



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

JUL 01 2011

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John A. Peterka
President
Heritage-WTI, Inc.
1250 St. George Street
East Liverpool, Ohio 43920-3400

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

Dear Mr. Murray:

I have enclosed a file stamped Consent Agreement and Final Order ("CAFO") which resolves case docket number, CAA-05-2011-0012, with Heritage-WTI, Inc. (WTI). As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on July 1, 2011. Pursuant to paragraph 11 of the CAFO, WTI must pay the civil penalty within 30 days of the date the CAFO is filed. Your check must display the case docket number, CAA-05-2011-0012, and the billing document number 2751103A039.

If you have any questions on this matter, please do not hesitate to call Mr. Charles Hall, of my staff, at (312) 353-3443, or, with legal questions, John Matson, Associate Regional Counsel, at (312) 886-2243.

Sincerely,

A handwritten signature in black ink that reads "William MacDowell".

William MacDowell
Minnesota/Ohio Air Enforcement and Compliance Assurance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

**SIGN
HERE**

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

RECEIVED
JUL 01 2011

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CONSENT AGREEMENT AND FINAL ORDER

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5, brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. On December 22, 2010, EPA filed the Complaint in this action against Respondent, Heritage-WTI, Inc. (WTI). The Complaint alleged that Respondent violated Section 112(f)(4) of the Act, 42 U.S.C. § 7412(f)(4), and the dioxin/furan and mercury emission limits in the National Emission Standard for Hazardous Air Pollutants from Hazardous Waste Combustors (HWC MACT) set forth at 40 C.F.R. § 63.1219(a)(1)(i)(A), and 40 C.F.R. § 63.1219(a)(2), at its facility in East Liverpool, OH.

3. Respondent filed an Answer and requested a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2).

4. On June 28, 2011, EPA filed its First Amended Complaint re-alleging WTI's original violations, but modifying the time period for WTI's violation of the HWC MACT dioxin/furan and mercury emission limits.

5. Complainant and Respondent wish to settle Respondent's liability for federal civil penalties for the violations and facts alleged in the First Amended Complaint, and have consented to the entry of this Consent Agreement, and the accompanying Final Order (CAFO).

Stipulations

6. Respondent admits the jurisdictional allegations in the First Amended Complaint and neither admits nor denies the factual allegations in the First Amended Complaint.

7. Respondent waives any right to contest the allegations in the First Amended Complaint and its right to appeal the Final Order accompanying the Consent Agreement.

8. Respondent certifies that it is complying fully with the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, 40 C.F.R. Part 63, Subpart EEE, 40 C.F.R. §§ 63.1200 through 63.1221.

9. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms and conditions of this CAFO.

10. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

11. In consideration of Respondent's self-reporting of the violations, its cooperation in establishing interim operating parameter limits until it could demonstrate compliance, the size of Respondent's business, and Respondent's agreement to perform a supplemental environment project, Complainant agrees to mitigate the proposed penalty of \$151,800 to \$50,100.

12. Within 30 days after the effective date of this CAFO, Respondent must pay the \$50,100 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 *In re Heritage-WTI, Inc.*, the docket number of this CAFO, CAA-05-2011-0012, and the billing document number.

13. Respondent must send a notice of payment that states *In re Heritage-WTI, Inc.*, the docket number of this CAFO, CAA-05-2011-0012, and the billing document number, to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch and to John Matson, at the following addresses when it pays the civil penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

John Matson (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

15. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 27, below, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

16. 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 overdue amount 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 quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). 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.

Supplemental Environmental Project

17. Respondent shall implement a Supplemental Environmental Project ("SEP") in the fall of 2011. Respondent shall sponsor one collection of household hazardous waste at a satellite location no farther than 25 miles from its hazardous waste incineration facility in East Liverpool, Ohio ("Fall 2011 SEP"). The Fall 2011 SEP shall be in addition to the collection effort that Respondent routinely sponsors in the spring of each year. Respondent shall collect, process, recycle, and/or dispose of the household hazardous wastes consistent with all applicable legal requirements. The cost of this project which WTI shall pay shall be no less than \$53,000.

18. Respondent must complete the Fall 2011 SEP as described in Exhibit A of this CAFO. Respondent must not cause the unpermitted or unauthorized release to the environment of any mercury, or any other toxic or hazardous chemical during the performance of the SEP. The Fall 2011 SEP will reduce the amount of mercury, plastic (which contain precursors for dioxin/furan emissions), and other household hazardous waste, being landfilled by households in the vicinity of the East Liverpool, Ohio facility.

19. Respondent certifies that it is not required to perform or develop the Fall 2011 SEP by any law, regulation, grant, order, or agreement or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the Fall

2011 SEP in any other enforcement action. Finally, Respondent certifies that it 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 Fall 2011 SEP. Respondent further certifies that, to the best of its 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 Fall 2011 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 of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

20. Respondent is responsible for the satisfactory completion of the Fall 2011 SEP in accordance with the requirements of this CAFO.

21. EPA may inspect the East Liverpool, Ohio facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

22. Respondent must submit a SEP completion report to EPA no later than 30 days after the date the Fall 2011 SEP occurs. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP, documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

23. Respondent must submit all notices and reports required by this CAFO by first class mail to the Compliance Tracker in the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 13, above.

24. In any report that Respondent submits as provided by this CAFO, it 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.

25. Following receipt of the SEP completion report described in paragraph 22, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the Fall 2011 SEP 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 Fall 2011 SEP or the SEP report and EPA will seek stipulated penalties under paragraph 27.

26. If EPA exercises option b, above, 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. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the Fall 2011 SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 27, below.

27. If Respondent violates any requirement of this CAFO relating to the Fall 2011 SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the Fall 2011 SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a stipulated penalty of \$30,000;
- b. If Respondent did not complete the Fall 2011 SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the Fall 2011 SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 17, Respondent will not be liable for any stipulated penalty under subparagraph a, above;

- c. If Respondent completed the Fall 2011 SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 17, Respondent must pay a penalty in the amount of 90% of the amount by which the Fall 2011 SEP fell short of \$53,000;
- d. If Respondent did not submit timely the SEP completion report required by paragraph 22, 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>
\$ 200	1st through 14th day
\$ 500	15th through 30th day
\$1,000	31st day and beyond

28. EPA's determinations of whether Respondent satisfactorily completed the Fall 2011 SEP and whether Respondent made good faith and timely efforts to complete the Fall 2011 SEP will bind Respondent.

29. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 12, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

30. Any public statement that Respondent makes referring to the Fall 2011 SEP must include the following language, "WTI undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against WTI for violations of National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, 40 C.F.R. Part 63, Subpart EEE."

31. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any cost or expenditures incurred in performing the Fall 2011 SEP.

General Provisions

32. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the First Amended Complaint.

33. This 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.

34. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 32, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

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

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

37. 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.

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

39. This CAFO constitutes that entire agreement between the parties.

Heritage-WTI, Inc., Respondent

Date



John A. Peterka, President
Heritage-WTI, Inc.

United States Environmental Protection Agency, Complainant

6/29/11
Date



Cheryl L. Newton
Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5

**Consent Agreement and Final Order
In the Matter of: Heritage-WTI, Inc.
Docket No. CAA-05-2011-0012**

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.

6-30-11



Date

Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

RECEIVED

JUL 01 2011

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

**Consent Agreement and Final Order
In the Matter of: Heritage-WTI, Inc.
Docket No. CAA-05-2011-0012**

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2011-0012 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed a second original copy by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

John Peterka
President
Heritage-WTI, Inc.
1250 St. George Street
East Liverpool, Ohio 43920-3400

Michael Scanlon, Esq.
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, Indiana 46204-3535

RECEIVED
JUL 01 2011

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

I certify that I mailed copies of the CAFO by first-class mail, addressed as follows:

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
50 West Town Street, Suite 700
Columbus, Ohio 43215

Ed Fasko, Air Pollution Control Supervisor
Northeast District Office
Ohio Environmental Protection Agency
2110 East Aurora Road
Twinsburg, Ohio 44087

Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Ariel Rios Building/Mail Code 1900L
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

I also certify that I delivered a copy of the CAFO by intra-office mail, addressed as follows:

Marcy Toney
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard/Mail Code C-14J
Chicago, Illinois 60604

on the 1 day of July 2011


Administrative Program Assistant

Certified Mail Receipt Number: 7009 1680 0000 7670 4564

RECEIVED
JUL 01 2011

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY