



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

AUG 17 2018

REPLY TO THE ATTENTION OF:

SENT VIA E-MAIL

Philip L. Comella, Partner  
Freeborn & Peters LLP  
Attorney at Law  
311 South Wacker Drive  
Suite 3000  
Chicago, IL 60606  
pcomella@freeborn.com

Re: Consent Agreement and Final Order  
Heritage Crystal Clean, LLC  
Docket No: **CWA-05-2018-0012**

Dear Mr. Comella:

Enclosed, please find a signed, fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on *8/17/2018*, with the Regional Hearing Clerk (RHC).

Your client should pay the civil penalty in the amount of \$12,054, in the manner prescribed in paragraphs 69 and 70 of the CAFO. If paying by check, the client should include the notation "OSLTF - 311" and the docket number of this case *CWA 05 2018 0012*. Your client's payment is due within 30 calendar days of the effective date of the CAFO.

Thank you for your cooperation in resolving this matter. If you have any questions or concerns regarding this matter, please contact Ellen Riley, of my staff, at 312-886-9497 or at [riley.ellen@epa.gov](mailto:riley.ellen@epa.gov).

Sincerely,

  
Michael E. Hans, Chief  
Chemical Emergency Preparedness and Prevention Section

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

**In the Matter of:** ) **Docket No. CWA-05-2018-0012**  
)  
**Heritage-Crystal Clean LLC** ) **Proceeding to Assess a Class I 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) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(A)(i), and Sections 22.1(a)(2), 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 Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Heritage-Crystal Clean LLC (Respondent), a 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, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 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 Judicial Review and Hearing**

7. For the purpose of this proceeding, 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 its right to obtain judicial review of this CAFO under Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G), its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

#### **Spill prevention, control and countermeasure plan requirements**

9. 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.

10. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to the EPA his authority under Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), to issue the regulations referenced in the preceding paragraph for non-transportation-related onshore facilities.

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 from non-transportation-related onshore facilities into or upon, among other things, the navigable waters of the United States and adjoining shorelines. 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. 40 C.F.R. § 112.1(b).

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. § 112.7 requires the owner or operator of a subject facility to: prepare a SPCC Plan in accordance with good engineering practices; have the full approval of management at a level of authority to implement the Plan; and prepare the Plan in writing. If the owner or operator does not follow the sequence specified in 40 C.F.R. § 112.7, the owner or operator must prepare an equivalent Plan that meets all of the applicable requirements listed 40 C.F.R. Part 112.

15. 40 C.F.R. § 112.7(a)(1) requires the owner or operator of a subject facility to include a discussion in the Plan of the facility's conformance with the requirements listed in 40 C.F.R. Part 112.

16. 40 C.F.R. § 112.3 (a) requires that the owner or operator of an SPCC-regulated facility that becomes operational after November 11, 2011 must prepare and implement a Plan before they begin operations.

17. 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 oil container and the storage area where mobile or portable containers are located.

18. 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 further requires that for mobile or portable containers, 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 capacities.

19. 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 and drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge.

20. 40 C.F.R. § 112.7(b) requires the owner or operator of a subject facility to include, where experience indicates that 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), in the SPCC 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.

21. 40 C.F.R. § 112.7(e) requires the owner or operator to conduct inspections and tests required by 40 C.F.R. Part 112 in accordance with written procedures that the owner, operator or certifying engineer develop for the facility; and further requires that the owner or operator keep these written procedures and the records 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 an onshore facility (excluding a production facility) to meet the general requirements for the Plan listed under § 112.7, and the specific discharge prevention and containment procedures listed in section 112.8.

23. 40 C.F.R. § 112.8(b)(1) requires the owner or operator of an onshore facility (excluding a production 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 discharges.

24. 40 C.F.R. § 112.8(b)(2) requires the owner or operator of an onshore facility (excluding a production facility) whose drainage drains directly into a watercourse and not into an on-site wastewater treatment plant to inspect the uncontaminated retained storm water prior to discharge.

25. 40 C.F.R. § 112.8(c)(3) requires the owner or operator of a subject facility to not allow drainage of uncontaminated rainwater from the diked area into a storm drain unless the

facility: (i) normally keeps the bypass valve closed; (ii) inspects the retained rainwater to ensure that its presence will not cause a discharge as described in § 112.1(b); opens the bypass valve and reseals it following drainage under responsible supervision; and (iv) keeps adequate records of such events, for example, any records required under permits issued in accordance with §§ 122.41(j) and 122.41(m)(3) of that chapter.

26. 40 C.F.R. § 112.8(c)(6) requires the owner or operator of a subject facility to inspect each aboveground container on a regular schedule in accordance with industry standards. The plan must include the appropriate qualifications for personnel performing the inspections, the frequency and types of inspections taking into account the container size, configuration, and design. The owner or operator must keep records of these inspections.

#### **General provisions and enforcement of the CWA**

27. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as waters of the United States. 40 C.F.R. § 112.2 further defines “navigable waters” to include: all navigable waters of the United States, as defined in judicial decisions prior to passage of the 1972 Amendments to the CWA and tributaries of such waters; interstate waters; intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

28. 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.

29. 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.

30. 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.

31. 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.

32. 40 C.F.R. § 112.3(a)(1) provides that the owner or operator of a subject facility must prepare and implement a SPCC Plan that meets the requirements of 40 C.F.R. Part 112 no later than November 10, 2011, or before beginning operations if the facility becomes operational after November 10, 2011.

33. 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; 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.



34. EPA may assess a class I civil penalty against any owner, operator, or person in charge of any onshore facility who fails or refuses to comply with any regulations issued under Section 311(j) of the CWA, 33 U.S.C. 1321(j), under Section 311(b)(6)(A)(i) of the CWA, 33 U.S.C. § 3121(b)(6)(A)(i).

35. EPA may assess a class I civil penalty of up to \$16,000 per violation for each day of violation up to a maximum of \$37,500 for violations that occurred prior to November 2, 2015, and a maximum of \$17,816 per violation for each day of violations up to a maximum of \$44,539 for violations occurring after November 2, 2015, under Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. Part 19.

#### **Factual Allegations and Alleged Violations**

36. Respondent operates a bulk storage, and distribution facility located at 1560 West Raymond Street, Indianapolis, Indiana (“the facility”).

37. Respondent began operating the facility on or about September 2, 2012.

38. Respondent HCC is a corporation, and is therefore a “person” as defined in Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

39. Respondent is a “operator” of the facility within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

40. Respondent engages in storing, and transferring oil or oil products at the facility.

41. 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.

42. The facility is not a production facility.

43. At all times relevant to this CAFO, Respondent stored oil at the Facility, and the Facility was therefore an onshore “non-transportation-related” facility within the meaning of 40 C.F.R. Part 112, Appendix A.

44. At all times relevant to this CAFO, the Facility had a total oil storage capacity of greater than 1,320 gallons.

45. The Little Eagle Creek is approximately 2,000 feet west and south of the facility.

46. The White River is approximately 4,000 feet south of the facility.

47. At all times relevant to this CAFO, a discharge from the facility, due to its location, could reasonably be expected to flow into a storm sewer which flows west to the Little Eagle Creek and/or a storm sewer which flows into the White River.

48. The Little Eagle Creek flows into the White River and the White River flows into the Wabash River.

49. The Wabash River is an interstate river that used by interstate travelers for recreational or other purposes and is a navigable in fact water, and is therefore a “navigable water” of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.

50. The White River is an intrastate water that is used by interstate travelers for recreational or other purposes and is a navigable in fact water, and is therefore a “navigable water” of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2.

51. At all times relevant to this CAFO, Respondent was an operator of a non-transportation-related onshore facility engaged in storing, and transferring 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.

52. At all times relevant to this CAFO, Respondent was subject to the oil pollution prevention regulations, and was therefore required to prepare and implement a SPCC Plan in accordance with the requirements of 40 C.F.R. Part 112.

53. On November 19, 2013, EPA conducted an inspection at the facility (“the facility inspection”). The Respondent provided the inspector an SPCC Plan at the time of the inspection. The SPCC Plan was marked “DRAFT” and dated September 30, 2013. At all times relevant to this CAFO, Respondent’s SPCC Plan for the facility was the 2013 SPCC Plan (“2013 Plan”).

54. During the inspection, the EPA inspector observed box trailers used to store oil in the loading area of the facility.

55. The facility began operations on or about September 2, 2012.

56. Respondent did not prepare and implement an SPCC plan in accordance with 40 C.F.R. Part 112 for the facility until at least September 20, 2013.

57. Respondent did not prepare and implement a Plan before the start of operations as required by 40 C.F.R. § 112.3(a).

58. The plan Respondent provided during the November 19, 2013 inspection had not been signed by management. Although Respondent states that its management approved the plan, the plan itself did not reflect such management approval at a level of authority to commit the necessary resources to fully implement the plan.

59. Respondent did not prepare an SPCC plan that had the full approval of management at a level of authority to commit the necessary resources to fully implement the plan, in violation of 40 C.F.R. 112.7.

60. During the November 19, 2013 inspection, the inspector observed that box trailers containing full drums of oil were stored at the facility in areas that were not identified on the facility diagram in the facility's SPCC Plan.

61. Respondent did not identify in the 2013 Plan the location and contents of each fixed oil storage container and the storage area where mobile or portable containers were located in violation of 40 C.F.R. § 112.7(a)(3).

62. The Respondent did not identify in the 2013 Plan the type of oil and storage capacity of each mobile and portable container or an estimate of the potential number of mobile or portable containers, the types of oil, and anticipated storage capacities of the portable containers stored in the box trailers in violation of 40 C.F.R. § 112.7(a)(3)(i).

63. Respondent did not address in the 2013 Plan the discharge or drainage controls around the containers and other structures in the van storage area, and procedures for control of a discharge from these areas, in violation of 40 C.F.R. §112.7(a)(3)(iii).

64. Respondent did not address in the 2013 Plan, where experience indicates a reasonable potential for equipment failure (such as loading and unloading), 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 of the portable containers stored in the box trailers, in violation of 40 C.F.R. § 112.7(b).

65. Respondent did not develop written procedures for conducting inspections and tests, signed by the appropriate supervisor or inspector, and retain inspection records with the SPCC Plan for a period of three years, in violation of 40 C.F.R. § 112.7(e).

66. During the November 19, 2013 inspection, the inspector observed that the facility retained storm water in a diked area which was equipped with an automatic float controller which allowed storm water to be discharged without inspection.

67. The facility drainage drains directly to a watercourse and not into an on-site waste water treatment plant.

68. Respondent did not inspect retained storm water, as provided in 40 C.F.R. § 112.8(c)(3)(ii), (iii), and (iv), in violation of 40 C.F.R. § 112.8(b)(2).

#### **Civil Penalty**

69. 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 \$12,054.

70. Within 30 days after the effective date of this CAFO, Respondent must pay a \$12,054 civil penalty by an electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
“D68010727 Environmental Protection Agency”

The comment or description field of the electronic funds transfer must state Respondent’s name and the docket number of this CAFO.

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

Ellen Riley (SC-5J)  
Enforcement Officer  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

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

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

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

73. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, 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.

74. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue 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). Respondent must pay the United States enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 33 U.S.C. § 1321(b)(6)(H).

#### **General Provisions**

75. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: gonzalez.maria@epa.gov (for Complainant); and pcomella@freeborn.com (for Respondent).

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

77. The CAFO does not 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.

78. Respondent certifies that it is complying with the requirements of the oil pollution prevention regulations at 40 C.F.R. Part 112.

79. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable federal, state and local laws. Except as provided in paragraph 76 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

80. This CAFO constitutes a "prior violation(s)" 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).

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

82. Each person signing this consent agreement 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.

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

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



**In the Matter of: Heritage-Crystal Clean LLC**  
**Docket No. CWA-05-2018-0012**


**Heritage-Crystal Clean LLC, Respondent**

8/7/18  
Date

  
Anita Decina  
Vice President, Environment, Health & Safety, DOT  
Heritage-Crystal Clean LLC  
2175 Point Blvd., Ste. 375  
Elgin, IL 60123

**United States Environmental Protection Agency, Complainant**

8/13/2018  
Date

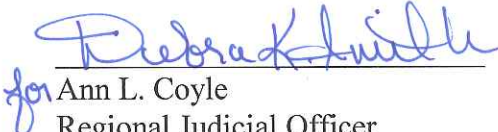
  
Doug Ballotti  
Acting Director  
Superfund Division  
U.S. Environmental Protection Agency, Region 5

**In the Matter of: Heritage-Crystal Clean LLC**  
**Docket No. CWA-05-2018-0012**

**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.

Date: 8/16/18

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

Consent Agreement and Final Order  
In the matter of: Heritage-Crystal Clean, LLC  
Docket Number: CWA-05-2018-0012

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **CWA-05-2018-0012**, which was filed on *August 17, 2018* in the following manner to the following addressees:

Copy by E-mail to  
Attorney for Respondent: Phillip L. Comella, Partner  
Freeborn & Peters LLC  
Attorneys at Law  
311 South Wacker Drive  
Suite 3000  
Chicago, Illinois 60606  
(312) 360-6935  
pcomella@freeborn.com

Copy by E-mail to  
Attorney for Complainant: Maria Gonzalez  
Gonzalez.maria@epa.gov

Copy by E-mail to  
Enforcement Officer: Ellen Riley  
riley.ellen@epa.gov

Copy by E-mail to  
Regional Judicial Officer: Ann Coyle  
coyle.ann@epa.gov

Dated: *August 17, 2018*



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