

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD  
CHARLESTON, WEST VIRGINIA**

**HERITAGE-CRYSTAL CLEAN, LLC,**

**APPELLANT,**

**v.**

**Appeal No. 07-27-EQB**

**LISA A. MCCLUNG, DIRECTOR, DIVISION OF  
WATER AND WASTE MANAGEMENT, DEPARTMENT  
OF ENVIRONMENTAL PROTECTION,**

**APPELLEE.**

**ORDER**

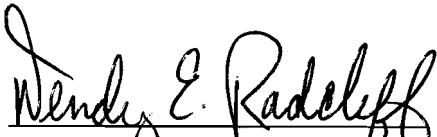
Appeal No. 07-24-EQB was filed with the West Virginia Environmental Quality Board ("Board") on December 5, 2007. In accordance with West Virginia Code §22B-1-7(f), an evidentiary hearing concerning the matters set forth in the Notice of Appeal filed in Appeal No. 07-27-EQB was scheduled for December 11, 2008.

On December 2, 2008, the parties filed with the Board a Consent Judgment and request this appeal be dismissed.

Finding it proper to do so, the Board does hereby dismiss this appeal from the docket. The Consent Judgment entered by the parties is attached and incorporated as if fully stated herein.

It is so **ORDERED** and Entered this 19<sup>th</sup> day of December, 2008.

**Environmental Quality Board**

*for*   
Dr. Edward Snyder, Chairperson

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD  
CHARLESTON, WV**

**HERITAGE-CRYSTAL CLEAN, LLC,**

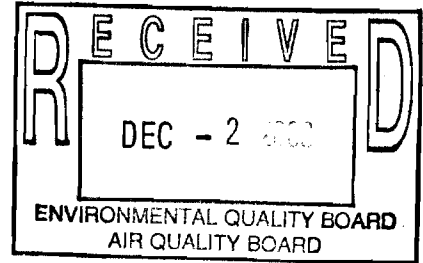
**APPELLANT,**

v.

**Appeal No. 07-27-EQB**

**LISA MCCLUNG, DIRECTOR,  
DIVISION OF WATER AND WASTE  
MANAGEMENT, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,**

**APPELLEE.**



**CONSENT JUDGMENT**

**NOW COMES** the Appellant, Heritage-Crystal Clean, LLC (“Appellant”) by and through its attorney, Philip L. Comella, Seyfarth Shaw LLP, and the Appellee, Lisa McClung, Director, Division of Water and Waste Management (“Appellee” or “WVDEP”) by and through Mark J. Rudolph, Office of Legal Services, Department of Environmental Protection and hereby file this Consent Judgment and request the Honorable Board to enter a order, judgment and decree, that states, as follows:

**WHEREAS,** Appellee issued an informal hearing decision on or about November 1, 2007 which was received by the Appellant on November 5, 2007;

**WHEREAS,** Appellant appealed the informal hearing decision to the Environmental Quality Board on or about December 5, 2007;

**WHEREAS,** the parties have worked to resolve this matter and have come to an agreement to settle this matter without the need for any long and/or complicated legal hearing(s); and,

**WHEREAS,** all legal issues associated with the appeal have been addressed in the attached Secondary Containment Equivalency Plan (Exhibit 1) which is attached hereto and incorporated as if

fully set forth herein, except a certain Engineering Plan related to surface water flow, volume analysis and berming, which will be addressed as set forth below.

**NOW THEREFORE**, with full consent and understanding of the parties as to the ramifications of this Consent Judgment, it is hereby **ORDERED, ADJUDGED and DECREED** that:

1. Appellant, Heritage Crystal Clean LLC hereby agrees to perform all acts necessary and otherwise abide by the attached Secondary Containment Equivalency Plan (Exhibit 1).
2. Appellant agrees to conduct an Engineering Study of surface water flows, volume characteristics, and containment technologies in order to minimize the impact of potential spills from the truck-to-rail operations. The Engineering Study, including recommended action items, shall be completed within sixty (60) days of the entry date of this order and submitted to the WVDEP for approval. Any action item determined to be necessary to improve the site to minimize the impact from potential spills shall be completed within 6 months of the approved Engineering Study. If the parties cannot come to an agreement on the recommended action items, either side may petition the Board for reinstatement of this appeal. If Appellant is denied right of access or develops other similar issues of concern, it agrees to notify WVDEP and provide contact information.
3. Appellant agrees to pay a civil penalty in the amount of \$7,166 to the "West Virginia Department of Environmental Protection" c/o Environmental Enforcement, 601 57<sup>th</sup> Street SE, Charleston, WV 25301., but such payment shall not be construed as an admission of liability.

4. Except for possible petitions for reinstatement for which this Board retains its rights to assert jurisdiction, this matter may be dismissed from the docket of the Environmental Quality Board, with each side to bear its own costs and attorneys fees.

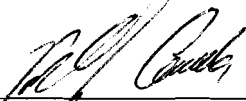
Respectfully submitted,  
**LISA MCCLUNG, DIRECTOR, DIVISION OF  
WATER AND WASTE MANAGEMENT,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION,**  
By Counsel

**HERITAGE-CRYSTAL CLEAN, LLC,**  
By Counsel



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MARK J. RUDOLPH SENIOR COUNSEL  
WVSB#6183  
Office of Legal Services  
WV Department of Environmental Protection  
601 57<sup>th</sup> Street, SE  
Charleston, WV 25304



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131 S. Dearborn, Suite 2400  
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**Containment Plan  
Par Industrial Park, Nitro WV Rail Spur**

Heritage-Crystal Clean transfers used non-hazardous oily water, used oil, and other non-hazardous waste from route collection trucks to rail cars. Once the rail cars are full and any additional required sampling and analysis is complete, the rail car is buttoned up and the railroad is contacted for transportation of the rail car to a recycling facility (oily water) or for off-site sale (oil). Two rail cars are actively used at one time. One for oil and one for the oily water / non-hazardous wastes.

This containment plan combines a physical containment system specially designed for rail car spurs with enhanced operational controls to protect against spills and over-filling of the rail car.

**PHYSICAL CONTROLS:**

**Track Pans:** Crystal Clean will install a track pan containment system under each of the rail cars that are in active use. The pans fold out during truck-to-rail car transfer. When not in use, the track pan "wings" fold inward.

**Asphalt:** There is asphalt between the rails. There is asphalt in the area where the oil and vacuum route trucks park while off-loading. Asphalt on the leased parcel will be maintained in a condition to minimize potential infiltration in the case of a spill from the transfer activities.

**No Storm Drains:** There are no storm drains in the immediate vicinity of the rail cars. However, there are drains back towards the large warehouse building near the back of the property. Crystal Clean will do a review of the area to determine the direction of flow of any potentially spilled material from its operations. Any drains affected by such spills will be plugged immediately upon the discovery of the spill.

Crystal Clean will maintain rail cars containing material so each will have a lock on the bottom belly valve of the rail car plus a cap at all times.

**OPERATIONAL CONTROLS:**

Crystal Clean will make order the movement of a filled railcar within 72 hours of being filled and buttoned up. The movement of the rail car away from the site is controlled by the railroad. Crystal Clean will implement the following additional procedures:

- a. Verify that the railcar is in proper location for the transfer operation and is centered directly over the track pan.
- b. Check that the track pan has no accumulation of water. If there is water in the track pan, the water will be pumped into the oil or vacuum services truck prior to

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**EXHIBIT 1**

- c. Prior to commencing the material transfer to a railcar, the Crystal Clean employee will inspect the car's air brake hoses, couplers, wheels, and bearings, axles, cushioning units, center sills, body bolsters, center plate, and other sections of the under carriage. In particular, inspect the lowermost drain and all outlets for leakage or defects. Tighten, adjust, and repair as necessary to prevent leakage after filling the railcar with used oil. If any railcar defects cannot be rectified by Crystal Clean staff, the transfer shall be postponed until defect-free rail car can be moved over one of the two track pans.
- d. Verify that the manual hand brakes on the railcars are engaged.
- e. Check that the lock on the bottom valve is in place to assure than no vandals can open it while the car is at the facility. If no lock is in place, install one before commencing loading operation.
- f. All physical inspections will be documented in a rail inspection log kept in the storage unit with the spill response equipment.
- g. Check the listed volume on the end of the railcar and record. Compare this volume to the volume of the product in the route truck.
- h. Prior to commencing the material transfer, visually inspect all storage tank flanges, joints, connections, valves, and outlets for evidence of leaks. Repair as necessary.
- i. Prior to commencing the material transfer, visually inspect the hose from the route truck to the railcar car. Look for evidence of leaks or "wet" spots.
- j. Prior to commencing the material transfer, check that the transfer pump's electrical circuit is operating properly and that the pump switch is unobstructed should an emergency shut-down be required.
- k. Reduce the flow rate while topping off the receiving tank to provide adequate reaction time for the pump to shut down so that overflow does not occur.
- l. Do not completely fill the railcar, but leave at least 1% ullage to accommodate thermal expansion.
- m. Upon completion of the transfer operation, securely close all tank and loading valves before disconnecting the hosing.
- n. Maintain the facility lock on the bottom valve until the railcar departs. Inspect the railcar for leaks or "wet" spots prior to departure.
- o. Complete loading operation and all related paperwork.

## **INCIDENT RESPONSE**

Crystal Clean personnel are trained on DOT and RCRA requirements for handling and transporting of the waste materials. All transportation activities are conducted under a DOT Transportation Plan.

All spill events of greater than 8 ounces require reporting to a company reporting system administered by CHEMTREC. Company Environment, Health, and Safety (EHS) managers are contacted and provide direction to field personnel on how to respond to the spill.

Spill control equipment is maintained in a mobile storage unit on-site at the Nitro Rail facility. Spill control equipment minimally includes: a shovel, broom, 20 absorbent pads, two bags of loose absorbent, and 50 feet of absorbent booms. Supply inventories in the storage unit are replenished upon their use.

If a spill cannot be adequately contained or cleaned up with the equipment and procedures on site, the Crystal Clean EHS manager will immediately contact an outside emergency response spill contractor to assist in spill containment or cleanup.

Crystal Clean personnel are trained in spill prevention and control.

Crystal Clean will maintain adequate environmental insurance to cover potential off-site impacts from spills resulting from its transfer operations.