



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

STATE OF INDIANA) SS: BEFORE THE INDIANA DEPARTMENT OF
)
 COUNTY OF MARION) ENVIRONMENTAL MANAGEMENT

COMMISSIONER OF THE DEPARTMENT)
 OF ENVIRONMENTAL MANAGEMENT,)
)
 Complainant,)
)
 v.) Case No. 2019-26271-H
)
 HERITAGE ENVIRONMENTAL)
 SERVICES, LLC,)
)
 Respondent.)

AGREED ORDER

Complainant and Respondent desire to settle and compromise this action without hearing or adjudication of any issue of fact or law, and consent to the entry of the following Findings of Fact and Order. Pursuant to Indiana Code (“IC”) 13-30-3-3, entry into the terms of this Agreed Order does not constitute an admission of any violation contained herein. Respondent’s entry into this Agreed Order shall not constitute a waiver of any defense, legal or equitable, which Respondent may have in any future administrative or judicial proceeding, except a proceeding to enforce this order.

I. FINDINGS OF FACT

1. Complainant is the Commissioner (“Complainant”) of the Indiana Department of Environmental Management (“IDEM”), a department of the State of Indiana created by Indiana Code (“IC”) 13-13-1-1.
2. Respondent is Heritage Environmental Services, LLC (“Respondent”), which owns/operates the facility with United States Environmental Protection Agency (“EPA”) ID No. IND 980 503 890 located at 4370 W. CR 1275 N., in Roachdale, Putnam County, Indiana (“Site”).
3. IDEM has jurisdiction over the parties and the subject matter of this action.
4. Pursuant to IC 13-30-3-3, IDEM issued a Notice of Violation (“NOV”) to:

Ms. Winde Hamrick,
Executive Vice President

CT Corporation System, Registered Agent
Heritage Environmental Services, LLC



Heritage Environmental Services, LLC 150 West Market Street, Suite 800
7901 West Morris Street Indianapolis, IN 46204
Indianapolis, IN 46231

5. Respondent notified EPA of hazardous waste disposal and large quantity generator (“LQG”) activities. Respondent operates a permitted Resource Conservation and Recovery Act (“RCRA”) Subtitle C hazardous waste landfill and a Subtitle D solid waste landfill at this Site.
6. 329 Indiana Administrative Code (“IAC”) 3.1 incorporates certain federal hazardous waste management requirements found in 40 Code of Federal Regulations (“CFR”) Parts 260 through 270 and Part 273, including those identified below.
7. During an investigation including a record review and inspections on April 2 and 26, 2019 conducted by a representative of IDEM, the following violations were found:

- a. Pursuant to Permit Condition II.C and Attachment C 3.2, wastestream confirmation analysis is conducted at a given interval, as described in Table C-3 of the RCRA Subtitle C permit. The purpose of the wastestream confirmation analysis is an ongoing determination that the wastestream is consistent and meets Land Disposal Restriction (“LDR”) regulations or the requirements of 40 CFR Part 264.555(e)(iv) or (v) which are referenced in 40 CFR 264.555.

As noted during the record reviews and inspections, Respondent has been accepting hazardous waste debris from Rineco, a RCRA permitted treatment facility located in Benton, Arkansas, for the past 1-2 years without conducting Wastestream Confirmation Sampling and Analysis monthly as required by Table C-3 in Respondent’s RCRA permit. According to Respondent, they cannot conduct the required monthly sampling because the hazardous waste debris is in a macroencapsulation bag.

- b. Pursuant to 40 CFR 268.7(c)(2), the owner or operator of any land disposal facility disposing any waste subject to restrictions under this part must assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in subpart D of this part. Such testing must be performed according to the frequency specified in the facility’s waste analysis plan as required by §264.13 of this chapter.

As noted during the record reviews and inspections, Respondent has been accepting hazardous waste debris from Rineco, a RCRA permitted treatment facility located in Benton, Arkansas, for the past 1-2 years, at an approximate rate of 20-30 bags per week without conducting Wastestream Confirmation Sampling and Analysis monthly as required by Table C-3 in Respondent’s RCRA permit. According to Respondent, they cannot conduct the required monthly sampling because the hazardous waste debris is contained in a macroencapsulation bag.

- c. Pursuant to Permit Condition II.C and Attachment C 3.2, if the load does not meet LDR requirements or the requirements for Corrective Action Management Unit

("CAMU") eligible waste described in Exhibit C-7, the load will be re-sampled. The waste shipment that does not meet LDR requirements will be considered for treatment at Heritage's Indianapolis Facility.

As noted during record reviews and an inspections, the hazardous waste debris accepted from Rineco on February 18, 2019, did not meet LDR treatment standards. This was evidenced by the fact that the hazardous waste debris contained in a macroencapsulation bag ignited and caught fire while unloading. The hazardous waste debris was not re-sampled or brought to Heritage's Indianapolis facility for further treatment. The hazardous waste debris was placed in eight (8)-26 yard bags then was treated on-site by adding dry ice and boric acid to the bags to limit oxygen exposure, and the bags were placed into the landfill.

- d. Pursuant to Permit Condition II.C and Attachment C 3.3, all fingerprint screening, (pH, Paint Filter Liquids Test and Appearance) and load verification procedures will be conducted at the Heritage Landfill. Results will be compared to the baseline analysis established by Wastestream Characterization Analysis, as explained in Section 3.1. Acceptable ranges are outlined in Exhibit C-3, the Load Verification Plan and Table C-4 in Exhibit C-1.

As noted during the inspections, Respondent did not conduct the pH or Paint Filter Liquids Test for the macroencapsulated wastes received from Rineco and disposed on Site. Appearance screening is limited to confirming that the truck contains a macroencapsulation bag. Respondent has been receiving this waste for 1-2 years, at an approximate 20-30 bags per week.

- e. Pursuant to Permit Condition II.C. and Permit Condition IV.G.1. & G.2., the Permittee must not place bulk or non-containerized liquid wastes or wastes containing free liquids in the landfill and the Permittee must demonstrate the absence of free liquids in either a containerized or a bulk waste by the following test: "Method 9095 (Paint Filter Liquids Test)" as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical methods" (EPA Publication No. SW-846).

As noted during the April 26, 2019 inspection, IDEM took a video of the unloading process of the hazardous waste debris from Rineco. The video shows free liquids escaping prior to the bag exiting the trailer. Respondent contends that the trailer is the container, and that the macroencapsulation bag is a treatment standard and does not meet the definition of a container.

8. On July 15, 2020, IDEM approved the Class 2 Permit Modification request received on May 3, 2020. The modification revised various waste analysis procedures in the permit's Waste Analysis Plan (Attachment C).
9. Orders of the Commissioner are subject to administrative review by the Office of Environmental Adjudication under IC 4-21.5; however, in recognition of the settlement reached, Respondent acknowledges notice of this right and waives any right to administrative and judicial review of this Agreed Order.

II. ORDER

1. This Agreed Order shall be effective ("Effective Date") when it is approved by Complainant or Complainant's delegate, and has been received by Respondent. This Agreed Order shall have no force or effect until the Effective Date.
2. Respondent shall comply with the statutes, rules, and/or permit conditions listed in the findings above.
3. Upon the Effective Date, Respondent shall comply with Permit Condition II.C and Attachment C 3.2 by providing certification that hazardous debris treated by macroencapsulation meets the debris treatment technology described in Table 1 of 40 CFR 268.45. Specifically, Respondent shall submit to IDEM within thirty (30) days certification that the hazardous waste debris that caught fire treated by macroencapsulation received from Rineco on February 18, 2019 on Uniform Hazardous Waste Manifest 000928540WAS met LDR's.
4. If Respondent wishes to continue to treat or dispose of hazardous debris treated by macroencapsulation bags, Respondent shall provide to IDEM documentation that a request to USEPA, pursuant to 40 CFR 268.42(b), for Determination of Equivalent Treatment (DET) has been made. Respondent shall obtain approval from USEPA in order to continue to accept waste treated by placement in macroencapsulation bags for disposal of hazardous waste debris.
5. All submittals required by this Agreed Order, unless Respondent is notified otherwise in writing by IDEM, shall be sent to:

Christina Halloran, Enforcement Case Manager
Office of Land Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251
6. Respondent is assessed and agrees to pay a civil penalty of Nine Thousand Dollars (\$9,000). Within thirty (30) days of the Effective Date, Respondent shall pay a portion of this penalty in the amount of One Thousand Eight Hundred Dollars (\$1,800) to the Environmental Management Special Fund. In lieu of payment of the remaining civil penalty, Respondent shall make a cash payment to the Indiana Finance Authority ("IFA") to fund a Supplemental Environmental Project ("SEP") of activities related to brownfield development at a brownfield site ("Brownfield Site") in Indianapolis, Indiana. Respondent will make a payment in the amount of Seven Thousand Two Hundred Dollars (\$7,200) to fund SEP activities at the Brownfield Site. Respondent shall make such payment to the IFA within thirty (30) days of the Effective Date. Payment to the IFA satisfies Respondent's obligation to undertake a SEP to offset a portion of the civil penalty assessed in this matter. Implementation of this SEP will benefit the community by rejuvenating neighborhoods, increasing the tax base, mitigating threats to human

health and the environment, and/or reducing blight. In the event that the civil penalty is not paid within thirty (30) days of the Effective Date, Respondent shall pay interest on the unpaid balance at the rate established by IC 24-4.6-1-101. The interest shall continue to accrue until the civil penalty is paid in full.

The Brownfield Site at which some or all of the SEP proceeds will be spent will be determined by the Brownfields Program for a site located in Indianapolis, Indiana. The designation of this Brownfield Site to receive the SEP proceeds is agreed upon by the Complainant, Respondent, and the IFA. The IFA will account for the SEP payment and the Brownfields Program will oversee the work undertaken at the Brownfield Site funded by the SEP proceeds. If SEP proceeds remain following a determination by the Brownfields Program that no additional SEP proceeds are needed at the Brownfield Site, the Brownfields Program will select another site or sites in Indianapolis at which work will be funded with the balance of the SEP proceeds. The IFA will notify IDEM's Enforcement Case Manager when SEP-funded activities at the Brownfield Site (and any other site at which activities may be funded with SEP proceeds) are complete.

In the event that Respondent does not make its SEP payment within thirty (30) days of the Effective Date, the full amount of the civil penalty as stated in this paragraph, plus interest established by IC 24-4.6-1-101 on the remaining amount, less the portion of the civil penalty Respondent has already paid, will be due within fifteen (15) days from Respondent's receipt of IDEM's notice to pay. Interest at the rate established by IC 24-4.6-1-101, shall be calculated on the amount due from the date which is thirty (30) days after the Effective Date of this Agreed Order until the full civil penalty is paid.

Payment of the SEP is payable by check to the "Indiana Finance Authority." The text "SEP-Indianapolis" and the Case Numbers of this action shall be included in the memo line of the check. The check shall be mailed to:

Meredith Gramelspacher
Indiana Brownfields Program - SEP
100 N. Senate Avenue
Room 1275
Indianapolis, Indiana 46204

7. In the event the terms and conditions of the following paragraphs are violated, Complainant may assess and Respondent shall pay a stipulated penalty in the following amount:

<u>Paragraph</u>	<u>Penalty</u>
Order paragraph # 3	\$100/week
Order paragraph # 4	\$100/week

8. Stipulated penalties shall be due and payable no later than the 30th day after Respondent receives written notice that Complainant has determined a stipulated penalty is due; the 30th day being the "Due Date." Complainant may notify Respondent at any time that a stipulated penalty is due. Failure to notify Respondent in writing in a timely manner of

stipulated penalty assessment shall not waive Complainant's right to collect such stipulated penalty or preclude Complainant from seeking additional relief against Respondent for violation of this Agreed Order. Neither assessment nor payment of stipulated penalties shall preclude Complainant from seeking additional relief against Respondent for a violation of this Agreed Order; such additional relief includes any remedies or sanctions available pursuant to Indiana law, including, but not limited to, civil penalties pursuant to IC 13-30-4.

9. Civil and stipulated penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number of this action and shall be mailed to:

Indiana Department of Environmental Management
Accounts Receivable
IGCN, Room 1340
100 North Senate Avenue
Indianapolis, IN 46204

10. In the event that the monies due to IDEM pursuant to this Agreed Order are not paid on or before their Due Date, Respondent shall pay interest on the unpaid balance at the rate established by IC 24-4.6-1. The interest shall be computed as having accrued from the Due Date until the date that Respondent pays any unpaid balance. Such interest shall be payable to the "Environmental Management Special Fund," and shall be payable to IDEM in the manner specified in Paragraph 9, above.
11. Signatories to this Agreed Order certify that they are fully authorized to execute this Agreed Order and legally bind the party they represent.
12. This Agreed Order shall apply to and be binding upon Respondent successors and assigns. Respondent shall provide a copy of this Agreed Order, if in force, to any subsequent owners, successors, or assigns before ownership rights are transferred.
13. No change in ownership, corporate, or partnership status of Respondent shall in any way alter its status or responsibilities under this Agreed Order.
14. Respondent shall ensure that all contractors, firms, and other persons performing work under this Agreed Order comply with the terms of this Agreed Order.
15. In the event that any terms of this Agreed Order are found to be invalid, the remaining terms shall remain in full force and effect and shall be construed and enforced as if this Agreed Order did not contain the invalid terms.
16. This Agreed Order is not and shall not be interpreted to be a permit or a modification of an existing permit. This Agreed Order, and IDEM's review or approval of any submittal made by Respondent pursuant to this Agreed Order, shall not in any way relieve Respondent of the obligation to comply with the requirements of any applicable permits or any applicable Federal or State laws or regulations.

17. Complainant does not, by its approval of this Agreed Order, warrant or aver in any manner that Respondent's compliance with any aspect of this Agreed Order will result in compliance with the provisions of any permit, order, or any applicable Federal or State law or regulation. Additionally, IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of Respondent's efforts to comply with this Agreed Order.
18. Nothing in this Agreed Order shall prevent or limit IDEM's rights to obtain penalties or injunctive relief under any applicable Federal or State law or regulation, except that IDEM may not, and hereby waives its right to, seek additional civil penalties for the violations specified in the NOV.
19. Nothing in this Agreed Order shall prevent IDEM or anyone acting on its behalf from communicating with the U.S. Environmental Protection Agency (U.S. EPA) or any other agency or entity about any matters relating to this enforcement action. IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of such communications with the U.S. EPA or any other agency or entity.
20. This Agreed Order shall remain in effect until IDEM issues a Resolution of Case letter to Respondent.

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TECHNICAL RECOMMENDATION:
Department of Environmental Management

By: Jennifer Reno
Jennifer Reno, Chief
Land Enforcement Section
Compliance Branch
Office of Land Quality

Date: 12/20/2021

RESPONDENT:

By: _____
Printed: _____
Date: _____

COUNSEL FOR RESPONDENT:

By: _____
Printed: _____
Date: _____

**COUNSEL FOR INDIANA FINANCE
AUTHORITY:**

By: _____
Director and General Counsel
Date: _____

**COUNSEL &/OR AUTHORIZED:
REPRESENTATIVE:
For the City of Indianapolis**

By: _____
Date: _____

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT THIS _____ DAY OF _____, 20_____

For the Commissioner:

Peggy Dorsey
Assistant Commissioner
Office of Land Quality