concentrations over or equal to 50 ppm must be disposed of in an incinerator that complies with 40 C.F.R. § 761.70. *See* 40 C.F.R. § 761.60(a).

19. Under 15 U.S.C. § 2614 and 40 C.F.R. § 761.1(d), it is unlawful for any person to fail or refuse to comply with any requirement of 40 C.F.R. Part 761. Any violation of 40 C.F.R. Part 761 may subject the violator to civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

20. The Administrator of EPA may assess a civil penalty of up to \$37,500 per day for each violation of TSCA that occurred after January 12, 2009, pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 40 C.F.R. Part 19.

General Factual Allegations

21. At all times relevant to this complaint, Respondent was a “person” as defined at 40 C.F.R. § 761.3.

22. At all times relevant to this complaint, Respondent operated a 10-day hazardous waste transfer facility at 1608 Robin Circle, Forest Hill, Maryland 21050 (the “Baltimore facility”). This facility is used to park route trucks overnight. Used oil is off-loaded from the route trucks into railcars at Trans-Flo rail yard in Baltimore, Maryland and sent to the Respondent’s re-refinery and processing facility at 3970 West 10th Street, Indianapolis, Indiana 46222-3269 (the “Indianapolis facility”).

23. On October 15, 2013, Respondent collected 190 gallons of used oil from G&G’s Auto in Newark, Delaware and combined it with nine other customer pickups into one compartment of a two compartment used oil route tanker truck.

24. The 190 gallons of used oil from G&G’s Auto had a PCB concentration of at least 360,000 ppm PCB.

25. The 190 gallons of used oil from G&G’s Auto was “PCB waste” as that term is defined at 40 C.F.R. § 761.3. At the time of the pick-up, Respondent was relying on information

provided in a written certification from the generator that its used oil did not contain PCBs, and only later did Respondent learn that this certification was false.

26. On October 17, 2013, Respondent's route tanker truck off-loaded 2,650 gallons of used oil, including the PCB waste from G&G's Auto, into railcar GATX 80237 at the Trans-Flo Baltimore rail yard. Nine other truckloads of used oil were added to railcar GATX 80237 from the route truck. There was a total of 23,664 gallons in railcar GATX 80237 when it was closed and tendered to the railroad.

27. The used oil stored in railcar GATX 80237, starting on October 17, 2013, was "PCB waste" under 40 C.F.R. § 761.3 and 761.1(b)(5), though at the time of the pick-up, Respondent was relying on information provided in a written certification from the generator that its used oil did not contain PCBs, and only later did Respondent learn that this certification was false.

28. Respondent shipped railcar GATX 80237 to the Indianapolis re-refinery, and it was prepared for off-loading, on November 6, 2013.

29. By transporting the route tanker truck to the Baltimore Trans-Flo rail yard and by shipping railcar GATX 80237 to the Indianapolis facility, Respondent was unknowingly a "transporter of PCB waste" as defined at 40 C.F.R. § 761.3.

30. Late on November 6, 2013 and during the early morning of November 7, Respondent off-loaded 3,700 gallons of the 23,664 gallons in railcar GATX 80237 into the Indianapolis facility's feed tank T-35. Approximately 19,946 gallons of PCB waste remained in railcar GATX 80237.

31. When the railcar containing PCBs was discovered to have been partially off-loaded into feed tank T-35 on November 7, 2013, the feed tank contained a total of 1,066,471

gallons of used oil.

32. The used oil stored in feed tank T-35, starting on early November 7, 2013, was “PCB waste” under 40 C.F.R. § 761.3 and 761.1(b)(5).

33. By storing PCB waste in feed tank T-35, starting on November 7, 2013, Respondent was a “commercial storer of PCB waste” under 40 C.F.R. § 761.3.

34. On the morning of November 7, 2013, Respondent learned that a portion of railcar GATX 80237 was off-loaded into the feed tank T-35 during the early morning hours earlier that day. That morning, Respondent notified EPA that it had determined that there were PCBs in the railcar, and the contaminated feed was being processed through a vacuum distillation unit (VDU) and hydrotreater.

35. Under 40 C.F.R. § 761.20(e)(2)(ii), liquid materials processed through the VDU from November 7, 2013 to November 18, 2013 are considered to have a PCB concentration of 50 ppm or greater before undergoing hydrotreatment.

36. From November 7, 2013 to November 18, 2013, Respondent had no approval to dispose of PCBs by using the hydrotreater at its Indianapolis facility as an alternative method of destroying PCBs under 40 C.F.R. § 761.60(e). Respondent did, however, submit a request for a TSCA coordinated approval after the processing occurred.

37. Respondent did not dispose of any of the PCB waste treated in the hydrotreater between November 7, 2013 to November 18, 2013 in an incinerator that complies with 40 C.F.R. § 761.70. Respondent did, however, ship the balance of the PCB-contaminated material in the railcar, other affected railcars, and the balance of the contaminated material in the feed tank to a TSCA approved incinerator.

38. On November 13, 2013, an Indiana Department of Environmental Management

(IDEM) official, representing EPA under a cooperative agreement, inspected Respondent's Indianapolis facility to determine compliance with the PCB rule.

Count I – Acceptance of PCB Waste for Transport Without Manifest Signed by Generator

39. The general factual allegations of this complaint are incorporated by reference as though set forth here in full.

40. When Respondent collected the 190 gallons of PCB waste from G&G's Auto, the PCB waste was not accompanied by a manifest signed by the generator. When Respondent collected the 190 gallons of PCB waste from G&G's Auto, G&G's Auto did not complete a TSCA manifest and did not identify the PCBs to the Respondent. G&G's Auto certified to Respondent that the used oil collection collected from their operation did not contain PCBs.

41. Nevertheless, EPA alleges that Respondent's acceptance of PCB waste without a manifest signed by the generator constitutes an acceptance of PCB waste for transport in violation of the manifest requirement at 40 C.F.R. § 761.211(a)(1) and Section 15 of TSCA, 15 U.S.C. § 2614.

42. Upon learning that PCBs were contained in railcar GATX 80237, Respondent immediately began an investigation to determine the source of the PCBs collected by the Baltimore branch.

Count II – Failure to Notify of PCB Waste Activity

43. The general factual allegations of this complaint are incorporated by reference as though set forth here in full.

44. Respondent did not notify EPA of its transportation of PCB waste on or before October 15, 2013, because at that time Respondent was relying upon the written certification from the generator that its used oil did not contain PCBs. Only later did Respondent learn that

this certification was false.

45. Starting on November 7, 2013, Respondent was unknowingly storing PCB waste from G&G's Auto in feed tank T-35 at its Indianapolis facility.

46. Respondent did not notify EPA of its commercial storage of PCB waste at its Indianapolis facility on or before November 7, 2013, because at that time Respondent was relying upon the written certification from the generator that its used oil did not contain PCBs. Only later did Respondent learn that this certification was false.

47. Nevertheless, EPA alleges that Respondent's unknowing transportation and commercial storage of PCB waste without notifying EPA of its PCB waste activities by filing EPA Form 7710-53 prior to engaging in those activities constituted a failure to notify EPA of PCB waste handling activities in violation of 40 C.F.R. § 761.205(a)(2) and Section 15 of TSCA, 15 U.S.C. § 2614.

Count III – Commercial Storage without a Permit

48. The general factual allegations of this complaint are incorporated by reference as though set forth here in full.

49. On or about November 7, 2013, Respondent unknowingly was storing 1,066,471 gallons of PCB waste in feed tank T-35 at its Indianapolis facility, which included approximately 23,000 gallons of PCB-contaminated used oil from railcar GATX 80237 together with over 1,000,000 gallons of other non-PCB-contaminated used oil.

50. On or about November 7, 2013, Respondent did not have a PCB commercial storage approval under 40 C.F.R. § 761.65(d).

51. Respondent's commercial storage of 1,066,471 gallons of PCB waste in feed tank T-35 at its Indianapolis facility constituted commercial storage of PCB waste without approval

from EPA in violation of 40 C.F.R. § 761.3 and 761.65(d) and Section 15 of TSCA, 15 U.S.C. § 2614.

Count IV – Improper Disposal of PCB Liquids

52. The general factual allegations of this complaint are incorporated by reference as though set forth here in full.

53. From November 7, 2013 to November 18, 2013, Respondent treated PCB waste, without a permit as required by 40 C.F.R. § 761.60(e) and .70, by processing over 1,100 gallons of PCB-contaminated used oil per day through the hydrotreater at its Indianapolis facility.

54. At the time Respondent learned of the presence of the PCB waste in the plant's feed tank, it had already inadvertently treated a small portion of the feed tank material through the VDU and the hydrotreater. Respondent continued to treat the material through the hydrotreater unit until it could bring the feed tank off-line.

55. By November 18, 2013, Respondent had treated approximately 67 pounds of PCBs through the hydrotreater at its Indianapolis facility. The remaining amount of PCBs in feed tank T-35 – approximately 72 pounds – was shipped off-site for destructive incineration.

56. Although Respondent later requested a TSCA Coordinated Approval to treat the PCB waste in the hydrotreater, at the time of treatment Respondent had not received approval for the hydrotreater at the Indianapolis facility as an alternative method of destroying PCBs under 40 C.F.R. § 761.60(e), and did not dispose of the PCB waste in an incinerator that complies with 40 C.F.R. § 761.70. Consequently, Respondent disposed of PCB liquids in violation of 40 C.F.R. § 761.60(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

Civil Penalty

57. Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires the Administrator to take into account the nature, circumstances, extent, and gravity of the violations and, with respect to the violator, ability to pay, effect on ability to continue in business, any history of prior such violations, the degree of culpability, and such other matters as justice may require, when determining the amount of civil penalty for violations of TSCA.

58. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), and Respondent's good faith and cooperation in resolving this matter, including steps that Respondent has agreed to take to complete a supplemental environmental project costing \$400,000.00 (described at paragraphs 64 to 82, below), Complainant has determined that an appropriate civil penalty to settle this action is \$100,000.00.

59. Within 30 days after the effective date of this CAFO, Respondent must pay a \$100,000.00 civil penalty for the TSCA violations. Respondent must pay the penalty by sending by first class mail a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must note "In the Matter of Heritage-Crystal Clean, LLC" and the docket number of this CAFO.

60. A transmittal letter stating Respondent's name, complete address, the case title, and the case docket number must accompany the payment. Respondent must send a copy of the

transmittal letter to:

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

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

Robert M. Peachey (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

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

62. If Respondent does not pay the civil penalty timely, EPA may refer the matter to the Attorney General, who will recover such amount by action in the appropriate United States district court under Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

63. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

64. Respondent will provide funding for a supplemental environmental project (SEP) designed to protect human health and the environment by conducting fluorescent light ballast (FLB) retrofits at selected local public schools within EPA, Region 5. This SEP will involve the removal and disposal of FLB fixtures (including capacitors and interior potting material) that may contain PCBs, and their replacement with newer, more energy efficient fixtures, at all schools selected by Respondent for FLB retrofits.

65. As of the effective date of this CAFO, Respondent has selected Gary Community School Corporation (GCSC) as a local public school for an FLB retrofit.

66. Within 30 days of the effective date of this CAFO, Respondent will establish an escrow account in the amount of \$400,000.00 for use by the GCSC to complete the project. GCSC will direct the work by a contractor selected by the Respondent. The escrow account will be maintained until the project has been completed by the GCSC.

67. The specific details of the SEP will be set out in an ancillary SEP Agreement to be negotiated between Respondent and GCSC within thirty (30) days after the effective date of this CAFO. The SEP Agreement must require that GCSC use any funds provided by Respondent solely for retrofitting FLB fixtures that may contain PCBs within school buildings where children may be present.

68. Respondent has selected Huston Electric as a contractor to assist with implementation of the FLB retrofit for GCSC.

69. Within 30 days of the date that the SEP is completed by the GCSC, Respondent shall submit a SEP completion report to EPA. This report must contain the following information:

- a. Invoices and completion report prepared by Huston Electric;
- b. Description of any problems executing the SEP by GCSC and the actions taken to correct the problems;
- c. Respondent must also provide confirmation from the GCSC that any funds received from Respondent were spent in conformity with the SEP as described or, if the GCSC has not yet completed the project, confirmation from the GCSC that any unused funds are being held in an account earmarked to be spent in conformity with the SEP as described;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO.

70. Following receipt of the SEP completion report described in paragraph 69, EPA must notify Respondent in writing that:

- a. GCSC has completed the SEP project and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report, and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP and the SEP report, and EPA will seek stipulated penalties under paragraph 72.

71. If EPA exercises option b in paragraph 70, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection.

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

- a. Except as provided in paragraph 73 below, if Respondent does not contribute \$400,000 to an escrow account dedicated to the SEP, enter into a SEP agreement with the GCSC, and select a contractor to assist with the SEP, Respondent must pay a penalty of \$450,000 (in addition to the civil penalty at paragraph 59);
- b. If Respondent does not submit timely the SEP completion report,

Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$0	1 st through 14 th day
\$500	15 th through 30 th day
\$1,000	31 st day and beyond

73. If there are any funds remaining in the escrow account as of the date that Respondent submits the SEP completion report (for instance, if GCSC fails to use all the funds in the escrow account), but EPA determines that Respondent made good faith and timely efforts to provide funding for the SEP, Respondent must pay an amount (in addition to the civil penalty at paragraph 59) which is the difference between \$400,000 and the amount that Respondent certifies it spent for the SEP (demonstrated by supporting documentation).

74. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

75. Respondent must pay any stipulated penalties under paragraph 72 within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 59 and 60 and will pay interest and nonpayment penalties on any overdue amounts.

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

77. Respondent certifies as follows:

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

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

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

79. Respondent shall submit all notices and reports pursuant to the SEP by first class mail to Mr. Moore and Mr. Peachey at the addresses listed in paragraph 60.

80. In each report that Respondent submits as provided by this SEP, Respondent must certify that the report is true and complete by including the following statement signed by one of its officers:

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

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

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision, and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

82. Any requirement of the SEP may be modified in writing by mutual agreement of the parties.

General Provisions

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

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

85. This CAFO does not affect Respondent's responsibility to comply with TSCA

and other applicable federal, state and local laws.

86. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to federal laws and regulations administered by the EPA.

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

88. Respondent certifies that it is now in compliance with TSCA and its implementing regulations.

89. This CAFO is a “final order” for purposes of 40 C.F.R. § 22.31.

90. The CAFO shall be binding upon Respondent and Respondent’s officers, directors, agents, servants, employees, and successors or assigns.

91. If Respondent fails to comply with this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of the EPA to bring a civil action in the appropriate United States District Court to compel compliance with this CAFO and/or seek an additional penalty for non-compliance with the CAFO.

92. Each party shall bear its own costs and attorney’s fees in connection with this CAFO.

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

94. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

Consent Agreement and Final Order
In the Matter of: Heritage-Crystal Clean, LLC
Docket No. TSCA-05-2016-0008

Heritage-Crystal Clean, LLC, Respondent

July 13, 2016
Date

Catherine A. McCord
Catherine A. McCord
Vice President for Environment, Health, and Safety
Heritage-Crystal Clean, LLC

United States Environmental Protection Agency, Complainant

7/21/2016
Date

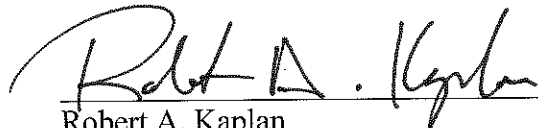
Michael D. Harris ^{In M.G.}
Margaret M. Guerriero
Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Heritage-Crystal Clean, LLC
Docket No. TSCA-05-2016-0008

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. § 22.18 and 22.31. IT IS SO ORDERED.

7/22/16
Date


Robert A. Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order

In the matter of: Heritage –Crystal Clean, LLC

Docket Number: TSCA-05-2016-0008

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number TSCA-05-2016-0008, which was filed on July 26, 2016, in the following manner to the following addresses:

Copy by E-mail to
Attorney for Respondent:

Phillip L. Comella
Heritage –Crystal Clean, LLC
Freeborn & Peters LLP
311 S. Wacker Drive, Suite 3000
Chicago, Illinois 60606

Copy by E-mail to
Attorney for Complainant:

Robert Peachey
peachey.robert@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: July 26, 2016



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

Certified Mail Receipt:

7011 1150 0000 2640 7216