

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2020-0021
)	
Heritage-Crystal Clean, LLC)	Proceeding to Assess a Civil Penalty
Indianapolis, Indiana)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), 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 Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Heritage-Crystal Clean, LLC, 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 Hearing

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

8. Respondent waives 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

Federally Enforceable State Operating Permit Program

9. On August 18, 1995, EPA approved the Indiana Federally Enforceable State Operating Permit (FESOP) program as part of the federally enforceable State Implementation Plan (SIP) for the State of Indiana. 60 Fed. Reg. 43008. Indiana’s FESOP program became effective on October 17, 1995. Indiana’s FESOP program rules are codified in 326 Indiana Administrative Code (IAC) 2-8.

FESOP Requirements

10. On June 24, 2010, the Indiana Department of Environmental Management (IDEM) issued FESOP No. F097-28484-00670 (2010 FESOP) to the Respondent with an effective date of June 24, 2010.

11. On February 11, 2013, IDEM issued First Significant Permit Revision No. F097-31757-00670 (2013 FESOP) to the Respondent with an effective date of February 11, 2013.

12. Condition D.1.2(e) of the 2013 FESOP provides the following hourly emission limits:

Emission Unit ID	SO ₂ Limit (lbs/hr)	NO _x Limit (lbs/hr)	CO Limit (lbs/hr)
Vacuum Heater H-400 (Off-Gas)	11.5	0.75	1.65
Back-up Dehydration Heater H-401	13.00	10.00	10.00

Indiana State Implementation Plan

13. On August 18, 1995, EPA approved 326 IAC 2-8-1 and 2-8-3 as part of the federally enforceable SIP for Indiana. 60 Fed. Reg. 43008.
14. 326 IAC 2-8-3(c)(3)(I) provides that insignificant activities shall be listed on an application for a FESOP.
15. 326 IAC 2-8-1 states that, among others, the definitions provided in 326 IAC 2-7 apply throughout 326 IAC 2-8.
16. 326 IAC 2-7-1(21)(E) defines [i]nsignificant activity” as, among other things, “[a]n emission unit or activity whose potential uncontrolled emissions meet the exemption levels specified in 326 IAC 2-1.1-3(e)(1) or the exemption levels specified in the following, whichever is lower: . . . (iv) [f]or VOC, the exemption limit is three (3) pounds per hour or fifteen (15) pounds per day.
17. On June 17, 2014, EPA approved 326 IAC 6.5-1-1 and 326 IAC 6.5-1-2 as part of the federally enforceable SIP for Indiana, with an effective date of July 17, 2012. 79 Fed. Reg. 34435.
18. 326 IAC 6.5-1-1(a) provides that, except as provided in subsections (b) through (d), sources or facilities located in Marion County shall comply with the limitations in 326 IAC 6.5-1-2 if the source or facility is not specifically listed in 326 IAC 6.5-2 through 326 IAC 6.5-10, but has actual emissions of ten (10) tons per year or more of particulate matter (PM).
19. 326 IAC 6.5-1-2 provides, in relevant part, “Particulate matter emissions . . . shall not exceed seven-hundredths (0.07) gram per dry standard cubic meter (g/dscm) (three-hundredths (0.03) grain per dry standard cubic foot (dscf))[gr/dscf].”
20. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after

December 6, 2013 through November 2, 2015 or \$48,192 per day of violation up to a total of \$385,535 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

21. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

22. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

23. The Respondent owns and operates a used oil and used solvent recycling and distribution facility at 3970 West 10th Street, Indianapolis, Indiana in Marion County.

24. EPA issued CAA Section 114 Information Requests to the Respondent on February 3, 2016; March 17, 2016; and November 28, 2016 and subsequent email requests for additional information on August 13, 2019 and October 23, 2019 (together "RFIs"). Respondent fully responded to the RFIs in a timely manner.

25. On July 15, 2016, the Respondent submitted an "Application for Transition to Title V Operating Permit" to IDEM to obtain a Part 70 operating permit (Title V Permit Application).

26. The operation of reactor R-500A/B associated with the Lube Oil Hydrotreater Process P-500, requires regular purging associated with maintenance.

27. The Title V Permit Application provided emission data associated with purge events at R-500A/B.

28. An investigation by Respondent indicated the purge gases from R-500A/B exceed the insignificant activity limit for VOCs.

29. Purge gas emissions from R-500A/B were not listed in the original FESOP application(s) submitted by the Respondent.

30. In response to EPA's March 17, 2016, Information Request, the Respondent provided estimated emissions of PM from components of the Lube Oil Distillation Process P-400, including dehydration heater H-401 and dehydration heater H-402 based on testing of material flowing into and out of dehydration drum V-400.

31. Certain annual PM emissions estimates provided by the Respondent exceeded 10 tons per year for both H-401 and H-402.

32. On April 6, 2016, the Respondent conducted a performance test at H-402 for PM (2016 Performance Test).

33. The 2016 Performance Test identified an average hourly PM emission rate of 3.23 pounds per hour and an annual PM emission rate of 14.14 tons per year.

34. Based on the information provided by the Respondent, H-401 and H-402 are subject to 326 IAC 6.5-1-1.

35. Based on the estimated PM emissions data provided by the Respondent, H-401 and H-402 exceeded the emission limit established pursuant to 326 IAC 6.5-1-2.

36. In response to EPA's February 8, 2016, Information Request, the Respondent provided the results of engineering tests, which identified hourly emission rates at H-400 and H-401.

37. The data provided by the Respondent indicated that the hourly SO₂ and NO_x emission limits in the 2013 FESOP were exceeded at H-400.

38. The data provided by the Respondent indicated that the hourly SO₂, NO_x, and CO emission limits in the 2013 FESOP were exceeded at H-401.

Notice of Violation and Finding of Violation

39. On March 31, 2017, EPA issued to the Respondent a Notice of Violation and Finding of Violation (NOV/FOV).

40. The NOV/FOV alleged:

- a. The Respondent exceeded the insignificant emission threshold for VOCs and failed to list emissions from R-500A/B on its FESOP applications, in violation of 326 IAC 2-8-3(c)(3)(I);
- b. The Respondent emitted PM from H-401 at concentrations exceeding 0.03 gr/dscf, in violation of 326 IAC 6.5-1-2;
- c. The Respondent emitted PM from H-402 at concentrations exceeding 0.03 gr/dscf in violation of 326 IAC 6.5-1-2;
- d. The Respondent exceeded the hourly emission limits for SO₂, NO_x, and CO at H-400 in violation of Condition D.1.2(d) of the 2012 FESOP and Condition D.1.2(e) of the 2013 FESOP; and
- e. The Respondent exceeded the hourly emission limits for SO₂, NO_x, and CO at H-401 in violation of Conditions D.1.2(e) and D.1.2(i) of the 2012 FESOP and Condition D.1.2(e) of the 2013 FESOP.

41. On May 18, 2017, representatives of the Respondent and EPA met to discuss the NOV/FOV. At the meeting, and in subsequent correspondence, the Respondent provided additional information to EPA relating to the allegations in the NOV/FOV.

42. In 2019 Respondent installed a baghouse to ensure compliance with particulate matter emission limits for H-402.

Civil Penalty

43. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$200,000.

44. Within 30 days after the effective date of this CAFO, Respondent must pay a \$200,000 civil penalty by 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”

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

45. 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:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Matthew R. Dawson
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5

dawson.matthew@epa.gov

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

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

47. 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 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

48. 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's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

49. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: dawson.matthew@epa.gov (for Complainant), and jolson@seyfarth.com (for Respondent).

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

51. 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.

52. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 50, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

53. Respondent certifies that it is complying fully with 326 IAC 6.5-1-2.

54. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

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

56. 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.

57. Each party agrees to bear its own costs and attorney's fees in this action.

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

Heritage-Crystal Clean, LLC, Respondent

June 16, 2020

Date



David P. Chameli
Vice President, General Counsel
Heritage-Crystal Clean, LLC

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

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MICHAEL HARRIS
Date: 2020.06.19
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Date

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Heritage-Crystal Clean, LLC
Docket No. CAA-05-2020-0021

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

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