

Final – March 2026

**RESPONSE TO COMMENTS ON THE FEDERAL DRAFT PERMIT FOR
HERITAGE THERMAL SERVICES, INC. (NOW ARCWOOD
ENVIRONMENTAL – EAST LIVERPOOL INC.),
EAST LIVERPOOL, OHIO, OHD 980 613 541**

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) prepared this summary in response to the comments raised during the public comment period and at the public hearings for the draft Resource Conservation and Recovery Act (RCRA) permit (draft permit) for Heritage Thermal Services, Inc. (Heritage or HTS)¹ for the facility at 1250 Saint George Street, East Liverpool, Ohio 43920 (facility). EPA noticed the draft permit to the public on August 28, 2020, and the public comment period for the draft permit lasted from August 28, 2020 to October 16, 2020. On December 7, 2020, EPA extended the public comment period until January 20, 2021. Virtual public hearings were held on January 12, 2021, and January 14, 2021.

During the public comment period (including the extended public comment period) and the virtual public hearings, EPA received comments from local community members (some in partnership with Earthjustice and River Valley Organizing), Heritage, and Earthjustice (on behalf of Save Our County).

This response summary is organized as follows: Comments submitted by various local community citizens during the initial public comment period (from August 28, 2020 through October 16, 2020) are in Section III.A (pages 3 through 9). Comments submitted by Heritage are in Section III.B (pages 9 through 43). Comments submitted by Earthjustice on behalf of Save Our County, a local environmental group, are in Section III.C (pages 43 through 54). Comments submitted by 739 local citizens, in partnership with Earthjustice and River Valley Organizing, are in Section III.D (pages 54 through 56). Comments submitted by local citizens during the extended public comment period (from December 7, 2020 to January 20, 2021) are in Section III.E (page 56). Finally, comments submitted during the virtual public hearing held on January 14, 2021, are in Section III.F (pages 56 through 57). No one submitted comments during the virtual hearing held on January 12, 2021.

Unless otherwise noted, the comments in this Response Summary are direct quotes from the commenter. EPA's responses and any corresponding changes made to the final permit are included directly after each comment.

¹ On April 3, 2025, the facility submitted a Class 1 permit modification to update the name in its permit to reflect its legal name change to Arcwood Environmental – East Liverpool, Inc. The facility noted that this does not reflect an ownership change or change in control. EPA updated the final permit to reflect the facility's new legal name but refers to the facility as "Heritage" in this response to comments to maintain consistency between the public comments and EPA's responses.

II. OTHER CHANGES FROM DRAFT PERMIT

Heritage submitted a Class 2 Permit Modification Request on September 12, 2024, to operate a new shredder. The EPA approved and issued the permit modification, with changes, on January 22, 2025. After review of the Class 2 Permit Modification Request, the EPA determined that added changes, in the form of additional enforceable permit conditions, were necessary to ensure that HTS is operating the new shredder in the Shredder Building in compliance with 40 C.F.R. Part 264, Subparts BB and CC. The EPA approved and issued the permit modification, with changes, on January 22, 2025. Changes have been made to this permit to incorporate the changes made through the Class 2 Permit Modification.

HTS has not applied for a permit modification for three other shredders it plans to install. As discussed at Section V.A. of its 2008 Permit, those units, if installed and operated, are regulated under applicable and appropriate provisions of 40 C.F.R. Part 264, Subparts X, BB, and CC, and the facility must also request a modification to the permit to incorporate those requirements in order to handle hazardous wastes in those units.

The draft federal RCRA permit posted for public comment also included conditions pertaining to a miscellaneous unit (an extruder unit) subject to Subpart CC. EPA removed those conditions in the final permit because the facility has closed and removed that extruder unit. Heritage certified in a response to EPA that the unit had been removed from the facility, and the EPA has a copy of the Certification of Partial Closure that the facility submitted to Ohio EPA. Most changes to a closure plan, including changes in the closure schedule for a unit, require only a Class I modification. *See* 40 C.F.R. § 270.42, Appendix 1. As such, Heritage was not required to seek prior approval from EPA before removing the extruder unit. The facility provided Ohio EPA with an updated Closure Plan for the extruder unit on August 14, 2020, and Ohio EPA acknowledged the Class I Permit Modification on December 28, 2020. Although Heritage did not notify EPA directly of its plans to close the extruder unit, nor did it submit a revised Part B application to EPA at the time, it notified Ohio EPA, and there is now adequate information in the administrative record to justify removal of the permit provisions pertaining to the extruder unit. Tank PT-6, associated with the extruder, was also removed from service, and the final permit has been updated to reflect this.

The draft federal permit stated that the East Storage Area, North Storage Area, and Bulk Storage Pad Area were not RCRA-permitted units. The facility has since provided clarity on the State-permitted status and Clean Air Act Title V compliance of these units. Off-site wastes in these areas are permitted by the State and must meet the permit conditions and applicable 40 C.F.R. Part 264/265 requirements (and any State-specific conditions). The final permit reflects that off-site waste for these units also falls under a RCRA/Clean Air Act (CAA) overlap provisions exemption.

Note that the facility also stores on-site generated waste under the less-than 90-day large quantity generator storage exemption in the East, North, and Bulk Solids storage areas. On-site generated

wastes accumulated for less than 90 days are managed under 40 C.F.R. 162.17 and are not subjected to the permit, provided the permittee meets all Large Quantity Generator conditions for exemption. The conditions for a less-than 90-day exemption also allow for use of the overlap provisions in 40 C.F.R. Subpart 265 Subpart CC, but the generator 90-day exemption containers are not subject to this permit; the less-than 90-day containers are discussed in section III.D of the permit to provide clarity.

Lastly, minor language changes were made on page 18 of the permit in order to reflect a clarification made by the facility upon its technical accuracy review of the final permit draft in March 2026 that the laboratory and wastewater treatment tanks do not have off-site hazardous waste placed in them. They are still permitted to hold hazardous waste in this federal RCRA permit, consistent with the State permit. The phrase “are permitted to” was added to the sentence “The existing tanks which are permitted to process hazardous waste are specified in the following chart,” and the word “can” was inserted into each of the first two sentences after the table of tanks on page 18 of the permit. These changes ensure that the permit reads to more accurately reflect the facility’s operations without substantively changing the permit’s requirements.

III. COMMENTS AND EPA’S RESPONSES

A. The following comments were submitted by the public during the initial public comment period for the draft permit.

1. **Comment:** I am reaching out to submit my comment on the most recent permit request of Heritage Thermal Services. It is my understanding that I must be very specific and concise when submitting certain documents to one of your departments or offices in order to prevent disqualification.

As a resident of East Liverpool here in Ohio, and as someone who is face to face with the commercial hazardous waste incinerator, I am convinced that the organization granting these permits simply does not hold the health, safety or well-being of the public in very high regard. The fact that a facility’s application can even be considered with the company being in the middle of a litigation process is absolutely baffling and appalling.

I’m aware that there are differences between the duties and jurisdictions of state and federal permits, but not of the specifics. I was informed that the federal permit doesn’t pertain to a lot of what one would think it did, but learned some things when I researched it myself. One thing I discovered is that the federal RCRA permit basically regulates organic (and otherwise?) material “from cradle to grave:” not just the tanks, containers etc.

Regardless of how many folks are made aware of the opportunity and then find the time and energy to submit a comment, I can guarantee they demand and deserve to voice their concerns at a hearing or town hall meeting and receive answers. We deserve to raise our children up with a lower chance of them becoming emotionally disturbed. We deserve

allies within the branches of the EPA who are not only transparent, but also true in their mission statement as well as unmoved by money and corruption. We deserve better. How does one regulate a facility in Ohio all the way from Chicago, and furthermore, how would one monitor the air, water and/or soil quality in the event of a tank, container etc leaking?

It is with high hopes that I say that I am looking forward to seeing you or a representative at the eventual gathering to discuss these issues.

EPA Response: HTS has several different permits, issued by both the EPA and Ohio EPA, to protect human health and the environment. These separate permits are issued by different agencies to implement different statutes and regulations. Each permit has its own regulatory jurisdiction and governs specific waste operating units, as established by Congress in the underlying statutes. One such permit is a Title V Clean Air Act (or CAA) permit, which Ohio EPA issued to HTS in December 2018. The Clean Air Act permit regulates air emissions from burning hazardous wastes at HTS. A separate National Pollutant Discharge Elimination System permit, also issued by Ohio EPA, regulates the facility's wastewater.

As indicated by this commenter, HTS's RCRA permit regulates the facility's hazardous waste operations from cradle to grave in containers, tanks, incinerators, and any other units which process hazardous wastes at the site. As stated in the proposed draft federal RCRA permit, "[t]he RCRA permit consists of both this permit, which contains the effective federal RCRA permit conditions, and the effective State RCRA permit conditions issued by the State of Ohio's RCRA program authorized under 40 Code of Federal Regulations (C.F.R.) Part 271 ... Any hazardous waste activity which requires a RCRA permit and is not included in the RCRA permit is prohibited."

The facility's State RCRA permit regulates the storage and treatment of wastes in tanks, containers, incinerators, and other units, and institutes corrective action requirements. The federal RCRA permit proposed by EPA regulates volatile organic (VO) emissions from one tank and one miscellaneous unit (a shredder) and air emissions from equipment leaks.

The EPA and Ohio EPA each issue RCRA permits to this facility because the State of Ohio received authorization pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271, to administer the RCRA hazardous waste program. Ohio, therefore, is responsible for issuing permits to Ohio facilities to implement most RCRA requirements. However, because the EPA has not yet authorized the State of Ohio to administer certain RCRA regulations promulgated under the Hazardous and Solid Waste Amendments of 1984 (HSWA), including the air emission standards for process vents (40 C.F.R. Part 264, Subpart AA), for equipment leaks (40 C.F.R. Part 264, Subpart BB), for tanks, surface impoundments, and containers (40 C.F.R. Part 264, Subparts CC), and for the Subpart AA through CC requirements for Miscellaneous Units (See 40 C.F.R. Part 264, Subpart X), the EPA retains the authority to issue the RCRA permit requirements for operations at this facility which fall under these HSWA regulations. *See* 42 U.S.C. § 6926(g)(1). It is only the discrete HSWA requirements for which the State has not been

authorized that EPA administers under that Section. EPA’s permit thus only addresses applicable requirements from 40 C.F.R. Part 264 subparts AA, BB, or CC, including for miscellaneous units.

In other words, the facility has two RCRA permits, one issued by EPA for the requirements that it administers, under 42 U.S.C. § 6926(g)(1), as to the HSWA provisions for which EPA has not authorized the State; and one issued by Ohio EPA for the authorized RCRA requirements, which the State administers. Both permits are issued on a ten-year cycle. This helps to ensure that the current conditions at the facility are considered. In addition, both EPA and Ohio EPA can carry out inspections of the facility to identify violations and have enforcement authority to ensure compliance with the facility’s permits.

Ohio EPA issued the State portion of the RCRA permit, which includes requirements for waste management in tanks, containers, and incinerators, in January 2019. That portion of the permit was not appealed. EPA conducted a comprehensive site-specific risk assessment (SSRA) in 1997 for the incinerator operations. Ohio EPA reevaluated EPA’s 1997 risk assessment in 2015 and concluded that “there were no significant changes to the conclusions of the 1997 study, and that compliance with the standards of 40 CFR Part 63 Subpart EEE is protective of human health and the environment.” EPA has encouraged Ohio EPA to evaluate outdated SSRAs, has provided Ohio EPA training on evaluating previous SSRAs and performing updated SSRAs, and has offered Ohio EPA technical assistance to do so.

In addition to its RCRA permits, the facility’s Title V Clean Air Act permit (P0134491) requires compliance with the emissions standards and operating requirements in 40 C.F.R. Part 63, Subpart EEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors). Certain specific operations of the incinerator (such as the maximum temperature limit, amount of waste to be injected into the incinerator, and other specific limits) are regulated by the Clean Air Act Title V permit issued by Ohio EPA. The State RCRA permit regulates the incinerator’s operating parameters, automatic and manual waste cut-off limit, and other additional conditions that relate to the waste to be injected into the incinerator. The State RCRA permit also includes risk-based operating conditions that—based on the 1997 risk assessment—Ohio EPA determined were more stringent than the corresponding requirements specified in the Clean Air Act Title V permit that HTS is required to comply with. Inspection of the tanks for potential leaking is regulated under the RCRA State-authorized requirements that the State administers under RCRA Section 3006, 42 U.S.C. § 6926.

There are provisions within Subparts AA, BB, and CC that allow a Permittee to rely on its compliance with certain CAA regulations to meet requirements in those respective Subparts. RCRA and the CAA overlap in their regulation of organic air emissions from hazardous waste management units. To avoid duplicative regulation, the EPA established exemption and compliance election provisions within the RCRA air emission standards at subparts AA, BB and CC. Where facility air emission units or equipment are subject to both CAA and RCRA requirements, an owner/operator may take steps set forth in Subparts AA, BB, and CC to comply with CAA requirements, specifically requirements

in 40 C.F.R. parts 60, 61, and 63, in place of the RCRA requirements of Subparts AA, BB or CC under certain conditions. See October 2019 Guidance on Implementing the RCRA/CAA Air Emission Controls Compliance Exemption/Election Provisions through RCRA Permits, Office of Resource and Recovery, Office of Land and Emergency Management, U.S. EPA (the October 2019 Guidance: <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100Y4EV.PDF?Dockey=P100Y4EV.PDF>). A number of hazardous waste management units at the facility meet the requirements in subparts BB and CC for complying with organic air emission standards by complying with such CAA requirements as specified in the overlap provisions in subparts BB and CC.

The federal RCRA permit also imposes conditions on volatile organic emissions from one tank and one miscellaneous unit that are not covered by the facility's Title V Clean Air Act permit and do not qualify for the overlap exemption.

With respect to the concern raised about the facility's noncompliance, there are currently no pending RCRA enforcement actions against HTS at the state or federal level, and EPA is not aware of—nor did any public comments raise—any current or historical violations of the RCRA Subpart BB or CC regulations.

On October 18, 2018, the United States Department of Justice, acting at the request of EPA, filed a civil action against HTS for violations of its Clean Air Act Title V permit. EPA and HTS lodged a consent decree with the court to resolve the facility's pending Clean Air Act violations at the same time. The court held a hearing on April 11, 2019, and entered the consent decree on April 1, 2022. That civil action under the Clean Air Act did not allege violations of any organic emissions standards from tanks and containers, which are the subject of this proposed federal RCRA permit. It did, however, allege violations of air emissions standards in the facility's Title V permit and Clean Air Act regulations (including 40 C.F.R. Part 63, Subpart EEE). As mentioned above, based on the 1997 Risk Assessment, Ohio EPA concluded that compliance with these standards is sufficiently protective of human health and environment. Because this conclusion is premised on the facility's compliance with CAA regulations, EPA shares the commenter's concerns about the facility's history of Clean Air Act noncompliance. But “[a]lthough the Agency has the authority to deny a permit where necessary to protect human health and environment, (see 50 Fed. Reg. 28,723), the primary means of deterring future noncompliance is through enforcement.” *In re California Thermal Treatment Services, Inc.*, 3 E.A.D. 88, n. 8 (EAB, Feb. 1, 1990).

When entering the consent decree between EPA and HTS for the facility's CAA violations, the court stated:

[T]he parties are cautioned that the Court will maintain strict oversight of the implementation of the Decree. If measures outlined in the Decree are not successful in eliminating the emission violations, the parties will be before this Court immediately, and the Court will require that further remedial measures be implemented. To facilitate the Court's oversight, the parties will file status reports every 90 days following entry of the Decree. These reports will include the

progress made implementing the measures in the Decree and detail any potential or alleged emission violations that continue to occur. *United States v. Heritage Thermal Services, Inc.*, 4:18-cv-02419 (N.D. Ohio, April 1, 2022).

EPA filed a status report with the court on February 14, 2025, outlining the facility's ongoing violations of the Hazardous Waste Combustors Maximum Available Control Technology regulations at 40 C.F.R. Part 63, Subpart EEE and noting that the United States had demanded, and Heritage had paid, stipulated penalties for its violations and outlining what improvements Heritage had undertaken and would continue to implement to bring the Facility into compliance. *United States v. Heritage Thermal Services, Inc.*, 4:18-cv-02419, United States' Status Report, Docket #82, (N.D. Ohio, Feb. 14, 2025). EPA specifically noted that if properly designed, installed, and operated, this equipment is expected to reduce violations significantly.

Pursuant to the Consent Decree, the EPA continues to monitor and report to the court violations of the Hazardous Waste Combustors Maximum Available Control Technology regulations at 40 C.F.R. Part 63, Subpart EEE, and HTS "has implemented several improvements at the facility that are in addition to the measures explicitly required by the Consent Decree." *United States v. Heritage Thermal Services, Inc.*, 4:18-cv-02419, United States' Status Report, Docket #88, (N.D. Ohio, August 15, 2025).

EPA can deny a permit under the RCRA omnibus provision based on a facility's past practices when there is no set of permit conditions that could ensure protection of human health and environment. *See In re: Chemical Waste Management of Indiana, Inc.*, 6 E.A.D. 66 (E.P.A.), 1995 WL 395962. Section III.A of the federal RCRA permit requires HTS to inform EPA and the State RCRA program about any notices of alleged noncompliance with the Clean Air Act requirements at the subject tanks and containers. Section III.A of the permit further states that "[i]n the event that any of the tanks and containers specified in the Part B Permit Application are no longer equipped with and operating air emission controls ... the Subpart CC exemption shall be suspended and such tanks and/or containers shall be immediately subject to and must comply with all applicable requirements of 40 C.F.R. Part 264, Subpart CC." These conditions will allow EPA to respond to any future instances of noncompliance as necessary to ensure protection of human health and environment. HTS's noncompliance with the Clean Air Act is more appropriately addressed through ongoing enforcement than by denying this permit.

In response to the request for a public hearing submitted during the public comment period, EPA conducted a public hearing on January 12, 2021. Due to the COVID 19 pandemic, the hearing was conducted virtually. For those who had technical difficulties in participating the virtual hearing, EPA also conducted a telephone hearing on January 14, 2021. Both public hearings took place after working hours, at 5:00 pm. Consequently, the public comment period was extended until January 20, 2021. Public notice for the extension of the comment period and the planned public hearings was issued least 30 days in advance.

No changes will be made per this comment.

2. **Comment:** Is this proposal meant to cover a new permit or reissuing over an existing permit? If this is a new permit, has HTS been able to operate without a permit in the past. Given HTS’s history of controversial argumentative negotiations concerning violations its permit and operating limits, how can the US EPA say “the Company has fulfilled all requirements” and the US EPA proposes to issue a permit? In addition, please consider this letter to be a formal request that the US EPA hold a public hearing in East Liverpool, Ohio to afford local citizen an opportunity to discuss the proposed permit.

EPA Response: This is a renewal permit for HTS. The previous federal portion of the RCRA permit was issued on May 1, 2009, and expired on May 1, 2019. However, as specified in 40 C.F.R. § 270.51(a), the federal RCRA permit has been administratively continued because on October 23, 2018, HTS submitted a timely and complete Part B RCRA Permit Application to EPA. As stated in the Response #A.1., above, this proposed federal RCRA permit regulates the organic emissions from one tank and one miscellaneous unit.

The statement from the factsheet that “EPA has concluded the company has fulfilled all requirements and proposes to issue a RCRA permit to Heritage,” means that HTS fulfilled its requirement to initiate the RCRA permit renewal process by submitting a complete Part B Permit Application in a timely fashion. For a response regarding the pending Clean Air Act violations and for the request of public hearing, please see the Response #A.1, above.

No changes will be made per this comment.

3. **Comment:** Based upon the EPA notification of the availability to receive public input on the Heritage Thermal Services, Inc. Hazardous Waste Management Permit I, as a private citizen and a resident of the region near the facility, submit the following comments about this draft federal permit.

I concur with the EPA statement, reference the EPA communication dated August 2020, that the “EPA has concluded the company has fulfilled all requirements and proposes to issue a RCRA permit to Heritage”. Personally, I was involved with the facility since the initial ground-grubbing, engineering, construction, test, operations, and maintenance. At that time, I led the independent management oversight for the Owner of the work performed and managed key resources supporting this important project. In my 40+ years’ experiences working on nuclear power plants (all phases), nuclear weapons plants, petro-chemical facilities, federal spent nuclear fuel and high-level radioactive waste storage facilities, and representing major firms in their environmental remediation programs I will state inequivalently that the Heritage Thermal Services, Inc. East Liverpool facility was and is as safe as a plant in which I have been involved.

This safety record and the Heritage Thermal Services, Inc. dedication to the community are facts. The EPA is encouraged to have the facts clearly defined and based upon the

positive record of performance by Heritage Thermal Services, Inc. to reissue the East Liverpool facility's Hazardous Waste Management.

It is requested that should EPA determine to have public hearing I be notified for the ability to participate. The Heritage Thermal Services hazardous waste facility is a positive and important asset of both the East Liverpool community and to our region. It is proven to be safe and adds direct value.

EPA Response: As discussed in Response #A.1, EPA conducted two virtual public hearings (January 12 and 14, 2021). There is no need to respond to the other points in this comment.

No changes will be made per this comment.

B. HTS submitted the following comments during the public comment period.

The comments below are quoted from HTS's written comments.

- 1. Comment:** HTS requests that the permit be issued for a period of 10 years. HTS sees no reason why the term of this permit is limited to expire with the Ohio RCRA permit and believes the Federal permit should remain a separate and distinct permit to maintain consistency with past practice.

HTS recommends maintaining the 10 year expiration term.

EPA Response: EPA concurs with this comment and will modify the Expiration date to be 10 years from the effective date of the final permit.

Change: Page i: "Expiration Date: January 17, 2029" will be changed to "Expiration Date: 10 Years from the Effective Date of the Final Permit"

- 2. Comment:** Throughout the permit, there is narrative discussing the history of how USEPA arrived at this permit and the history of facility's Ohio permit. This type of narrative should be deleted from the permit. The permit should not be the historical source. The permit should only cover what is being regulated, the requirements, and allowable activities. In other words, it should mirror the standard RCRA permit format and content. This permit is being issued because the State of Ohio is not authorized to regulate three specific aspects of RCRA regulations pertaining to permitted facilities, namely 40 C.F.R. Part 264 Subparts AA, BB, and CC. HTS is concerned that the facility will have to modify both permits for any changes that only affects Ohio regulated equipment and/or activities because of the additional information, the information is duplicative, and is potentially inconsistent with other permits issued to the facility for operations and/or permitted units that are directly related to the facility operation.

Suggested Revision to Permit: Remove extraneous and unnecessary narrative throughout the permit that is not relevant to the regulatory application of 40 C.F.R. Part 264 Subparts

AA, BB, and CC. Issue the permit in the standard format and with the standard content as described above. This would result in a streamlined permit that is easier to understand and administrate for all parties.

EPA Response: Permits can have narrative explanations that provide important background related to permit requirements and issuance. The permit will be read by a wide audience that includes facility personnel, regulatory personnel, and the public for years to come. Narratives provide important context for implementing permit conditions. That context includes certain historical facts and a narrative explanation about the facility and the relationship between the state and federal RCRA permits.

No changes will be made per this comment.

3. **Comment:** There are many sections and citations specified in this permit that are regulated by Ohio EPA.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC.

EPA Response: In the “Federal RCRA (BB/CC) Permit Compliance Certification” document, dated 11/27/2018, Heritage states that “[i]n accordance with 40 CFR § 264.1064(m), HTS elects to determine compliance with subpart BB by complying with 40 CFR Part 61—National Emission Standard for Hazardous Air Pollutants, Subpart V and Subpart J.”

The above-mentioned document also states that the permitted hazardous waste tank and container units, except tank T-1, are equipped with and operating air emission controls in accordance with 40 C.F.R. Part 61, Subpart FF, as stipulated in 40 C.F.R. § 264.1080(b)(7). HTS originally elected to comply with the RCRA provisions for an extruder unit, which was permitted as a miscellaneous unit. As discussed above, HTS has since closed that unit. It is now operating a shredder, which is a miscellaneous unit. EPA added corresponding Subpart BB and Subpart CC conditions to the permit for the shredder. Section II.B includes Subpart BB requirements for equipment leaks and Section III.E includes Subpart CC requirements for this miscellaneous unit. EPA is not imposing Subpart AA requirements because the facility does not use process vents.

The federal permit acknowledges the election of HTS to comply with Clean Air Act Title V permit issued by Ohio EPA in the overlapping regulatory areas. However, this permit contains RCRA requirements for those units for which HTS elected to comply with RCRA (such as Tank T-1 and the shredder unit). Moreover, 40 C.F.R. Part 264, Subpart BB allows the facility’s owner or operator to elect to demonstrate compliance with Subpart BB via the facility’s compliance monitoring under corresponding CAA requirements. But unlike Subparts AA and CC, Subpart BB requirements are still enforceable under the RCRA permit, even if the facility elects to show compliance with Subpart BB through CAA documentation requirements.

To the extent this comment references the standard permit conditions in Section I of the permit, those provisions are included to implement the Subpart BB and CC requirements. For example, the conditions in 40 C.F.R. § 270.30 apply to all permits.

No changes will be made per this comment.

4. **Comment:** The permit language established within many sections is inconsistent with regulatory requirements with additions and/or omissions related to the regulatory standards. This is particularly noticeable with additions and omissions within boilerplate language required at 40 C.F.R. Part 270.30 where conditions to all permits expressly are required or incorporated by reference by citation. In other instances, there are conditions in the permit that omit alternate means of compliance or details that classify a situation. This may have the unintended effect of, for example, foreclosing alternate means of compliance or critical details related to applicability or relevance.

Suggestion: If it is necessary to cite a regulatory provision in the permit, either include the language verbatim or merely include the regulatory citation. These instances are identified in various comments below.

EPA Response: This comment describes a general concern and is followed by more specific comments below. See EPA’s responses to the following comments: #B. 12, 15, 17–24, 26, and 40, below.

No changes will be made per this comment.

5. **Comment:** This permit includes generator activities, which are exempt and are authorized/regulated by the State Permit.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC.

EPA Response: If a hazardous waste unit stores the waste less than 90 days, then the unit is exempt from permitting, but the unit still must comply with 40 C.F.R. Part 265, Subpart CC requirements. See EPA’s responses to the Comments #B.55 and #B.68, below, for more detail.

No changes will be made per this comment.

6. **Comment:** Requirements for same equipment are repeated several places with slight variation in the applicable language. This unnecessary redundancy can lead to confusion on the part of the permittee and agency as to which requirement must be followed. In addition, requirements for equipment is not in any specific location causing readers to have to piece together all the requirement for the piece of equipment by manually cross-referencing throughout the document.

Suggestion: See #B.4., above.

EPA Response: EPA has added a table in Section III.G to the final federal permit to clarify the requirements for each piece of equipment.

7. **Comment:** This permit states which regulations the Permittee must comply. The permit should not dictate the applicable level of the containers and tanks. That is for the Permittee to determine based on current operations. The current Federal permit does not dictate the unit levels but relies on the Permittee to make the determination. It should remain as such.

EPA Response: RCRA hazardous waste treatment, storage, or disposal facility Permits are written to regulate units with the facility-specific applicable regulations. The applicable regulations to the unit operated at the facility (i.e., the specific level of tanks and containers under Subpart CC regulations) are determined based on the documents in the administrative record (including the Part B Application). More precise permit conditions, rather than general conditions, help not only the facility to comply with the permit requirements, but also the enforcement staff who inspect and determine the compliance status of the facility with these requirements. To ensure the permittee is complying with the applicable permitting requirements, EPA must be made aware of any changes to its operations. Using more general conditions, as suggested by the permittee, without mentioning the specific level of the tanks, and leaving that decision to the operator to determine based on day-by-day operations would create unnecessary confusion. If the facility decides to change the operational status of any tanks or containers, then the Permittee should inform the EPA of such changes and follow-up by submitting the appropriate permit modification request. The table at 40 C.F.R. 270.42 recognizes permit modifications may be needed to address, among other things, modifications of tank units, modification of tank management practices, changes in equipment, and transition to compliance with the air requirements. It further provides information on the class of modification to use. This demonstrates that information such as the applicable level of containers and tanks may appropriately be included in the permit.

As this commenter pointed out, this proposed permit has more specific conditions than the permit issued in 2009 by EPA. The 2009 federal RCRA permit, which was issued based on the Part B Application submitted at that time, does not address the RCRA/CAA regulatory exemptions for tanks. However, the 2009 permit does require the Permittee to comply with Level 2 standards for the tanks in the tank farm, and Level 1 requirements for tanks W-6, W-7, and W-8. This proposed permit, which is written based on the Part B Application dated October 2018, has more refined conditions relating to the RCRA/CAA regulatory exemption provisions for tanks. The final permit also accounts for a Class 1 Modification sent to Ohio EPA, dated December 2020, which removed the extruder unit, and a Class 2 Modification sent to EPA dated September 2024, which added the shredder unit. The next renewal permit in 10 years will also be different, as the operations of the facility and the application of the regulations change over time. It is beneficial to have tailored permit conditions that are specific to this facility.

No changes will be made per this comment.

8. **Comment:** There is no reference to the equipment regulated under 40 C.F.R. 264 Subpart BB because HTS elects compliance with 40 C.F.R. 61.

Suggestion: Remove all units and any discussion about the units that are not regulated under this permit

EPA Response: As discussed in Response #B.3., above, 40 C.F.R. Part 264, Subpart BB allows the facility's owner or operator to elect to demonstrate compliance with Subpart BB via the facility's compliance monitoring under corresponding CAA requirements. Unlike Subparts AA and CC, Subpart BB requirements are still enforceable under the RCRA permit, even if the facility elects to show compliance with Subpart BB through CAA documentation requirements.

No changes will be made per this comment.

9. **Comment:** Consent Decree (case 4:06 CV 2893) compliance requirements were removed from this permit. The consent Decree requirements remain in HTS' Title V permit and Ohio RCRA permit. This will result in HTS having two sets of requirements for the same carbon adsorption system.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC.

EPA Response: Heritage's 2008 Permit incorporated, by reference, certain provisions from a Consent Decree between EPA and Von Roll America in *United States v. Von Roll America, Inc.*, No. 4:06CV2893 (N.D. Ohio). On January 22, 2025, EPA granted Heritage's Class 2 Permit Modification Request and added additional enforceable permit conditions for the new shredder and the carbon adsorption system. These conditions ensure these units are operating in compliance with 40 C.F.R. Part 264, Subparts BB and CC; The Class 2 Modification incorporated the Consent Decree requirements referenced in the 2008 Permit, and EPA has included these provisions in the Final Permit. While the conditions added to the permit through the Class 2 modification and now reflected in Section III.E.4.e.iv of the final permit do differ from the conditions applicable to the carbon adsorption system under Section III.C.8.d of the final permit because it receives emissions from Tank T-1, the conditions in these sections do not conflict with one another. For example, carbon replacement should be done both when breakthrough occurs as described in Section III.E.iv of the permit and at regular intervals as part of routine maintenance as described in Section III.C.8.d.ii of the permit. The facility can be in compliance with both sets of carbon adsorption unit conditions simultaneously through the facility's practices for managing the carbon adsorption system as described in the permit renewal application.

Change: See Section III.E.4.e.iv of the Final Permit.

- 10. Comment:** Control devices and the closed vent system are included in this permit but also are regulated in the facility’s Title V permit. This is duplicative regulation (CAA and RCRA), potentially confusing and unnecessary.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC.

EPA Response: HTS raises this issue—that it is redundant to regulate a control device under its RCRA permit when the same control device is regulated by the CAA—several times throughout its comments.

The Permittee certified that it would comply with RCRA Subpart CC requirements for one tank (Tank T-1) and one shredder unit. For the remaining tanks, HTS certified that it will comply with the CAA.

Subpart CC, specifically 40 C.F.R. § 264.1080(b)(7), states that “[t]he requirements of [Subpart CC] do not apply to the following *waste management units* at the facility: ... A hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.” (emphasis added). A hazardous waste management unit is defined as “a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.” 40 C.F.R. § 260.10; *see also* 40 C.F.R. § 264.1081 (noting that terms used in Subpart CC shall have the meaning given to them in, among other locations, Part 260).

As such, the exemption applies to the hazardous waste management units, not to the control device directly. The carbon adsorption system is not “equipped with and operating air emission controls,” and so is not itself an exempt unit. *See* 61 Fed. Reg. 59,932, 59,938 (1996). (“The EPA has decided that the best way to eliminate any regulatory overlap is to amend the RCRA rules to exempt *units* that are using air emission controls in accordance with the requirements of applicable Clean Air Act NESHAP or NSPS regulations.”) (emphasis added). Rather, the provisions of Subpart CC that pertain to the control device do not apply to a hazardous waste unit that qualifies for the exemption in 40 C.F.R. § 264.1080(b)(7).

The exemption in 40 C.F.R. § 264.1080(b)(7) exists to prevent regulatory overlap by allowing owners and operators to certify that their equipment is equipped with CAA-compliant air emission controls. *See* 61 Fed. Reg. at 59,938. With respect to the hazardous waste management units (i.e. the tanks and their associated piping and underlying containment systems) for which HTS has certified compliance with the CAA, therefore, it does not have to comply with the requirements in Subpart CC, as laid out in

40 C.F.R. § 264.1080(b). Had HTS certified compliance with the CAA for all relevant hazardous waste management units, it would have been exempt from all Subpart CC requirements, including those that pertain to the carbon adsorption system.

But HTS certified that it would comply with RCRA Subpart CC for Tank T-1 and a shredder unit (regulated as miscellaneous unit, *see* 40 C.F.R. § 264.601) and as a result, it must comply with all of Subpart CC. This includes compliance with 40 C.F.R. § 264.1087, which institutes requirements for each “closed-vent system and control device installed and operated by the owner or operator to control air emissions in accordance with standards of [Subpart CC].” 40 C.F.R. § 264.1087. Because the carbon adsorption system controls air emissions from Tank T-1, and because HTS certified that it would comply with Subpart CC for this unit, it must also comply with the Subpart CC provisions that relate to the carbon adsorption system.

As specified in 40 C.F.R. § 264.1080(b)(7), the regulatory exemption provision applies to the regulated units such as tanks, containers, surface impoundments or miscellaneous units with air emission controls. The regulatory exemption provision does not apply directly to the control device or closed vent system. Therefore, if the control device (or the closed vent system) is controlling emissions from a RCRA-regulated unit, then the control device is regulated under RCRA even if the control device is attached to another independent unit regulated under the CAA. No changes will be made per this comment.

- 11. Comment:** Section I.E.3, Page 3, 2nd sentence states: “This permit and all conditions herein will remain in effect beyond the permit’s expiration date if you have submitted a timely, complete application (40 C.F.R. 270.10 and 270.13 through 270.29), and, through no fault of your own, the Director has not made a final determination regarding permit reissuance.” The word “complete” is not in the citations identified.

Suggestion: The permit language should be consistent with the regulation.

EPA Response: “When EPA is the permit-issuing authority, the conditions of an expired permit continue in force under 5 U.S.C. 558(c) until the effective date of a new permit (see § 124.15) if: (1) The permittee has submitted a timely application under § 270.14 and the applicable sections in §§ 270.15 through 270.29 *which is a complete* (under § 270.10(c)) application for a new permit; and (2) The Regional Administrator through no fault of the permittee, does not issue a new permit with an effective date under § 124.15 on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).” 40 C.F.R § 270.51(a) (emphasis added). The Permit requirement stems from 40 C.F.R. § 270.51, which refers to an application which is a complete “(under § 270.10(c)).” 40 C.F.R. § 270.10(c) discusses completeness. The timely submittal of a complete application is a pre-requisite for the expiring permit to be administratively continued.

No changes will be made per this comment.

- 12. Comment:** Section I.E.7, Page 4, Last sentence is not in the regulations cited.

Suggestion: The permit language should be consistent with the regulation.

EPA Response: EPA is removing the sentence from the permit. The Paperwork Reduction Act (PRA) 44 U.S.C. §§ 3501 et seq. was enacted to minimize the paperwork burden for individuals; small businesses; educational and nonprofit institutions; federal contractors; state, local and tribal governments; and other persons resulting from the collection of information by or for the federal government. The PRA requires that agencies obtain Office of Management and Budget approval before conducting or sponsoring a collecting of information from 10 or more members of the public in a 12-month period. While there are exemptions to the Paperwork Reduction Act, such as the exemption for enforcement investigations at 44 U.S.C. § 3518(c), those exemption apply in specified circumstances, and there are also information collections in RCRA regulations that the Office of Management and Budget has approved under the PRA. The language in draft permit could have been read as suggesting an exemption would apply under all circumstances and is no longer included in the EPA’s permit template.

Change: EPA has removed the aforementioned sentence from the final permit.

13. **Comment:** Section I.E.9, Page 5: The language stated in this section is not present in 40 C.F.R. 270.30(j)(1).

Suggestion: See comment #4.

EPA Response: Section I.E.9 is an explanation of 40 C.F.R. § 270.30(j)(1) for representative sampling. It is necessary to include this section to explain how samples and measurements can be collected to represent the waste activity.

A generator can either test his or her waste or apply knowledge of the waste to determine whether the waste is hazardous. If a generator decides to test the waste, testing should be done in accordance with the test methods set forth in 40 C.F.R. Part 261, Subpart C.

For the purposes of Subpart C, a representative sample can be obtained using any of the specified methods in 40 C.F.R. Part 261, Appendix I. A representative sample means a sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

Sampling is the physical collection of a representative portion of the universe or whole of a waste or waste treatment residual. For a sample to provide meaningful data, it is imperative that it reflect the average properties of the universe from which it was obtained, that its physical and chemical integrity be maintained, and that it be analyzed pursuant to a dedicated quality assurance program. A facility can choose to use sampling methods specified in the regulations in 40 C.F.R. Part 261, Appendix I, or it may choose to petition EPA for equivalency testing and analytical methods. In particular, EPA developed SW-846 to assist the regulated community in meeting analytical responsibilities under the RCRA program. Refer to the following documents for planning

and implementing strategies for representative sampling and setting confidence levels for statistical analysis of data to determine if a waste is hazardous. *See* RCRA Waste Sampling Draft Technical Guidance Document (August 2002), available at https://www.epa.gov/sites/default/files/2015-10/documents/rwsdtg_0.pdf. *See also* ASTM Manual 42 - RCRA Waste Management: Planning, Implementation, and Assessment of Sampling Activities, a link to which can be found at <https://www.epa.gov/hw-sw846/sampling>.

No changes will be made per this comment.

- 14. Comment:** Section I.E.10, Page 5: This requirement should be specific to the equipment regulated by this permit only. Ohio EPA is the regulating agency HTS notifies when there are planned changes at the facility that require such notification.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC.

EPA Response: As stated in page i of the permit, “[s]pecifically, this permit addresses air emission standards, including monitoring and recordkeeping requirements, for equipment leaks, tanks, containers, and miscellaneous units. *See* 40 C.F.R. Part 264, Subparts BB and CC.” Therefore, Section I.E.10 (Reporting Planned Changes) is confined to the equipment and units that are subject to 40 C.F.R. Part 264, Subparts BB and CC. Any planned physical alternations or additions of the equipment and units that are subject to 40 C.F.R. Part 264 Subparts BB and CC must be reported to EPA. Section I.E.10 does not pertain to any equipment and units that are subject to the CAA requirements in 40 C.F.R. parts 60, 61, or 63 unless such alterations or additions of the equipment or units would change the regulatory compliance election or exemption status specified in 40 C.F.R. § 264.1064(m) or 40 C.F.R. § 264.1080(b)(7), respectively.

No changes will be made per this comment.

- 15. Comment:** Section I.E.12, Page 6: The regulatory citation stated in the draft permit is for “Anticipated noncompliance” not facility modifications.

Suggestion: The permit language should include applicable citations and should be consistent with the intent of the regulation.

EPA Response: Section I.E.11 deals with the anticipated noncompliance that this comment mentions. Section I.E.12 is written to specifically apply the “anticipated noncompliance” requirement to the air pollution control device operated by the facility. Because the emissions control device is a critical component of compliance with the 40 C.F.R. Part 264, Subpart CC regulations to prevent unnecessary emission of harmful organics to the atmosphere, this condition is included to emphasize the importance of the air pollution control device. It should be noted that this permit requires compliance with the CAA permit requirements for 40 C.F.R. Part 264, Subpart CC.

No changes will be made per this comment.

- 16. Comment:** Section I.E.12, Page 6: The control devices, as specified in this section, at the HTS facility are regulated under the Title V air permit. Ohio EPA has jurisdiction over the equipment regulated under the Title V air permit and the Ohio RCRA permit. The way this section is worded makes the control devices regulated by both U.S. EPA and Ohio EPA and both the air division and the RCRA division. This creates unnecessary confusion and duplication.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC. The permit language should be consistent with the regulation. Add language that this applies to only equipment regulated by this permit.

EPA Response: Operation of the air pollution control device for the emissions from Tank T-1 and the shredder are regulated by this permit. See the Response #B.9 and 10, above, for more detail.

No changes will be made per this comment.

- 17. Comment:** Section I.E.13, Page 6: Regulations cited clearly state that the changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Director.

Suggestion: Remove 40 C.F.R. 270.42, Appendix I citation.

EPA Response: The 40 C.F.R. § 270.42, Appendix I citation was included in Section I.E.13 to show where in the regulations the referenced requirement comes from. 40 C.F.R. § 270.42(a)(2) states that “Class 1 permit modifications identified in appendix I by an asterisk may be made only with the prior written approval of the Director.” 40 C.F.R. § 270.42, Appendix I states that “Changes in ownership or operational control of a facility, provided the procedures of § 270.40(b) are followed (Appendix I (A)(7)),” are “Class 1 modifications requiring prior Agency approval.”

No changes will be made per this comment.

- 18. Comment:** Section I.E.13, page 6: “Before transferring ownership or operation you must provide a copy of the RCRA permit to the new owner or operator.” is not in the regulation.

Suggestion: The permit language should be consistent with the regulation.

EPA Response: As stated in 40 C.F.R. § 264.12(c), “the owner or operator must notify the new owner or operator in writing of the requirements of [40 C.F.R. part 264 and] part 270” before transferring ownership or operation. 40 C.F.R. § 270.30(1)(3) states that the permit is not transferrable to any person except after notice to EPA. EPA may require

modification or revocation and reissuance of the permit to change the name of the Permittee and incorporate any other requirements as may be necessary. 40 C.F.R. § 270.30(l)(3). 40 C.F.R. § 270.40(a) provides that “[a] permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under § 270.40(b) or § 270.41(b)(2)) to identify the new permittee and incorporate such other requirements as may be necessary under the appropriate Act.” The last sentence of Section I.E.13 summarizes these requirements. Providing a copy of the permit to the new owner is an easy and effective way to inform the new owner of the requirements of the permit as required by 40 C.F.R. § 264.12(c) and is consistent with the regulation.

No changes will be made per this comment.

- 19. Comment:** Section I.E.14, Page 6: Citations listed include Ohio EPA regulatory provisions, which Ohio EPA has included the facility’s Part B permit. This section should clearly identify that it is only applicable to the units regulated by this permit.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC.

EPA Response: See the Response #B.14., above.

- 20. Comment:** Section I.E.14, item b(2), Page 6: The wording from the applicable regulation that appears in the draft permit was changed and could be misinterpreted given the unnecessary change. The language “could threaten human health and/or the environment” was removed which materially changes the requirement of the citation.

Suggestion: The permit language should be consistent with the regulation.

EPA Response: EPA concurs with this comment and will modify Section I.E.14.b to be consistent with the cited regulation of 40 C.F.R. § 270.30(l)(6) as “(2) Any information of a release or discharge of hazardous waste or of a fire or explosion from the [hazardous waste management] facility, which could threaten the environment or human health outside the facility.”

Change: Section I.E.14(b): “(2) Information of a release or discharge of hazardous waste; or (3) Information of a fire or explosion from the hazardous waste management facility, which could threaten the environment or human health outside the facility. You must include the following information:” will be changed to “(2) Any information of a release or discharge of hazardous waste or of a fire or explosion from the hazardous waste management facility, which could threaten the environment or human health outside the facility. You must include the following information:”

- 21. Comment:** Section I.E.15, Page 8: Citation listed includes Ohio EPA regulatory provisions, which Ohio EPA has included the facility’s Part B permit. This section should clearly identify that it is only applicable to the units regulated by this permit.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC. If it is necessary to cite a regulatory provision in the permit, either include the language verbatim or merely include the regulatory citation.

EPA Response: As stated in the response #B.14., above, this permit specifically addresses air emission standards for equipment leaks, tanks, containers, and miscellaneous units regulated under 40 C.F.R. Part 264, Subparts BB and CC. Therefore, the requirements related to the Section I.E.15 pertain to the equipment and/or units that are subject to 40 C.F.R. Part 264, Subparts BB and CC.

No changes will be made per this comment.

- 22. Comment:** Sections I.E.16.a and I.E.16.b, page 8: Citation listed includes Ohio EPA regulatory provisions, which Ohio EPA has included the facility’s Part B permit. This section should clearly identify that it is only applicable to the units regulated by this permit.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC. If it is necessary to cite a regulatory provision in the permit, either include the language verbatim or merely include the regulatory citation.

EPA Response: See Response to Comment #B.14., above.

No changes will be made per this comment.

- 23. Comment:** Section I.E.16.a, Page 8: Citation listed includes Ohio EPA regulatory provisions, which Ohio EPA has included the facility’s Part B permit. This section should clearly identify that it is only applicable to the units regulated by this permit. In addition, the language in the draft permit varies from the regulatory language significantly changing the regulatory requirement of the citation.

- a. 40 C.F.R. 270.30(l)(11) does not state “explain in writing the circumstances of the incomplete or inaccurate submittal”.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC. If it is necessary to cite a regulatory provision in the permit, either include the language verbatim or merely include the regulatory citation.

EPA Response: For the applicability of Section I.E.16.a, see the Response to #B.14., above. For the comment regarding the requirement that the Permittee “explain in writing the circumstances of the incomplete or inaccurate submittal,” as provided in 40 C.F.R. § 270.30(h), EPA can request that the Permittee furnish any relevant information

regarding the inadequate submittal of a Part B Application to allow EPA to determine whether further actions, such as modifying, revoking and reissuing, or terminating the permit are appropriate. An explanation of the site-specific circumstances of the incomplete or inaccurate submittal contained in the Part B Application is necessary for EPA to determine appropriateness of any further actions. This requirement is consistent with the regulatory citations noted in in Section I.E.16(a): 40 C.F.R. §§ 270.30(l)(11) and 270.30(h).

No changes will be made per this comment.

24. Comment: Section I.F, Page 9: See comment #4.

EPA Response: Section I.F is consistent with the requirement specified in 40 C.F.R. § 270.30(k) which states that “[a]ll applications, reports, or information submitted to the Director shall be signed and certified (See § 270.11.)” This section reiterates that all documents that the permit requires be submitted to EPA need to be signed and be certified.

No changes will be made per this comment.

25. Comment: Section I.G, Page 9: Will it be a violation of the permit if the note is not on an envelope?

EPA Response: The referenced provision was included in Section I.G to ensure delivery and receipt of the submittals to the right recipient. It is not a violation of the permit if the envelope does not contain the specified note.

No changes will be made per this comment.

26. Comment: Section I.H, Page 9: Suggestion: If it is necessary to cite a regulatory provision in the permit, either include the language verbatim or merely include the regulatory citation.

EPA Response: The permit is written to specify the requirements to be consistent with the regulatory provisions. The permit conditions must also be easily understood by the facility, the public, and enforcement personnel, including site inspectors. Therefore, some of the conditions are written with exact language from the relevant citations, but some of other conditions include explanatory narratives to allow the reader to better understand the requirements without losing the meaning of the original provisions. Section I.H is written to clearly and concisely state the confidentiality of information provisions contained in 40 C.F.R. § 270.12.

If HTS submits any data or information pursuant to the federal permit or other actions by EPA, and if such data or information contains confidential information, HTS must specify that the submittal includes confidential information. If a claim is asserted, as set forth at 40 C.F.R. § 270.12, EPA will treat the information as confidential and will follow the procedures set out for the confidential information.

No changes will be made per this comment.

- 27. Comment:** Section I.I.1, page 10: Citations listed include Ohio EPA regulatory provisions. 40 C.F.R. 264.136 is for general waste analysis, which Ohio EPA has included the facility’s Part B permit application and permit – Section C Waste Characterization and Waste Analysis.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC.

EPA Response: The citation to 40 C.F.R. § 264.136 in this comment appears to be a typo intended to reference 40 C.F.R. § 264.13. 40 C.F.R. § 264.13, General Waste Analysis, is cited in this permit because waste analysis is an important part of complying with 40 C.F.R. Part 264, Subpart CC. As addressed in more detail in Response #B.60., below, under certain circumstances, waste analysis is a critical procedure in determining whether the unit is subject to 40 C.F.R. Part 264, Subpart CC requirements. Section III.B of the permit exempts the Tanks L-1, W-6, W-7, and W-8 from certain provisions of 40 C.F.R. Part 264, Subpart CC on the condition that these tanks contain an average VO concentration, as determined at the point of waste origination, of less than 500 ppmw. As specified in 40 C.F.R. § 264.13(b)(8), Heritage must develop the procedures and schedules for waste sampling and analysis for the exemption request. This section of the permit references the General Waste Analysis provision of 40 C.F.R. § 264.13 for this reason.

No changes will be made per this comment.

- 28. Comment:** Section I.I.2, Page 10: Citations listed include Ohio EPA regulatory provisions and are included in the State permit. In addition, the wording from the applicable regulation that appears in the draft permit was changed and could be misinterpreted given the unnecessary change. The words “off-site” and “initial” were removed from the permit language. This materially changes the applicable requirement.

- a. Removing “off-site” changes the intent of the regulation from a TSDF requirement to a generator requirement and conflicts with the generator requirements identified in 40 C.F.R. 264.262. The permit language should be consistent with the regulation as written.
- b. Removing “initial” requires HTS to maintain all incoming notifications required under 40 C.F.R. Part 268, Subpart C, not just the initial one, as allowed by the applicable regulation. This materially and adversely affects HTS’ ability to comply with the alternative One Time LDR provisions in 40 C.F.R. Part 268.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC. The permit language should be consistent with the regulation as written.

EPA Response: Section I.I.2 describes the general requirements concerning the retention of notifications submitted from generators required under 40 C.F.R. § 268.7 and the operating record requirements of 40 C.F.R. § 264.73. The detailed and specific requirements that the Permittee should comply with are contained in 40 C.F.R. §§ 268.7 and 264.73.

No changes will be made per this comment.

29. **Comment:** Section I.I.3, Page 10: There is no specific mention of “you must update it as necessary to incorporate any official permit modifications” in the applicable regulations and therefore no regulatory basis for its inclusion in this permit.

Suggestion: This requirement should be deleted from the draft permit.

EPA Response: The permit must be placed at the facility so the facility operating personnel can comply with specific permit conditions and so inspectors from regulatory agencies can review the permit at the time of the inspection. Therefore, it is important to retain a copy of the permit at the facility. Because the modifications of the permit are part of the permit, retaining an updated version with any modifications is required.

No changes will be made per this comment.

30. **Comment:** Section I.J, Page 10: See comment #3.

EPA Response: See Response #B.3., above.

No changes will be made per this comment.

31. **Comment:** Section I.J.2, Page 10: The inclusion of 266 is a new requirement that does not apply to HTS based on 40 C.F.R. 266.100(b)(1).

Suggestion: This requirement should be deleted from the draft permit.

EPA Response: EPA concurs with this comment and will modify Section I.J.2 as follows: “This permit also includes the documents attached hereto, all documents cross-referenced in these documents, and the applicable regulations contained in 40 C.F.R. Parts 124, 260, 261, 262, 264, 268, and 270, and applicable provisions of RCRA, all of which are incorporated herein by reference.”

Change: Section I.J.2: “40 C.F.R. Parts 124, 260, 261, 262, 264, 266, 268, and 270” will be changed to “40 C.F.R. Parts 124, 260, 261, 262, 264, 268, and 270.”

32. **Comment:** Section I.K, Page 11: The permit statement “You must not operate process vents at the facility as defined in 40 C.F.R. 264.103].” This is a new permit condition and misleading. This can be interpreted to mean that process vents are not allowed at the facility based on an EPA determination. However, if in the future HTS decides to

pursue installation and operation of a process vent, HTS may do so through the permitting process.

Suggestion: Please add language to clarify that process vents are allowable if properly permitted.

EPA Response: As stated in the title pages i and ii, “[a]ccording to Heritage’s RCRA Part B Permit Application, this facility currently does not operate process vents as defined in 40 C.F.R. Part 264, Subpart AA, Air Emission Standards for Process Vents. Therefore, this permit does not set forth Subpart AA requirements and the RCRA permit does not include process vents.” Because there are no conditions for the operation of the Subpart AA units set forth in the permit based on the Part B Application, the Permittee is not allowed to operate process vents. If, in the future, the Permittee decides to operate process vents, then the Permittee, as stated in Section I.B.1, can submit an appropriate permit modification request to EPA to obtain an appropriate permit to operate Subpart AA units.

No changes will be made per this comment.

- 33. Comment:** Section II, Page 11: This section is very clean and clear. This leaves no room for the permittee or other interested parties to question how the facility is complying with 40 C.F.R. 264 Subpart BB. This approach is necessary for 40 C.F.R. 264 Subpart CC as well. There are several pieces of equipment for which compliance with 264.1064(m) is not elected. Those are the only pieces of equipment that should be identified in this permit.

Suggestion: Use this same approach for Subpart CC

EPA Response: It is EPA’s understanding that HTS has elected to determine compliance with Subpart BB by documentation of compliance with 40 C.F.R. Part 61, Subparts V and J for all equipment, pursuant to 40 C.F.R. § 264.1064(m), with the exception of the Subpart BB equipment associated with the Shredder unit (added in a Class 2 modification after the draft permit was issued), for which applicable Subpart BB requirements have been added to the final permit. This is reflected in the final permit in Section II.

Unlike Section II (which relates to 40 C.F.R. Part 264, Subpart BB), Section III (which relates to 40 C.F.R. Part 264, Subpart CC) includes more diverse hazardous waste management units, regulatory requirements, and exemptions. It is important that the federal permit clarify the Subpart CC applicability status of exempt units because exemption eligibility can change depending on factors such as the VOC concentration of the hazardous waste managed in the unit or the unit’s coverage under the facility’s Title V permit. Furthermore, inclusion of Subpart CC exempt units in the permit serves to document that EPA reviewed the facility’s exemption claim and supporting documentation during the permit renewal process and made the determination that the exemption indeed applies to the unit. A table is included in Section III.G of the final permit clarifying Subpart CC applicability for each tank, container storage area, and

miscellaneous unit at the facility permitted to manage hazardous waste.

Moreover, as discussed in Response #B.3., above, 40 C.F.R. Part 264, Subpart BB allows the facility's owner or operator to elect to demonstrate compliance with Subpart BB via the facility's compliance monitoring under corresponding CAA requirements. Unlike Subparts AA and CC, Subpart BB requirements are still enforceable under the RCRA permit, even if the facility elects to show compliance with Subpart BB through CAA documentation requirements.

No changes will be made per this comment.

34. Comment: 1st Full Paragraph, Page 12: The following paragraph:

For any proposed changes of the Subpart BB Determination of Compliance, including but not limited to changes due to the amount of benzene produced or processed at the facility, you must submit a Class I permit modification request providing for the application of 40 C.F.R. Part 264, Subpart BB to such hazardous waste equipment.

This requirement should be limited strictly to how HTS determines compliance with 40 C.F.R. 264 Subpart BB. That is the basis for the permit. The amount of Benzene processed at the facility changes every year depending on customer generation rates, which, of course, is dependent on myriad of factors that are not within the control of the facility. Again, this statement could be misconstrued to imply that every time of amount of benzene produced or processed at the facility changes, HTS must apply for a Class I permit modification.

Suggestion: Requirement should read:

For any proposed changes of the Subpart BB Determination of Compliance, you must submit a Class I permit modification request providing for the application of 40 C.F.R. Part 264, Subpart BB to such hazardous waste equipment.

EPA Response: EPA concurs with this comment, in part. However, to make clear that the benzene usage exemption in the CAA regulations will not impact compliance with 40 C.F.R. Part 264, Subpart BB, the first full paragraph on page 12 will be modified to state: "For any proposed changes to the Subpart BB Determination of Compliance, including but not limited to changes due to the amount of benzene produced or processed at the facility that qualify the facility for the exemption in 40 C.F.R. § 61.110(c), you must submit a Class I permit modification request providing for the application of 40 C.F.R. Part 264, Subpart BB to such hazardous waste equipment."

40 C.F.R. § 61.110(c)(2) (Subpart J) states that "[a]ny equipment in benzene service that is located at a plant site designed to produce or use less than 1,000 megagrams (1,102 tons) of benzene per year is exempt from the requirements of § 61.112." 40 C.F.R. § 61.112 states that "[e]ach owner or operator subject to the provisions of this subpart shall comply with the requirements of subpart V of this part." 40 C.F.R. Part 61, Subpart V is titled "National Emission Standard for Equipment Leaks (Fugitive Emission Sources)." If

the facility is designed to produce or use less than 1,000 megagrams of benzene, then 40 C.F.R. Part 61, Subpart V is not applicable to the equipment which either contains or contacts a fluid (liquid or gas) that is at least 10 percent by weight as determined according to the provisions of 40 C.F.R. § 61.245. Because RCRA does not have a similar benzene exemption, to allow the permittee to utilize 40 C.F.R. § 264.1064(m), it is necessary to note that the benzene usage exemption is not applicable to RCRA.

Change: “For any proposed changes of the Subpart BB Determination of Compliance, including but not limited to changes due to the amount of benzene produced or processed at the facility, you must submit a Class I permit modification request providing for the application of 40 C.F.R. Part 264, Subpart BB to such hazardous waste equipment.” will be changed to “For any proposed changes of the Subpart BB Determination of Compliance, including but not limited to changes due to the amount of benzene produced or processed at the facility that qualify the facility for the exemption in 40 C.F.R. § 61.110(c), you must submit a Class 1 permit modification request providing for the application of 40 C.F.R. Part 264, Subpart BB to such hazardous waste equipment.” The revised language is in II.E of the final permit.

- 35. Comment:** Section III, page 12: a. Remove all State Part B Permit Application information. Placing the State permit information into the Federal permit creates unnecessary confusion.
- b. Newly constructed tanks go through the Ohio EPA permitting process. A newly constructed tank should be added to this federal permit if it determined to be subject to the federal permit because the State permits (Title V and RCRA) do not address regulatory requirement. Requiring a modification notification as a permit requirement is unnecessary since the applicable regulations already dictate if a modification is needed.

Suggestion: Add language to the permit that addresses this situation

EPA Response: As stated in Page ii of the permit, the RCRA permit consists of the effective federal RCRA permit and the effective State RCRA permit. The State RCRA permit is an integral part of the RCRA permit that the facility must comply with. Because the federal RCRA permit regulates air emissions from the units and its associated equipment permitted by the State, it is important to note the status of the State RCRA permit.

The federal permit discusses these tanks to ensure consistency with the State permit. As stated in Section III, the federal permit does not currently contain conditions that specify the air emission requirements for tanks that have not yet been constructed. If in the future, the facility constructs these tanks in accordance with procedures set forth by the State, then the facility must apply for a permit modification to add these newly constructed tanks to the federal permit.

No changes will be made per this comment.

- 36. Comment:** Section III, Page 12: L-1, W-6, W-7, and W-8 are all regulated units under the State permit. This section only should address the units that are not covered under the State Part B Permit Application or Title V Permit. In addition, the material stored in this tank would be generator activities that should not be listed in this permit. They are exempt and are authorized/regulated by the State Permit.

Suggestion: The Federal permit only should include those units not covered by the State permit and the Title V permit.

EPA Response: Heritage provided an updated certification of compliance with Clean Air Act requirements as it relates to the overlap provisions and clarified the 40 C.F.R. Part 264 Subpart CC applicability/exemption status for each tank. EPA included this information in the final permit in a table that summarizes the regulatory status of the container and tank units in regards to 40 C.F.R. 264 Subpart CC, and the table is consistent with Heritage’s recertification. EPA includes discussion of L-1, W-6, W-7, and W-8 in the permit to provide clarity regarding the 40 C.F.R. Part 264 Subpart CC applicability status of these units. It is the Subpart CC regulation at 40 C.F.R. § 264.1080(b)(7), implemented by the federal RCRA permit, that provides for the exemption for operating air emission controls in accordance with the requirements of applicable Clean Air Act regulation, so it makes sense that the federal RCRA permit discusses how that exemption applies to the units covered by the CAA requirements, consistent with the October 2019 Guidance.

Change: Section III.G, Table.

- 37. Comment:** Section III, Page 13: The information from the Facility’s State permit should be removed. There is no regulatory reason or basis to summarize the State permit within the Federal permit.

Suggestion: The Federal permit only should include those units not covered by the State permit and the Title V permit.

EPA Response: See the Responses #B.35 and 36, above.

No changes will be made per this comment.

- 38. Comment:** Section III, Page 13: The 3rd full paragraph should state with which regulations the Permittee must comply. It should not dictate the applicable level of the containers and tanks. That is for the Permittee to determine based on current operations. The current Federal permit does not dictate the unit levels but relies on the Permittee to make the determination. It should remain as such.

EPA Response: See the Response #B.7, above.

- 39. Comment:** 4th Paragraph, Page 13: The permit statement “You must not conduct a waste stabilization process, as defined in 40 C.F.R. 265.1081, in containers, tanks, and/or miscellaneous units which contain hazardous waste.” This is a new permit condition and misleading. This can be interpreted to mean that stabilization of wastes subject to the requirements of 40 C.F.R. Part 264, Subpart CC is not allowed at the facility based on an EPA determination as opposed to the Permittee does not stabilize wastes subject to the requirements. However, if in the future HTS decides to pursue such waste stabilization, HTS may do so through the permitting process. Suggest including language that clarifies this is allowable if properly permitted.

Suggestion: There is no regulatory rationale why HTS cannot conduct waste stabilization if the facility complies with applicable regulations. Add language that provides this clarification.

EPA Response: The Part B Application does not mention waste stabilization, as defined in 40 C.F.R. § 265.1081, as a treatment activity in tanks, containers and miscellaneous units. The permit conditions, therefore, were determined assuming there is no waste stabilization conducted at the facility. If the Permittee conducts waste stabilization in the applicable units, then the Part B Application must reflect that. Because waste stabilization is one criterion used to distinguish the level of a tank or container, the permit does not allow the Permittee to conduct such activity. For example, a container having a design capacity greater than 26 gallons used for a treatment of a hazardous waste by a waste stabilization process should control air emissions from the container using the Level 3 container standards. If in the future, the Permittee wants to perform such activity at the facility, then the Permittee must submit an appropriate permit modification request.

No changes will be made per this comment.

- 40. Comment:** Section III.A, Page 13: Suggestion: If it is necessary to cite a regulatory provision in the permit, either include the language verbatim or merely include the regulatory citation.

EPA Response: Section III.A includes the specific regulatory citation for the exemption (40 C.F.R. § 264.1080(b)(7)) and the language in Section III.A is consistent with that provision.

No changes will be made per this comment.

- 41. Comment:** Section III, Page 14: The historical information regarding how HTS elected to use alternate compliance should not be part of the Federal permit. It may be made part of the record, such as a FACT SHEET, but should not be included in the permit. As noted earlier in these comments, the Federal permit should not be used to relive or incorporate the history of the permit.

EPA Response: As stated in the Response #B.2., above, the permit can include not only the regulatory requirements but the historical and relevant information of the permit.

Section III.A states that the facility has elected to comply with the CAA rather than RCRA for certain tanks and containers. This statement is relevant and important to show that the Permittee will comply with the CAA, not the RCRA regulations, pursuant to the regulatory exemption provision in 40 C.F.R. § 264.1080(b)(7), and that it is certifying that each unit thus exempt from RCRA Subpart CC requirements is equipped with and operating air emission controls in accordance with the requirements of an applicable CAA regulation(s), as required by RCRA.

No changes will be made per this comment.

- 42. Comment:** 1st Full Paragraph, Page 14: Remove unnecessary wording that only refers to regulations covered by the Title V permit.

Suggestion: The Permittee's Part B Permit Application already contains a written certified statement from a responsible company official that, pursuant to 40 C.F.R. 264.1080(b)(7), containers and tanks, are equipped with and operating air emission controls in accordance with the requirements of the applicable CAA regulations under 40 C.F.R. Part 60, 61, or 63.

EPA Response: See the Response #B.41., above.

No changes will be made per this comment.

- 43. Comment:** 1st Full Paragraph, Page 14: Please correct a typographical error Sources, Subpart kb... should be Subpart Kb

EPA Response: EPA concurs with this comment and had corrected the typographical error.

Change: EPA has corrected the typographical error.

- 44. Comment:** 2nd Full Paragraph, Page 14: This paragraph should be in the introduction to Section III. to identify what is regulated by this permit.

Suggestion: Make this the introduction paragraph and remove regulatory citations that are not 40 C.F.R. 264 Subpart CC.

EPA Response: Section III.A contains the requirements for air emission standards for tanks and containers. The section begins with the language of the exemption in 40 C.F.R. § 264.1080(b)(7). The first full paragraph on page 14 of the draft permit discusses the intention of the Permittee to comply with the CAA rather than the RCRA for the tanks and containers. Because 40 C.F.R. § 264.1080(b)(7) requires certification that the unit is equipped with and operating a control device, the second paragraph discusses that the Part B application is considered a certification that the Permittee operates the control device as required by 40 C.F.R. § 264.1080(b)(7). The Part B Permit Application certifies that HTS will comply with the CAA for the applicable units, except Tank T-1 and the

shredder per 40 C.F.R. § 264.1080(b)(7). The second full paragraph and the regulatory citations therein are necessary and need not be moved to the beginning of the section.

No changes will be made per this comment.

- 45. Comment:** 3rd Full Paragraph, Page 14: HTS has elected compliance with the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations. That should be the statement incorporated here.

Suggested language: Since the Permittee certified compliance with 40 C.F.R. 264.1080(b)(7), the air emission standard requirements of Subpart CC do not apply to hazardous waste management tanks and containers at the facility other than Tank T-1.

Regarding the other tanks, the requirement should state:

All other tanks, except T-1, shall remain subject CAA (Title V permit) at all times hazardous waste is managed in the units unless the Permittee elects compliance with 40 C.F.R. 264 Subpart CC. In the event the Permittee elects compliance with compliance with 40 C.F.R. 264 Subpart CC, the Permittee must submit to EPA and the State RCRA program a Class II permit modification request providing for the formal revision of this permit to apply 40 C.F.R. Part 264, Subpart CC to those hazardous waste tanks and containers.

EPA Response: As required by 40 C.F.R. § 264.1080(b)(7), the Permittee shall control the emissions from Subpart CC-exempt units in accordance with 40 C.F.R. Parts 60, 61, or 63. Therefore it is important to note in the permit that the Permittee has an obligation to equip and operate the control device in accordance with 40 C.F.R. Parts 60, 61, or 63. This is a pre-requirement for the regulatory exemption. In accordance with 40 C.F.R. § 264.1080(b)(7), the air emission standard requirements of Subpart CC do not apply to hazardous waste management tanks and containers at the facility other than Tank T-1. Those tanks and containers are subject to the CAA, but they must be equipped with and operating air pollution controls in accordance with the requirements of 40 C.F.R. Part 60, Subpart Kb; Part 61, Subpart FF; and Part 63, Subpart DD at all times hazardous waste is managed in the units.

No changes will be made per this comment.

- 46. Comment:** Last Paragraph, Page 14: Remove this discussion on S-1 and S-2. The unit is not regulated under Subpart CC as stated.

EPA Response: This Paragraph discusses the Permittee’s certification to comply with the CAA for the S1 and S2 tanks. 40 C.F.R. § 264.1080(b)(7) states that “[f]or the purpose of complying with this paragraph, a tank for which the air emission control includes an enclosure, as opposed to a cover, must be in compliance with the enclosure and control device requirements of [40 C.F.R.] § 264.1084(i), except as provided in § 264.1082(c)(5).” The Permittee certified that it meets the exemption criteria required by 40 C.F.R. § 264.1082(c)(5) for the tanks located in an enclosure. Since the exemptions

for these units are provided through the regulations at 40 C.F.R. §§ 264.1080(b)(7) and 264.1082(c)(5) that the federal RCRA permit implements, the federal permit discusses the application of those exemptions to those units. Because tanks S1 and S2 use an enclosure rather than a cover, they must meet the criteria at 40 C.F.R. § 264.1082(c)(5) to qualify for the exemption at 40 C.F.R. § 264.1080(b)(7), by the terms of that exemption, or be required to comply with the enclosure and control device requirements of § 264.1084(i). 40 C.F.R. § 264.1082(c)(5) requires (i) the tank to be located inside an enclosure vented to a control device that is designed and operated in accordance with all applicable requirements specified under 40 CFR part 61, subpart FF for a facility at which the total annual benzene quantity from the facility waste is equal to or greater than 10 megagrams per year; (ii) the enclosure and control device serving the tank to have been installed and operated prior to November 25, 1996; and (iii) the enclosure to be designed and operated in accordance with the criteria for a permanent total enclosure as specified in “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” under 40 C.F.R. § 52.741, appendix B. It requires the owner or operator to annually perform the verification procedure for the enclosure as specified in Section 5.0 to Procedure T. Any changes of the exemption status noted in this paragraph of the permit would require a permit modification. Therefore, it is important to include this paragraph in the permit.

No changes will be made per this comment.

47. **Comment:** 1st Full Paragraph, Page 15: HTS cannot locate the regulatory basis for “You must inform the EPA Region 5 RCRA program (at the address specified in Section I.G) and the State RCRA Program, in writing, about any local, State, or federal findings or notice of alleged noncompliance with CAA requirements at the subject tanks and containers at least 30 days after your receipt of such notice of noncompliance.”

Suggestion: Please provide the regulatory citation for this requirement or remove from the permit.

EPA Response: Because RCRA exempts compliance with the RCRA regulations when the Permittee certifies that it will comply with the CAA instead, the compliance status of the CAA by the Permittee is important (40 C.F.R. § 264.1080(b)(7)). One assumption that underlies this exemption is that the facility is equipped with and operating the control device in accordance with the requirements of an applicable Clean Air Act regulation. If the facility is not complying with the CAA requirements, including the required operation and performance of the control device, the exemption would not apply. Therefore, it is important for the RCRA program to be aware of any noncompliance with the CAA. Notification of noncompliance with the CAA requirements is also consistent with the October 2019 Guidance.

No changes will be made per this comment.

48. **Comment:** 2nd Full Paragraph, Page 15: The language covers any changes to equipment that are already regulated under the Title V permit. The language in this paragraph

results in duplicative requirements for the Permittee that the promulgation of the MACT standards intended to avoid. Please refer to the attached FACT Sheet (5305W). This paragraph should only include permit conditions not covered by the Title V permit.

Suggestion: If you anticipate changing the installed air emission control equipment that would change your Subpart CC Certification, or any changes in your certification or the compliance status of the tanks and containers, you must inform the EPA Region 5 RCRA program (at the address specified in Section I.G), in writing, about the changes no later than 30 days prior to any such changes.

EPA Response: As specified in the Permit Transition: Moving from RCRA to the CAA document that Heritage references, which it attached to its public comments, the MACT standards were promulgated to avoid imposing duplicative requirements under both RCRA and the CAA, by: 1) placing the standards only in the CAA implementing regulations at 40 C.F.R. Part 63, Subpart EEE, 2) specifying that the analogous standards in the RCRA regulations no longer apply once a facility demonstrates compliance with the HWC MACT standards in Subpart EEE, and 3) requiring the HWC MACT standards to be incorporated into operating permits issued under Title V of the CAA rather than into RCRA permits.

For Subpart CC, certain facts must be documented and actions must be taken before the RCRA program can acknowledge the facility's exemption in a RCRA permit: 1) there must be an enforceable CAA requirement applicable to the subject Subpart CC units at issue, 2) the subject units must be "equipped with and operating air emission controls in accordance with" the CAA requirements, 3) the facility owner or operator must certify the CAA controls and compliance requirement for the installation and operation of the air emission control device, and 4) once the Subpart CC exemption is applied, the facility must ensure that documentation of compliance under the regulations at 40 C.F.R. Part 60, Part 61, or Part 63 be kept with or made readily available with the facility operating record. Thus, the Subpart CC exemption requires that the facility "maintain" its certification of compliance. This is consistent with the 2019 Guidance.

Moreover, the CAA allows compliance in certain circumstances through emissions averaging or "bubbling." 40 C.F.R. § 63.2 defines "emissions averaging" as "a way to comply with the emission limitations specified in a relevant standard, whereby an affected source, if allowed under a subpart of this part, may create emission credits by reducing emissions from specific points to a level below that required by the relevant standard, and those credits are used to offset emissions from points that are not controlled to the level required by the relevant standard." The term "bubbling" is used interchangeably with emissions averaging provisions. The boiler MACT (40 C.F.R. Part 63, Subpart DDDDD) is perhaps the most common example of a rule that allows emissions averaging. Others include: 40 C.F.R. Part 63, Subpart G–NESHAP from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater; and 40 C.F.R. Part 63, Subpart U–NESHAP Emissions: Group I Polymers and Resins. For an exemption to apply, the RCRA regulations make clear that each unit subject to Subpart CC (tanks, surface

impoundments, containers and miscellaneous units) must physically be equipped with and operating air emission controls in accordance with applicable CAA requirements, specifically 40 C.F.R. parts 60, 61, or 63. This means that emissions from each subject Subpart CC unit must be controlled, and so compliance with the CAA requirements through “emission averaging” or “bubbling,” or pursuant to an emissions threshold determination, without installation and operation of controls, does not suffice for RCRA.

In support, the 1996 final rule titled Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, discussing the Subpart CC overlap provision, states: “It is important to note that this exemption only applies to those units using organic air emission controls... A unit that does not use the required air emission controls but is in compliance with a NESHAP through an ‘emission averaging’ or ‘bubbling’ provision does not qualify for the exemption since EPA lacks assurance that emissions from the unit are controlled to the extent necessary to protect human health and the environment. ... Similarly, if the Clean Air Act standard for the particular unit is no control (for example, because the MACT floor for the source category is no control and the Agency decided not to apply controls more stringent than the floor), the exemption from the RCRA standards would not apply since the unit would not actually be controlled under provisions of the MACT standard.” 61 Fed. Reg. 59,932, 59,938–39 (1996).

No changes will be made per this comment.

- 49. Comment:** 2nd Full Paragraph, Page 15: If the regulation under 40 C.F.R. Part 60, Subpart Kb, Part 61, Subpart FF, and/or Part 63, Subpart DD no longer requires, on an on-going basis, operation of such equipment to achieve and maintain compliance with the CAA changes and HTS continues to comply with the regulation, how can US EPA require HTS to comply with Subpart CC if Subpart CC includes an alternative compliance method?

Suggestion: In the event that any of the tanks and containers specified in the Part B Permit Application are no longer equipped with and operating air emission controls because 40 C.F.R. Part 60, Subpart Kb, Part 61, Subpart FF, and/or Part 63, Subpart DD no longer requires, on an on-going basis, operation of such equipment to achieve and maintain compliance with the CAA, the Subpart CC exemption shall be suspended and such tanks and/or containers shall comply with all applicable requirements of 40 C.F.R. Part 264, Subpart CC.

EPA Response: As pointed out in the Response #B.48, above, the CAA includes other mechanisms to comply with these requirements. Unlike RCRA, the CAA allows the use of emission averaging or bubbling to achieve compliance. Similarly, as discussed in the Response #B.34., above, the amount of benzene the facility generates can also trigger an exemption of the relevant CAA regulations to the affected units. These exemptions do not exist under RCRA. Therefore, it is important to note that using such methods, or qualifying for an exemption from the CAA for any of the reasons specified above, does not allow one to “certify” comply with the CAA for RCRA Subpart CC purposes. This

paragraph was inserted to make clear that units complying with the CAA through one of the above methods do not satisfy the requirements laid out in the RCRA regulations, and so do not count as compliance, nor reasons to be exempted from RCRA.

No changes will be made per this comment.

- 50. Comment:** 2nd Full Paragraph, Page 15: Changing the equipment certification of compliance from Clean Air Act to RCRA certification appears to meet the criteria for a Class I modification. 40 C.F.R. 270.42 Appendix I classifies a modification where the permittee incorporates changes to conform with agency guidance or regulations as a Class I. HTS believes that this should be classified in accordance with the Appendix and not a Class II.

Suggestion: In this event, you must submit to EPA and the State RCRA modification request as specified in 40 C.F.R. 270.42 Appendix I providing for the formal revision of this permit to apply 40 C.F.R. Part 264, Subpart CC to those hazardous waste tanks and containers.

EPA Response: 40 C.F.R. § 270.42 Appendix I does not specify the type of permit modification category that applies where a permittee seeks to change the method of compliance from the CAA to RCRA. However, 40 C.F.R. § 270.42(d) addresses the intended differences between modification classes. For example, 40 C.F.R. § 270.42(d) (2)(i) specifies that Class I modifications do not apply to changes that substantially alter permit conditions. Changing the compliance status from the CAA back to the RCRA is a significant modification because the permit needs to specify the specific requirements to be complied with. This modification would also need to be reviewed by the public for any comments. Because the current permit, which went through the public comment period process, specifies that the facility will comply with the CAA for all Subpart CC units aside from Tank T-1 and the shredder, any changes of such compliance status should be reviewed by the public. A Class II permit modification is the proper modification category because a Class II modification requires the public comment period process, while a Class I modification does not. Furthermore, Appendix I to 40 C.F.R. § 270.42, at G.4. lists modification of a tank management practice as a Class 2 modification.

No changes will be made per this comment.

- 51. Comment:** Last Paragraph, Page 15: The use of the word “claims” implies uncertainty. **Suggestion:** Remove the term claims

EPA Response: EPA concurs this comment and will use “requests” instead.

Change: Page, Last Paragraph: “the Permit Application also claims a different exemption” will be changed to “the Permit Application also requests a different exemption.”.

52. Comment: Section III.B., Page16: As a point of clarification, the tanks referenced in this section of the permit are part of the air pollution control system at the facility. While identified in the OEPA permit, they are considered to be part of the closed loop system associated with the air pollution control system as opposed to tanks receiving hazardous wastes subject to permitting. In addition, annual testing has been performed for these tanks to determine whether or not the contents of the tank exceed 500 ppm VOC's. Based on testing over a period of several years, the tanks are not subject to 40 C.F.R. Part 264, Subpart CC.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC.

EPA Response: Section III.B. requirements are written based on the Part B Application which states that Tanks L-1, W-6, W-7, and W-8 receive hazardous wastes with less than 500 ppmw at the point of waste origination. If the facility currently operates these tanks to store non-hazardous waste, then the Permittee needs to modify the Part B Application. It is also noted that the State RCRA permit issued in January 2019 includes these four tanks as a part of the hazardous waste permitted tanks. Any tanks which store hazardous waste will be subject to 40 C.F.R. Part 264, Subpart CC regulations.

Section III.B discusses these four tanks, which the Part B Application indicated are hazardous waste management units exempt from certain provisions of the 40 C.F.R. Part 264, Subpart CC regulations (40 C.F.R. § 264.1082) because the tanks receive wastes less than 500 ppmw at the point of waste origination. These tanks might be connected to the air pollution control system of the facility as identified in the Ohio EPA permit. But the exemption in 40 C.F.R. § 264.1082(c) does not extend to 40 C.F.R. §§ 264.1088 (inspection and monitoring requirements), 264.1089 (recordkeeping requirements), and 264.1090 (reporting requirements). Therefore, it is important to keep Section III.B for the waste analysis, monitoring, reporting, and record keeping requirements and to make sure the requirements of Subpart CC are met.

As specified in Section III.B, for each hazardous waste placed in these Tanks (L-1, W-6, W-7, and W-8), HTS must review and update, as necessary, the determination at least once every twelve months following the date of the initial determination using the procedures specified in 40 C.F.R. §§ 264.1083(a) and 265.1084(a)(2) through (a)(4), as specified in 40 C.F.R. § 264.1082(c)(1) and 264.1083(a). HTS must perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste managed in any of these four Tanks (L-1, W-6, W-7, and W-8) to increase to a level that is equal or greater than 500 ppmw. HTS must also review and update, as necessary, determinations under 40 C.F.R. § 264.1082(c)(1) at least once every twelve months following the date of the determination, as required by 40 C.F.R. § 264.1082(c)(1). HTS must comply with all applicable recordkeeping and reporting requirements described in 40 C.F.R. § 264.1089 and § 264.1090 for Tanks L-1, W-6, W-7, and W-8.

No changes will be made per this comment.

- 53. Comment:** Section III.B., Page 16: Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC. If there is an exemption, then it is not regulated.

EPA Response: As indicated in the Response #B.52., above, even an exempt unit must comply with waste analysis, monitoring, reporting, and recordkeeping requirements.

No changes will be made per this comment.

- 54. Comment:** Section III.B., Page 16: Remove the paragraph that starts with “Among other requirements...” This is unnecessary. If this is a permit requirement, then state it as such. The permit does not need to explain how a determination was made.

EPA Response: As discussed in the Response #B.2., above, the permit can include information or statements other than the regulatory requirements. This paragraph is inserted to explain the requirements specified in 40 C.F.R. § 264.1083(a). As specified in 40 C.F.R. § 264.1082(c), waste with less than 500 ppmw at the point of waste origination is exempt from 40 C.F.R. §§ 264.1084 through 264.1087. That provision further states that “[t]he average VO concentration shall be determined using the procedures specified in 40 C.F.R. § 264.1083(a) of [Subpart CC]. The owner or operator shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous waste streams entering the unit.”

The provisions in 40 C.F.R. § 264.1083(a), which explain the analysis procedure that the facility must use for the determination, are important because Section III.B. exempts those tanks from Subpart CC regulations because the waste has VO concentrations less than 500 ppmw at the point of waste origination. This requirement is restated in Section III.B.1.

No changes will be made per this comment.

- 55. Comment:** Section III.B.2, Page 17: The material stored in this tank would be generator activities that should not be listed in this permit. They are exempt and are authorized/regulated by the State Permit.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC.

EPA Response: 40 C.F.R. Part 264, Subpart CC regulates the applicable hazardous waste units which process waste either generated on-site or received from off-site. 40 C.F.R. § 264.1080 (“The requirements of this subpart apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to either subpart I, J, or K of this part except as § 264.1 and paragraph (b) of this section provide otherwise.”). If the unit accumulates generated waste less than 90 days and meets the other conditions for the Large Quantity

Generator exemption, including complying with 40 C.F.R. Part 265, Subpart CC requirements under 40 C.F.R. § 262.17(a)(1), which was previously at 40 C.F.R. § 262.32(a)(1)), then the unit is exempt from permitting. The Part B Application indicates that these tanks store waste more than 90 days. These tanks are also permitted by the State RCRA permit. Therefore, these tanks are subject to 40 C.F.R. Part 264, Subpart CC requirements.

No changes will be made per this comment.

- 56. Comment:** Section III.B.2.a, Page 17: If a feedstream is > 500 ppmw and it is not placed into L-1, then L-1 is not subject to Tank Level 1 standards. The language should be revised to state that if it > 500 ppmw and placed into L-1, then it is subject to Tank Level 1 standards.

EPA Response: The requirement in Section III.B.2.a apply when a feedstream that exceeds an average VO concentration above 500 ppmw enters Tank L-1. A feedstream, with or without its VO concentration above 500 ppmw at the point of waste origination, that does not enter Tank L-1, does not trigger the Section III.B.2.a requirement.

Section III.B.2.a states that if any one of the feedstreams that enters Tank L-1 has its VO concentration above 500 ppmw at the point of waste origination, then the tank L-1 itself is subject to 40 C.F.R., Part 264, Subpart CC requirements.

No changes will be made per this comment.

- 57. Comment:** Section III.B.3, Page 17: The material stored in these tanks would be generator activities that should not be listed in this permit. They are exempt and are authorized/regulated by the State Permit.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC.

EPA Response: See Response #B.55., above.

No changes will be made per this comment.

- 58. Comment:** Section III.B.3, Page 17: The 12-month recertification requirement is repeated in the document. It is mentioned twice in III.B.3, for example. Place this requirement in the general section of the permit so it only needs to appear once.

EPA Response: The first paragraph in Section III.B.3 deals with the general requirement of the waste analysis and its frequency, while the second paragraph discusses the requirement when any changes occur in the waste process which would impact the profiles of the waste. The notion of “12-month recertification” was repeated in Section III.B.3 twice to emphasize the importance of such requirements. 40 C.F.R. § 264.1083, which discusses the initial determination and the new waste determination (which is

triggered by the changes of the source generating the waste stream that would be reasonably likely to impact the average VO concentrations) is subject to annual recertification requirements in 40 C.F.R. § 264.1082(c)(1).

No changes will be made per this comment.

- 59. Comment:** Section III.B.4, Page 17: The material stored in these tanks would be generator activities that should not be listed in this permit. They are exempt and are authorized/regulated by the State Permit.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC.

EPA Response: See the Response in #B.55., above. It is also noted that recordkeeping and reporting requirements are applicable to the exempted units which store the generated wastes.

No changes will be made per this comment.

- 60. Comment:** Section III.B.5, Page 17: HTS cannot locate the regulatory basis this requirement.

Suggestion: Please provide the regulatory citation for this requirement. If there is no regulatory basis, please remove from this permit.

EPA Response: EPA concurs with this comment, and the appropriate regulatory citation will be inserted in the end of Section III.B.5. The reporting requirement is discussed at 40 C.F.R. § 264.1090, and 40 C.F.R. § 270.42 discusses the permit modification procedures. These two citations will be inserted. Based on the information contained in the Part B Application, this permit exempts four Tanks (L-1, W-6, W-7, and W-8) from the Subpart CC requirements due to less than 500 ppmw of the VO concentration at the point of waste origination. Therefore, any changes of such waste analysis information could trigger the loss of the exemption status. If the facility loses the exemption status of 40 C.F.R. § 264.1082(c)(1), then the facility must comply with the Subpart CC requirements immediately, as the exemption status would no longer be applicable. Therefore, if the facility determines any changes of the waste processed in these tanks from the information contained in the Part B Application, the Permittee must inform EPA of such changes 30 days in advance. The 30-day notice requirement will enable the facility and EPA to determine the proper regulatory requirements. There is also a 15-day notice requirement, as specified in 40 C.F.R. § 264.1090, for occurrences of non-compliance.

Change: Section III.B.5, “for the application of 40 C.F.R. Part 264, Subpart CC to those hazardous waste tank(s).” will be changed to “for the application of 40 C.F.R. Part 264, Subpart CC to those hazardous waste tank(s). (40 C.F.R. § 264.1090) (40 C.F.R. § 270.42).”.

- 61. Comment:** Section III.B.5, Page 17: a. Currently, material in these four tanks has not been discarded so it is not a solid waste and therefore, not a hazardous waste. W-6, W-7, and W-8 are returned to the process from which it came in a closed loop system and never triggered a point of generation as a waste. L-1 point of generation is when HTS decides to dispose of the rinsewater in the tank. Prior to that the material entering L-1 is rinsewater from lab area cleaning, no samples or waste are dumped into laboratory sinks. Any change that could result in the VOC being > 500 ppmw will not be known prior to this point. This type of situation would occur during the annual verification.
- b. The State permit already allows these units to accept hazardous waste. That is not dependent on the VO concentration. There is no need to modify the State permit.

EPA Response: Section III.B.5 requirements for four tanks are written based on the Part B Application which states that these four tanks receive hazardous wastes with less than 500 ppmw at the point of waste origination. If the facility currently operates these tanks to store non-hazardous waste, then the Permittee needs to modify the Part B Application. It is also noted that the State RCRA permit issued in January 2019 includes these four tanks as a part of the hazardous waste permitted tanks. Any tanks which store hazardous waste will be subject to 40 C.F.R. Part 264, Subpart CC regulations. If the waste in the tanks has VO concentration less than 500 ppmw at the point of waste origination, then such unit is exempted from the Subpart CC regulations except the recordkeeping and reporting requirements and the requirements for the exemption. 40 C.F.R. § 264.1082(c)(1) only provides an exemption from those standards specified in §§ 264.1084 through 264.1087.

Section III.B.5 does not require the Permittee to modify the State RCRA permit in the case of the dismissal of the exemption status due to the VO concentration above 500 ppmw at the point of waste origination. Only modification of the federal permit is required. However, the Permittee is required to submit a federal permit modification request to the Ohio EPA, as well as EPA.

It should be noted that for the tank, which would accept multiple different waste streams, it is necessary to sample and analyze the feedstream at the waste generating point, not in the tank with merged multiple waste streams, in order to be exempted from 40 C.F.R. Part 264, Subpart CC requirements.

No changes will be made per this comment.

- 62. Comment:** Section III.C, Page 18: HTS does not store hazardous waste in T-1. This tank is permitted for the storage of hazardous waste but has not been used for the storage of hazardous waste. In addition, the permit states which level requirements the Permittee must comply. The permit should not dictate the applicable level of the containers and tanks. That is for the Permittee to determine based on current operations. The current Federal permit does not dictate the unit levels but relies on the Permittee to make the determination. It should remain as such

Suggestion: The requirement should state “if hazardous waste is stored in T-1, then the tank must comply with applicable tank standards listed in this permit.”

EPA Response: Section III.C conditions are written based on the Part B Application, which states that the T-1 tank will comply with Level 2 tank requirements. In addition, the renewed Clean Air Act Compliance Certification states that the T-1 tank is permitted to store hazardous waste, and if it does store hazardous waste, the waste will contain VOCs > 500 ppmw.

As stated in Response #B.7., above, the permit condition is written to show the facility-specific requirements for the units operated at the facility. Subpart CC conditions that are open-ended or too general, leaving the applicability up to the facility to decide based on day-by-day operations, can result in confusion for both the facility and the inspector.

No changes will be made per this comment.

- 63. Comment:** Section III.C.5, Page 19: The air emission control equipment is regulated by Ohio EPA under the Title V permit.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC.

EPA Response: See the Response #B.9–10., above.

No changes will be made per this comment.

- 64. Comment:** Section III.C.7, Page 19: The closed vent system is regulated by Ohio EPA under the Title V permit.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC.

EPA Response: See the Response #B.9–10., above. The closed vent system is treated the same as the control device, and so the relevant RCRA regulations must be complied with by the Permittee.

No changes will be made per this comment.

- 65. Comment:** Sections III.C.8.a thru III.C.8.e, Pages 20-21: The control device is regulated by Ohio EPA under the Title V permit.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC.

EPA Response: See the Response #B.9–10., above.

No changes will be made per this comment.

- 66. Comment:** Section III.C.8.a, Page 20: The carbon adsorption system is regulated by Ohio EPA under the Title V permit. And this requirement conflicts with the Title V permit and the State permit.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC.

EPA Response: See the Response #B.9–10., above.

No changes will be made per this comment.

- 67. Comment:** Section III.C.9, Page 21: The closed vent system is regulated by Ohio EPA under the Title V permit.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC.

EPA Response: See Responses #B.9–10, above.

No changes will be made per this comment.

- 68. Comment:** Section III.D.1, Pages 21-22: Only facility generated waste containers will be managed in < 90-days. These units are permitted for off-site generated waste and will be managed in compliance with the State permit. Generator activities should not be listed in this permit. They are exempt and would be authorized/regulated by the State Permit. The State is an authorized State. Please remove the discussion on its applicability from the permit.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC.

EPA Response: The facility has clarified to EPA in an updated Clean Air Act Compliance Certification that the North, East, and Bulk Solids Storage areas contain both permitted hazardous waste storage and less-than-90-day generator storage operations. The permit has been updated to reflect this and clarify that RCRA Organic Air Emissions standards for the permitted storage operations for off-site generated wastes are covered by an exemption under the RCRA and Clean Air Act Overlap Provisions, contingent on the units' compliance with the facility's Title V permit. The LQG less-than-90-day generator storage exemption is for the storage of on-site generated wastes.

The text pertaining to the less-than-90-day storage is still included in the permit to provide clarity. A unit containing hazardous waste generated by the facility that it accumulates for less than 90 days does not need a permit if it meets the conditions and requirements for a large quantity generator exemption. Section III.D.1 makes the

Permittee aware that the permitting exemption it is relying on imposes air emission requirements at 40 C.F.R. Part 265, Subpart CC (see 40 C.F.R. § 262.17(a)(1)(i) (previously located at 40 C.F.R. § 262.34(a)(1)(i))). This section of the permit acknowledges that the permit is not authorizing or imposing conditions on units that rely on the less-than-90-day exemption. It informs the permittee that such units are subject to similar conditions (as imposed by the exemption provision) and provides necessary information on what to do if the permittee no longer qualifies for the exemption.

No changes will be made per this comment.

- 69. Comment:** Section III.E, Page 22: Note that the contents of drums are hard pushed out of the drum by a hydraulic ram. Gravity may aid the flow, but a hydraulic ram is used.

EPA Response: EPA removed conditions associated with the extruder unit in the final permit because the facility has closed and removed the unit. No further changes will be made in response to this comment.

- 70. Comment:** Section III.E.2.b, Page 24: Closed vent system and control devices are regulated by Ohio EPA under the Title V permit.

Suggestion: HTS recommends this permit only include aspects not regulated under Ohio EPA – 40 C.F.R. 264 Subpart AA, Subpart BB, and Subpart CC.

EPA Response: See the Responses to #B.9 and 10, above.

No changes will be made per this comment.

- 71. Comment:** Sections III.E.2.d. – III.E.2.j, Pages 24-25: Remove references to control device and carbon adsorption system since these are regulated under CAA (Title V permit) and the State permit. See comment #3.

EPA Response: There are provisions in the regulations at 40 C.F.R. Part 264 Subparts AA, BB, and CC that provide an avenue through which the RCRA permittee can avoid duplicating requirements, but those provisions are addressed in EPA’s federal RCRA permit because Ohio has not received authorization for those provisions, which are promulgated under the HSWA amendments to RCRA. EPA has determined that these closed vent and control units should be included in the RCRA permit because, as discussed in Response #B.10, above, the regulatory exemption provision provides exemption status to the regulatory unit (such as a tank) not the vent and control device associated with the exempted unit. As mentioned previously, the extruder has been removed from the facility and the final federal permit. The shredder unit that has been added to the federal permit vents to the closed vent system and control device. The shredder and Tank T-1 are subject to 40 C.F.R. Part 264 Subpart CC under the federal permit because the facility is not claiming exemption for these units under the CAA overlap provisions. The portion of the closed vent system and control device that is

utilized by the non-exempted tank and shredder unit must therefore be addressed by the RCRA permit.

The Facility's Title V Permit requires that "The permittee shall install, calibrate, operate and maintain equipment to continuously monitor and record total hydrocarbons (THC), in units of parts per million, between the first and second carbon bed of each train of the carbon adsorption system (Inter-Box CEMS) for the purpose of determining breakthrough." EPA agrees with HTS's notion that RCRA permit conditions for the carbon adsorption system should be consistent with those in the Title V permit. Section III.E.9.e will state "The concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system must be accurately monitored with one of the following frequencies: (a) daily, or (b) an interval that is no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of 40 C.F.R. § 264.1035(b)(4)(iii)(G), whichever is longer. The carbon adsorption system must be monitored by a method appropriate for the facility that can detect carbon breakthrough. You must calibrate, inspect and maintain the monitoring device as required by the device's manufacture specifications to assure proper function. You must replace the existing carbon in the control device with fresh carbon immediately when carbon breakthrough is indicated. (40 C.F.R. §§ 264.1087(c)(3)(i) and 264.1033(h)(1))". This language ensures that the facility meets its RCRA requirements, while recognizing the importance of avoiding inconsistent overlapping regulation, to the extent possible.

72. Comment: Section III.E.2.f, Page 24: The applicable regulations do not require a specific instrument to monitor a carbon adsorption system. There is no specific mention of a required instrument in the applicable regulations and therefore no regulatory basis for its inclusion in this permit. It should be deleted from III.E.2.e.

EPA Response: EPA concurs with this comment, but EPA removed conditions associated with the extruder unit in the final permit because the facility has closed and removed the unit. Section III.E.9.e, which pertains to the shredder unit that has been added since the draft permit, will instead include a revised version of the equivalent language in light of this comment.

Change: Section III.E.9.e will not specify an instrument for monitoring the carbon adsorption system and will instead include the statement "The carbon adsorption system must be monitored by a method appropriate for the facility that can detect carbon breakthrough."

C. Earthjustice, on behalf of Save Our County, (referred to as Save Our County for conciseness and consistency) submitted the following comments during the extended public comment period. For conciseness, not all comments are included verbatim in this response, but are included in the Administrative Record in full. In addition to providing one general response, EPA has broken the narrative comments into smaller sections and addressed the comments individually.

1. General Response to Save Our County’s Comments:

EPA authorized the State of Ohio “to administer and enforce a hazardous waste management program in lieu of the Federal program under Subtitle C” of RCRA on June 30, 1989. 40 C.F.R. § 272.1800(a); *see also* 42 U.S.C. § 6926(b). In doing so, EPA recognized that there would “be a dual State/Federal regulatory program in Ohio.” Ohio: Final Authorization of State Hazardous Waste Management Program, 54 Fed. Reg. 27,170-01, 27,172 (June 28, 1989). In 1991, EPA authorized Ohio to administer certain HSWA requirements, including the omnibus provision, in lieu of the EPA. 40 C.F.R. § 272.1800(b); *see also* 56 Fed. Reg. 14,203. When authorizing the State of Ohio, EPA stated it would not issue any more new permits or new portions of permits for the provisions for which Ohio is authorized after the effective date of this authorization. EPA would, however, continue to implement and issue permits for HSWA requirements for which Ohio is not yet authorized. Ohio: Final Authorization of State Hazardous Waste Management Program Revision, 68 Fed. Reg. 3429-01.

Because EPA has not authorized Ohio to administer RCRA air emission standards for equipment leaks (40 C.F.R. Part 264, Subpart BB) and tanks, containers, and miscellaneous units (40 C.F.R. Part 264, Subpart CC), EPA is responsible for administering those requirements, including issuing relevant permits. EPA retains omnibus authority with respect to those HSWA requirements it still administers.

When delegating the authority to administer and enforce a hazardous waste management program to Ohio, EPA retained its enforcement authorities under Sections 3007 (Inspections), 3008 (Federal Enforcement), 3013 (Monitoring, Analysis, and Testing) and 7003 (Imminent Hazard) of RCRA and other federal laws and regulations. 40 C.F.R. § 272.1800(c). But enforcement is separate from permitting, and any enforcement that EPA may take pursuant to those provisions is outside the scope of this permit.

Save Our County, urges EPA to exercise its omnibus authority, pursuant to Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925(c)(3), to deny the permit renewal or impose conditions sufficient to eliminate the threat, including prohibiting Heritage from accepting PFAS-containing materials. Section 3005(c)(3) provides that “[e]ach permit issued under this section shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment.” The omnibus provision “authorize[s] the Agency to impose permit conditions beyond those mandated by the regulations, such as new or better technologies or other new requirements.” 50 Fed. Reg. 28,702, 28,723 (July 15, 1985) (citing S. Rep. No. 284, 98th Cong., 1st Sess. 31 (1983)). But Save Our County does not simply seek more stringent standards than those mandated by the regulations that EPA administers in Ohio. In asking EPA to prohibit the facility from incinerating PFAS, given the dual State/Federal role in Ohio, Save Our County asks EPA to impose a restriction that, if appropriate, should be incorporated into the Ohio EPA-issued RCRA permit.

EPA retains its omnibus authority to add permit conditions that pertain to the HSWA provisions that EPA has not authorized Ohio to administer. But as noted above, EPA

authorized Ohio to administer the permitting omnibus authority provision at 40 C.F.R. § 270.32(b)(2) in 1991. If the director of Ohio EPA concludes, based on certain factors, that compliance with Clean Air Act National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors (40 C.F.R. Part 63 subpart EEE) may not be protective of human health or the environment, Ohio EPA will require additional information or assessments necessary to determine whether additional controls are necessary to ensure such protection. *See* Ohio Admin. Code 3745-50-40(I)(1). And if the director of Ohio EPA “approves an application for a renewal permit, the director will issue the permit upon such terms and conditions as the director finds are reasonable to ensure that continued operation, maintenance, closure, and post-closure care of the hazardous waste facility are conducted in accordance with Chapter 3734 of the Revised Code and the hazardous waste rules, *and such additional terms and conditions the director determines are necessary to protect human health and the environment.*” Ohio Admin. Code 3745-50-40(D)(6) (emphasis added).

Aside from the air emission standards for equipment leaks, tanks, containers, and miscellaneous units, Ohio EPA administers the hazardous waste program for facilities in Ohio in lieu of a federal program, with federal oversight. This permit contains only requirements relevant to RCRA Subparts BB (air emission standards for equipment leaks) and CC (tanks, containers, and miscellaneous units). Ohio EPA regulates the remaining aspects of Heritage’s storage and treatment of hazardous wastes and issued the facility’s RCRA permit accordingly in January 2019.

Congress created a system in which states, once authorized, carry out hazardous waste programs, subject to federal oversight. *See* 42 U.S.C. § 6926. Under the specific facts presented in this permit renewal matter, imposing limits prohibiting the facility’s incineration of PFAS would not be an appropriate use of EPA’s permitting omnibus authority.

Specific comments and responses:

1. **Comment:** Earthjustice submits comments on behalf of Save Our County, an organization that represents the residents of East Liverpool and the surrounding areas, some of whom live less than 1,000 feet from the incinerator. While the City of East Liverpool is more than 90% white, the East End community that neighbors the incinerator is predominantly black. East Liverpool has a strikingly high incidence rate of overall cancer, according to the Ohio Department of Health. *See* Letter from Alvin D. Jackson, Ohio Dep’t of Health, to Alonzo Spencer, Save Our County (Aug. 19, 2010).

EPA Response: As discussed in the response to Comment A.1, EPA encourages Ohio EPA to evaluate outdated site-specific risk assessments. A risk evaluation should determine if compliance with the standards of 40 C.F.R. Part 63 Subpart EEE alone will not be protective of human health and the environment. An updated risk assessment would address the factors described in OAC 3745-50-40(I), including adequacy of any previously conducted risk assessment; identities and quantities of emissions of persistent, bioaccumulative, or toxic pollutants; and volume and types of wastes, for example wastes

containing highly toxic constituents. An updated risk assessment would also include updated emissions testing data from the facility, such as particle size distribution, metals speciation, stack gas temperature, and flow rate. For the reasons discussed in EPA’s general response to Save Our County’s comments, no changes to the permit will be made per this comment.

- 2. Comment:** Heritage has violated its Clean Air Act and RCRA permits hundreds of times, according to a recent complaint filed by DOJ.

EPA Response: As discussed in more detail in Response #A.1, there are no active RCRA enforcement actions against HTS at the state or federal level, and EPA is not aware of—nor did any public comments raise—any current or historical violations of the RCRA Subpart BB/CC regulations or the facility’s federal RCRA permit.

EPA can deny a permit under the RCRA omnibus provision based on a facility’s past practices when there is no set of permit conditions that could ensure protection of human health and environment. *See In re: Chemical Waste Management of Indiana, Inc.*, 6 E.A.D. 66, 74 (EAB 1995), 1995 WL 395962. The permit requires HTS to inform EPA and the State RCRA program about any notices of alleged noncompliance with the CAA. And the permit requires that “[i]n the event that any of the tanks and containers specified in the Part B Permit Application are no longer equipped with and operating air emission controls ... the Subpart CC exemption shall be suspended and such tanks and/or containers shall be immediately subject to and must comply with all applicable requirements of 40 C.F.R. Part 264, Subpart CC.”

Moreover, “the primary means of deterring future noncompliance is through enforcement.” *In re California Thermal Treatment Services, Inc.*, 3 E.A.D. 88, n. 8 (EAB 1990). This includes potential permit revocation proceedings if future noncompliance indicates that a facility “cannot or will not operate the incinerator in a manner protective of human health and the environment.” *Id.* HTS’s history of CAA noncompliance, however, is better addressed through the CAA enforcement action litigation than by denying this permit.

Finally, for the reasons stated in the general response to Save Our County’s comments, HTS’s history of noncompliance does not warrant adding a condition prohibiting incineration of PFAS to its federal RCRA permit, which is limited to regulating air emissions from one tank and the shredder and from equipment leaks.

No changes will be made per this comment.

- 3. Comment:** In recent years, the problems associated with the Heritage incinerator have been exacerbated by its large-scale incineration of per- and polyfluoroalkyl substances (“PFAS”), a highly toxic and persistent class of chemicals that are designed not to break down when burned. EPA has acknowledged that it does not know whether PFAS can be safely incinerated, and that additional research is needed to determine the effects of such incineration. By its own estimates, Heritage accepts more than 1,000 tons of PFAS-containing waste at its East Liverpool incinerator each year.

EPA has long known of the threats posed by the Heritage incinerator. Save Our County commented on the last federal RCRA permit renewal. EPA also told the East Liverpool City Council that it shares the council's concerns over incineration of PFAS and that it was investigating whether Heritage's permits permitted PFAS incineration. EPA has brushed aside those concerns saying Ohio is principally responsible for Heritage's RCRA permitting and that these concerns are not relevant to the federal portions of the permit.

EPA Response: For the reasons stated in EPA's general response to Save Our County's comments, any action that EPA may take with respect to the facility's incineration of PFAS-containing materials is outside of the scope of this permitting action.

No changes will be made per this comment.

- Comment:** When issuing a RCRA permit, EPA must impose conditions necessary to protect human health and environment. Here, there are additional conditions that EPA must include to do so. To the extent Ohio's RCRA permit has failed to protect human health or the environment, EPA must modify or terminate that permit. EPA's abdication of those responsibilities is unsupported by RCRA and irreconcilable with EPA's mission. We urge EPA to take this opportunity to prohibit Heritage's incineration of PFAS-containing waste and to make additional changes to the facility's draft RCRA permit.

EPA Response: As discussed in EPA's general response to Save Our County's comments, in delegating the authority to administer and enforce a hazardous waste management program to the State of Ohio, EPA retained enforcement authority under Sections 3007, 3008, 3013, and 7003 of RCRA. 40 C.F.R. § 272.1800(c). This includes the authority, pursuant to Section 3008(a), to suspend or revoke a State-issued permit by administrative order, upon notice to the State, when the permittee violates any requirement of RCRA. *See* 42 U.S.C. § 6928(a). As stated in EPA's general response to Save Our County's comments, however, any conditions pertaining to the facility's incineration of PFAS pertain to the State-issued permit. And any modification or termination of the State-issued permit is outside of the scope of this permitting action. Causes for terminating a permit or denying renewal under 40 C.F.R. § 270.43 would be based on (1) Noncompliance by the permittee with any condition of the permit, (2) a permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time, or (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination. The Facility has not violated its federal permit or misrepresented or withheld relevant facts, and the activities EPA is permitting do not endanger human health or the environment as regulated by the permit.

No changes will be made per this comment.

- Comment:** Heritage's East Liverpool facility is one of the nation's largest hazardous waste incinerators, with the capacity to process and burn approximately 60,000 tons of waste per year. Heritage has violated its Title V Clean Air Act and RCRA permits numerous times, and in October 2018, DOJ filed suit against Heritage alleging systemic

failures to comply with the Clean Air Act. Since EPA last renewed Heritage’s permit in 2009, DOJ has sued Heritage for systemic violations of its permits and Heritage disclosed that it has incinerated more than one thousand tons of PFAS-containing waste annually.

EPA Response: See Responses #A.1 and C.4, above. For the reasons stated in EPA’s general response to Save Our County’s comments, any action that EPA may take with respect to the facility’s incineration of PFAS-containing materials is outside of the scope of this permitting action.

No changes will be made per this comment.

6. **Comment:** The purpose of RCRA is to regulate hazardous waste management to minimize present and future threats to human health and environment. And to that end, the omnibus provision requires that each permit contain terms and conditions necessary to promote public health and environment. Under the omnibus provision, if the operation of a facility would have an adverse impact on the health or environment of the community, EPA must include permit conditions to ensure those impacts do not occur.

EPA Response: For the reasons stated in EPA’s general response to Save Our County’s comments, no changes will be made per this comment.

7. **Comment:** When a commenter submits a plausible claim that operation of the facility will have a disproportionate impact on a minority or low-income segment of the affected community, EPA should use its omnibus authority to analyze the impacts on that segment of the community. Heritage’s treatment, storage, and disposal of wastes containing PFAS presents a serious threat to human health and environment and would have a disproportionate impact on the largely black community surrounding the incinerator.

Because of the threat to health and environment and the disproportionate on an environmental justice community, EPA must deny the permit or impose conditions to eliminate that threat, including a prohibition on the acceptance of PFAS-containing waste.

EPA Response: For the reasons stated in EPA’s general response to Save Our County’s comments, commenters have not raised a plausible claim that air emissions from the facility’s Subpart BB equipment and CC units, as they pertain to this permit, will have a disproportionate impact on a minority or low-income community. Any action that EPA or Ohio EPA may take with respect to the facility’s incineration of PFAS-containing materials is outside of the scope of this permitting action.

No changes will be made per this comment

8. **Comment:** PFAS are a “large, complex, and ever-expanding” class of approximately 6,000 synthetic chemicals that contain fluorine atoms bonded to a carbon chain. The carbon-fluorine bond is “one of the strongest ever created,” making PFAS extremely persistent in the environment and difficult to break down or remediate. Research shows that PFAS bioaccumulate in the bodies of living organisms and are highly toxic, such that

exposure to even low levels of PFAS has been associated with increased risk of cancer and other serious health concerns. EPA has acknowledged that PFAS are difficult to break down via incineration, that it lacks data on the effects of PFAS incineration, and that it lacks measurement methodologies to reliably measure PFAS emissions.

EPA Response: For the reasons stated in EPA’s general response to Save Our County’s comments, any action that EPA may take with respect to the facility’s incineration of PFAS-containing materials is outside of the scope of this permitting action.

No changes will be made per this comment.

9. **Comment:** Given the known risks and data gaps surrounding the effectiveness of PFAS incineration, EPA has advised that interim storage may be appropriate. Yet Heritage has handled and treated more than 3,750 tons of material potentially containing PFAS in the last three years. Heritage does not track PFAS compounds, monitor PFAS emissions, or have special operating parameters to process PFAS. Heritage noted its RCRA permit does not impose such conditions. Because EPA is aware that Heritage is accepting PFAS by the ton, and neither EPA nor Heritage can ensure the facility safely processes and treats that waste, EPA must prohibit Heritage’s processing of PFAS to protect the surrounding community and the environment.

EPA Response: For the reasons stated in EPA’s general response to Save Our County’s comments, any action that EPA may take with respect to the facility’s incineration of PFAS-containing materials is outside of the scope of this permitting action.

Please note, the Toxics Release Inventory (TRI) program tracks the industrial management of toxic chemicals, including some PFAS. The National Defense Authorization Act (NDAA) required the addition of certain per- and polyfluoroalkyl substances (PFAS) to the list of chemicals covered by TRI under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). The NDAA also provided a framework for the addition of other PFAS to TRI on an annual basis. *See* Addition of Certain PFAS to the TRI by the National Defense Authorization Act (<https://www.epa.gov/toxics-release-inventory-tri-program/addition-certain-pfas-tri-national-defense-authorization-act>). For reporting years 2024 and 2025, seven and nine additional PFAS compounds were added to the TRI list respectively.

No changes will be made per this comment.

10. **Comment:** That EPA and the State of Ohio share RCRA permitting authority does not excuse EPA from exercising its responsibility under RCRA Section 3005(c)(3). First, according to Heritage, “[PFAS] are processed both through . . . tanks and our bulk solids pits in addition to containerized feed.” EPA has similarly warned that “[v]olatile PFAS releases from thermal treatment device equipment (e.g., fugitive emissions) and waste storage activities are another potential source of PFAS releases, if they are not adequately controlled.” [citing EPA, Interim Guidance on the Destruction and Disposal of Perfluoroalkyl and Polyfluoroalkyl Substances and Materials Containing Perfluoroalkyl and Polyfluoroalkyl Substances: Draft for Public Comment at 33–50 (Dec. 18, 2020)].

Tanks and surface impoundments are regulated under RCRA Part 265 Subpart CC and are thus subject to EPA’s RCRA permit.

EPA Response: The federal RCRA permit minimizes release of vapor emissions from the Subpart CC units directly to the atmosphere. The tanks, containers, and shredder unit are operated with a closed-vent system to route emissions to the control device. Any releases from these units are routed to the incinerator and/or carbon adsorption system and not emitted directly to the environment. The federal RCRA permit requires that the combustion control device reduce organic emissions vented to it by at least 95 percent by weight.

For the reasons stated in EPA’s response to comments, emissions from the incinerator to the atmosphere are regulated in the facility’s Ohio EPA RCRA and CAA permits, and any action that EPA may take with respect to the facility’s incineration of PFAS-containing materials is outside of the scope of this permitting action.

No changes will be made per this comment.

11. **Comment:** Moreover, even if Heritage’s PFAS incineration was subject to the State’s RCRA jurisdiction, EPA is still required to ensure that the State’s permit complies with RCRA and protects the surrounding community. EPA’s delegation of authority to Ohio states that “EPA retains the authority to exercise its enforcement authorities under Section 3007, 3008, 3013, and 7003 of RCRA.” 40 C.F.R. § 272.1800(c). This enforcement authority includes that power to suspend or revoke any State-issued permit, by administrative order and following notice to the State officials, where the permittee has violated any requirement of RCRA. 42 U.S.C. § 6928(a).

EPA Response: See Response #C.4 above. Any such action would be outside of the scope of this permitting matter.

No changes will be made per this comment.

12. **Comment:** RCRA requires Heritage to “design, construct, maintain and operate the facility to minimize the possibility of” unplanned releases “which could threaten human health or the environment.” Ohio EPA, Ohio Hazardous Waste Facility Installation and Operation Permit Renewal: Heritage Thermal Services, Inc. § B.1(a), OHD980613541 (Jan. 17, 2019), <http://edocpub.epa.ohio.gov/publicportal/ViewDocument.aspx?docid=979798>. EPA should immediately inform Ohio EPA that Heritage’s incineration of PFAS chemicals, which has the potential to result in the release of PFAS and other hazardous PICs, violates that requirement, and EPA should revoke or suspend Heritage’s permit if Ohio EPA does not take action to address that violation.

EPA Response: For the reasons stated in EPA’s general response to comments and Response #C.4, any action that EPA may take with respect to the facility’s incineration of PFAS-containing materials is outside of the scope of this permitting action. We also note Ohio has been authorized for the analogue to the requirement at 40 C.F.R. § 264.31 that

“Facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.” *See* Ohio Admin. Code § 3745-54-31. This requirement is already included as condition B.1.(a) of the Facility’s existing State RCRA permit, and would not be in the part of the limited federal portion of the RCRA permit EPA is issuing in this permitting action.

No changes will be made per this comment.

- 13. Comment:** That PFAS are not listed as hazardous waste does not deprive EPA of its authority to protect the public. First, RCRA Section 3005(c)(3) does not refer to hazardous waste. Just as “disposal of nonhazardous solid wastes which contribute to an imminent and substantial endangerment can still result in [RCRA] liability,” so too can the disposal of non-hazardous waste that threatens human health or the environment trigger EPA’s omnibus permitting obligations under Section 3005(c)(3).

EPA Response: For the reasons stated in EPA’s general response to Save Our County’s comments, any action that EPA may take with respect to the facility’s incineration of PFAS-containing materials, including pursuant to RCRA Section 3005(c)(3), is outside of the scope of this permitting action. This permit addresses the subpart BB requirements for equipment and the subpart CC requirements for a tank and a drum shredder at the Facility and imposes protective conditions on those units. The federal permit would require the tank and shredder to be operated with a closed-vent system and to route emissions to a control device that would reduce organic emissions vented to it by at least 95 percent by weight. EPA considers these conditions protective and did not add conditions to the federally permitted units and equipment. The State permit addresses, among other things, the incinerator, secondary containment, corrective action and the requirement that the facility be designed, constructed, maintained, and operated to minimize the possibility of release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment; and the State has been authorized for the omnibus provision. It is not within the purview of this permitting action to impose requirements on the incinerator or restrict the wastes the Facility can accept.

No changes will be made per this comment.

- 14. Comment:** Second, RCRA broadly defines “hazardous waste” to include any solid waste that “pose[s] a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.” This definition encompasses any waste that presents a substantial hazard due to its toxic characteristics. According to EPA, exposure to many PFAS chemicals presents increased risks of developmental effects to fetuses during pregnancy and infants, cancer, and liver, immune, and thyroid effects. PFAS and PFOA (both found in the firefighting foam incinerated by Heritage) have been phased out of production because of their severe health effects. The toxicity of PFOA and PFOS is not subject to serious dispute. EPA must use its RCRA authority to prohibit Heritage’s incineration of those and other toxic PFAS chemicals.

EPA Response: For the reasons stated in EPA’s general response to Save Our County’s comments, any action that EPA may take with respect to the facility’s incineration of PFAS-containing materials is outside of the scope of this permitting action. EPA notes as well that the requirements being imposed through the permit apply to units that hold hazardous waste as defined in the regulations. Permits are required for the treatment, storage or disposal of hazardous waste as identified or listed in 40 C.F.R. Part 261. See 40 C.F.R. § 270.1(c).

No changes will be made per this comment.

- 15. Comment:** 40 C.F.R. § 270.30 establishes a minimum set of requirements that “apply to all RCRA permits, and shall be incorporated into the permits either expressly or by reference.” The draft permit does not incorporate all of those requirements. EPA must add all terms required by its RCRA regulations to the draft permit.

EPA Response: 40 C.F.R. § 270.30 lists conditions that are applicable to all RCRA permits. The draft permit issued on August 24, 2020 to Heritage includes all these conditions except those in 40 C.F.R. § 270.30(j)(3), (l)(5), and (l)(7) through (l)(9). 40 C.F.R. § 270.30(l)(5), which requires reports of compliance with requirements contained in any compliance schedules in the permit, is not relevant to this permit because this permit contains no compliance schedule. 40 C.F.R. § 270.30(l)(7), Manifest Discrepancy Report; 40 C.F.R. § 270.30(l)(8), Unmanifested Waste Report; and 40 C.F.R. § 270.30(l)(9), Biennial Report, are not included in the federal RCRA permit because these conditions are related to the facility’s waste management activities and are included in the State RCRA permit issued in January 2019. 40 C.F.R. § 270.30(j)(3) is usually incorporated in the Waste Analysis Plan which is a part of the Part B Application. But to ensure the monitoring report is properly prepared, 40 C.F.R. § 270.30(j)(3) will be incorporated in the permit.

Change: Add Section I.E.9.e to state:

I.E.9.e The records for monitoring information shall include:

- (i) The date, exact place, and time of sampling or measurements;
- (ii) The individual(s) who performed the sampling or measurements;
- (iii) The date(s) analyses were performed;
- (iv) The individual(s) who performed the analyses;
- (v) The analytical techniques or methods used; and
- (vi) The results of such analyses.

- 16. Comment:** The draft permit states “[y]ou must inform the EPA Region 5 RCRA program . . . and the State RCRA Program, in writing, about any local, State, or federal findings or notice of alleged noncompliance with [Clean Air Act] requirements at the subject tanks

and containers at least 30 days after your receipt of such notice of noncompliance.” Instead of “at least 30 days,” that provision should say “no later than 30 days.”

EPA Response: EPA concurs with this comment and will change accordingly.

Change: Section III.A, end of 6th paragraph: “You must inform the EPA Region 5 RCRA program (at the address specified in Section I.G) and the State RCRA Program, in writing, about any local, State, or federal findings or notice of alleged noncompliance with CAA requirements at the subject tanks and containers at least 30 days after your receipt of such notice of noncompliance.” will be changed to “You must inform the EPA Region 5 RCRA program (at the address specified in Section I.G) and the State RCRA Program, in writing, about any local, State, or federal findings or notice of alleged noncompliance with CAA requirements at the subject tanks and containers no later than 30 days after your receipt of such notice of noncompliance.”

17. **Comment:** The provision in the Draft Permit titled “Coordination with the Clean Air Act” states “this permit does not include the requirements imposed by the Clean Air Act.” That language, which can only serve to limit EPA’s enforcement authority, is not typically included in RCRA permits, and it was not in the permits for hazardous waste incinerators in Grafton, Ohio or Sauget, Illinois. As East Liverpool deserves no less protection than those communities, the above-referenced language should be removed from the draft permit.

EPA Response:

Model permit language used by EPA for RCRA permits has been amended since the issuance of the two permits mentioned in the comment. The previous language of Section I.K, which is in the Veolia permit (Sauget, Illinois, January 2010) and the Ross permit (Grafton, Ohio, April 2014), was intended to require the permittee to comply with the applicable CAA regulations for the regulatory exemption/compliance election provisions of 40 C.F.R. Part 264, Subparts AA, BB, and CC, as stipulated in 40 C.F.R. § 264.1030(e), § 264.1064(m), and § 264.1080(b)(7). Because the Permittee elected or certified to demonstrate compliance with the CAA rather than RCRA, the applicable sections of the federal RCRA permit (Section II for Subpart BB units and Section III.A for Subpart CC units) required that the Permittee document compliance with the applicable CAA provisions.

The amended language clarifies that facilities may elect or certify to demonstrate compliance with the CAA rather than RCRA. The same was true under previous version of the model language as well. This revision does not reduce the protection of the community. Under either version of the permit condition in Section I.K., the permittee must comply with the CAA provisions required to qualify for the RCRA exemption and compliance election provisions.

No changes will be made per this comment.

18. Comment: According to EPA, “[o]ne of the common problems found onsite relating to fugitive air emissions from conservation vents on Level 1 tanks is that the vent appears to be venting all the time.” EPA thus recommends that, for RCRA Part CC permits, “the Permit Writer should require the following information be included in the Permit Application”: (1) “The manufacturer’s design specifications for the Level 1 tank that has a conservation vent and the conservation vent’s manufacturer specified set point,” and (2) “Tank design specs include the maximum working pressure.” To protect against excessive venting, EPA further recommends that the pressure at which the conservation vent will open should not be less than the maximum working design pressure of the tank, and the vacuum pressure of the conservation vent should not be less than the tank’s working vacuum pressure. While Heritage’s permit references Level 1 tanks, the foregoing information about tank design and pressure is not contained in the draft permit or in the version of Heritage’s application that has been made available online. EPA should require it to be provided and should modify the permit to ensure that conservation vents are only used when needed.

EPA Response: As stated in Section III of the federal draft permit, all tanks at the Heritage facility, except Tank T-1, are exempt from the requirements in RCRA Subpart CC because Heritage certified that they are equipped with and operating air emission controls as required by the applicable CAA regulation. *See* 40 C.F.R. § 264.1080(b)(7). For Tank T-1, Heritage chose to comply with RCRA regulations because it currently stores bulk product in Tank T-1, and not hazardous waste. However, Heritage continues to manage the tank as a hazardous waste tank and will comply with Level 2 requirements of 40 C.F.R. Part 264, Subpart CC. Tank T-1 is also equipped with and operating air emission controls. Therefore, all tanks at Heritage which would be subject to Subpart CC are equipped with and operating air emission controls (under the applicable CAA and RCRA regulations). The vapor emissions from these tanks are routed to the control device (the incinerator and carbon adsorption system). As allowed by the regulatory exemption provision of 40 C.F.R. § 264.1080(b)(7), Heritage certified that it will comply with the CAA requirements for the tanks, except Tank T-1.

Section III.B of the draft permit discusses Level 1 tanks such as Tanks L-1, W-6, W-7, and W-8. As stated in that section, these tanks are exempted from the 40 C.F.R. Part 264 Subpart CC requirements, except the recordkeeping and reporting requirements, because they contain waste with VO concentrations less than 500 ppmw at the point of waste origination. *See* 40 C.F.R. § 264.1082(c)(1). Because the tanks are exempt from 40 C.F.R. Part 264, Subpart CC, the permit does not include the recommended Level 1 information outlined in this comment.

No changes will be made per this comment.

19. Comment: Subpart BB of RCRA Part 264 regulates emissions from equipment leaks. The draft permit states that Heritage “has elected to determine compliance with” that subpart by relying on the provisions of the Clean Air Act that regulate leaks. While RCRA permits facility owners to “elect to determine compliance with [Subpart BB] . . . by documentation of compliance” with applicable Clean Air Act regulations, neither

Heritage's application nor the draft permit contain the information required to effectuate this election and to protect the public from emissions from equipment leaks. First, 40 C.F.R. § 270.25 requires, among other things, a detailed description of and locations for equipment subject to Subpart BB, as well as documentation for and the method of compliance with Subpart BB standards. The Heritage application materials available online do not contain that information.

EPA Response: The Federal RCRA (BB/CC) Permit Compliance Certification, dated November 27, 2018, and the recently updated Compliance Certification, dated December 30, 2025, which are a part of the administrative record, state that Heritage elects to determine compliance with subpart BB by complying with 40 CFR Part 61- National Emission Standards for Hazardous Air Pollutants, Subpart V and Subpart J in accordance with 40 C.F.R. § 264.1064(m). Both documents list the locations, tag numbers, and descriptions for each piece of equipment. The current Final Air Pollution Title V Permit, issued on October 29, 2024, requires Heritage to control equipment leaks from each equipment component in accordance with 40 C.F.R. § 61.242 through § 61.247. The specific test methods and procedures for the monitoring of equipment leaks are specified in 40 C.F.R. § 61.245.

No changes will be made per this comment.

- 20. Comment:** EPA also recommends that, if an applicant elects to determine compliance with Subpart BB through reference to the Clean Air Act, the draft permit should include a table specifying, among other information, the type of equipment subject to the Clean Air Act, the proportion of total organics in the hazardous waste stream, the hazardous waste state, and the specific method of compliance or applicable regulation under the Clean Air Act. The draft permit does not contain any of that information, and it also omits other provisions recommended by EPA to document the Part BB compliance election. That information and recommended language in EPA's guidance should be added to the draft permit.

EPA Response: Section II.B of the draft permit contains similar language that is referenced as an example of the above-mentioned guideline. The previous Federal RCRA (BB/CC) Permit Compliance certification dated November 27, 2018, and the updated Federal RCRA (BB/CC) Permit Compliance certification dated December 30, 2025, which are a part of the Part B Application, each contain a table with types of equipment subject to 40 C.F.R. Part 264, Subpart BB, and descriptions, locations, and tag identification numbers of the equipment. As provided in the permit, the permit is issued based on the assumption that Heritage's application is accurate and that the facility is configured, operated, and maintained as specified in the application. Heritage must inform EPA of any deviation from, or changes in, the information in its permit application.

No changes will be made per this comment.

D. Seven hundred and thirty-nine residents of East Liverpool and the surrounding area, in partnership with Earthjustice and River Valley Organizing, submitted the following comment during the extended public comment period.

1. **Comment:** The undersigned individuals submit these comments on the Environmental Protection Agency’s (“EPA’s”) draft Resource Conservation and Recovery Act (“RCRA”) permit authorizing Heritage Thermal Services, Inc. (“Heritage”) to operate a hazardous waste incinerator in East Liverpool, Ohio.

We are residents of East Liverpool and the surrounding area. For three decades, we, our families, our friends and our neighbors have suffered the impacts of Heritage’s pollution. According to the Ohio Department of Health, East Liverpool has a “strikingly high incidence rate of overall cancer.” Toxic emissions from facilities like Heritage contribute to and exacerbate the community’s increased cancer risk. To make matters worse, we know that our exposure to toxic pollution from Heritage could have been reduced had Heritage complied with its permits. Yet, a recent complaint filed by the Department of Justice alleges that Heritage has violated its Clean Air Act permit hundreds of times, releasing harmful chemicals into our surrounding community with its “systemic” violations of its permits.

In recent years, the problems associated with the Heritage incinerator have been exacerbated by its large-scale incineration of per- and polyfluoroalkyl substances (“PFAS”), a highly toxic and persistent class of chemicals. Heritage is incinerating PFAS even though EPA has acknowledged that it does not know if PFAS can be incinerated safely. By its own estimates, Heritage accepts more than 1,000 tons of PFAS-containing waste at its East Liverpool incinerator each year, yet Heritage admits that it “does not track PFAS compounds” and “does not have special operating parameters for processing PFAS.” Nearly a year ago, EPA advised the East Liverpool City Council that it “shares the council’s concern over the incinerat[ion] of PFAS waste.” However, EPA has taken no steps to protect our community from this dangerous practice.

When issuing any permit under RCRA, EPA has an obligation to impose terms and conditions “necessary to protect human health and the environment.” EPA cannot ignore the very real threats that our community faces as a result of the incineration of PFAS at Heritage, and the rampant failure of Heritage to comply with its federal permits. We urge EPA at a minimum to include terms in Heritage’s renewal RCRA permit that prohibit Heritage from incinerating PFAS-containing waste in order to protect our community from the serious threat to our health. In addition, we urge EPA to adopt stringent monitoring and reporting requirements under any renewal permit issued to Heritage so that the community can track and report any violations.

Our community is a quintessential environmental justice community, but despite promises from past administrations that they would focus on concerns of disproportionately impacted communities like East Liverpool, we have not gotten the attention or relief we need to protect our families’ health. Incoming President Biden has promised that environmental justice will be a cornerstone of his environmental agenda.

We implore the Biden Administration’s EPA to take our concerns seriously and protect us from the dangerous Heritage incinerator using its authority under RCRA and any other applicable laws.

EPA Response: Regarding the request for EPA to adopt stringent monitoring and reporting requirements, Section I.E.9 includes monitoring and records requirements and Sections I.E.14 and 15 of the permit require that the facility report to the Director any noncompliance with the permit that may endanger human health or the environment. Additionally, equipment and unit specific reporting requirements are included in sections II.D and III.F. The State permit also contains reporting requirements.

This comment otherwise contains the same comments posed in Section C, above, and the responses to Section C apply.

E. The following comments were submitted by the public for the draft permit during the extended public comment period.

1. **Comment:** I know why I am asking for a denial of this permit. It is because they have violated their RCRA and Clean Air Act permits hundreds of times over the years that they have been in operation. When one looks at the history of this hazardous waste facility they can see that HTS has impacted the health and safety of the residents of East Liverpool, Ohio and the surrounding area and the environment. In 1993, during their TRIAL BURN this facility emitted 28.6 POUNDS of mercury into our atmosphere by injecting it directly into their second combustion chamber over the course of two days. It was March and it was snowing here in the Ohio Valley. I was behind a school bus that was letting elementary age children off at their bus stops. As they got off, they lifted their heads up to catch the big fluffy snowflakes on their tongues, as children do. Days later we learned about the mercury that was put into our air and into our bodies. I will never forget that. Knowing that, the EPA permitted them to continue on to their shakedown phase. We have witnessed “pink/purple plumes”, fires and explosions, injuries and death all related to this facility.

HTS has a culture and history of non-compliance of their Title V of the Clean Air Act and RCRA permits. If that isn’t a reason to deny future permits, it should be. Yes, some parts of their permit are regulated by OHIO EPA and some by you. (Federal EPA). In October 2018, the US Department of Justice filed suit against HTS for alleged violations of YOUR part of the RCRA permit...the ones they are asking to renew. No new permit should be issued until that court case is resolved. That suit pertains directly to emissions from tanks, vents, storage areas and equipment that would be found in this very draft permit.

The east end area of East Liverpool, Ohio, where HTS is located, is a designated Environmental Justice area. The majority of people are of low income and are minorities. It is wrong for the EPA to permit HTS to operate there. One explosion alone in 2013 sent over 800 pounds of ash containing lead, thallium, arsenic, manganese, and other harmful toxins to blanket the entire neighborhood. When their incineration process is over, they release dioxin and furans that are more dangerous than the chemicals were before

incineration, out their stack 24 hours a day...every day. Enough is Enough. Deny this permit. Protect the people and environment of this area.

EPA Response: See Responses #A.1, C.1-C.4, and C.11, above.

F. The following oral comments were submitted during the virtual public hearing held on January 14, 2021.

1. **Comment:** I only have one public comment, and it's just that I think it's a shame that since before the '90s there's been public disputes about this place and higher and higher cancer rates, but yet the people are never really heard. Yes, there is progress made on different requirements, but still there's too much unknown, and it's almost too -- too scientifically technical for people to really understand what they're being exposed to environmentally. The only data that the people really get is -- is the cancer rates and the lower IQs of the schools around the area and things like that, and it does seem with, like, the Trump administration that they knocked back a lot of requirements and even the EPA's hand in things. Like, it's just concerning, and I -- at this point, considering the hearings that I've been to and the information that I know, it doesn't really seem to matter much what the people who are inflicted go through. It's just -- there's, like, 100 people that work there, but the whole town suffers. There's not a single person I know that hasn't had to deal with somebody dying from cancer or go through chemo, and it's -- I mean, it's just awful. I participate in every year's Relay for Life, and it's just -- it gets worse and worse. So that's all I have to say. I would also like to say that I -- I -- I don't think that the permit should be approved and I've never thought that it should be approved. I also forgot to add that I think there should be more repercussions than just a fine that a business like this could simply pay away. There ought to be -- there ought to be real-life consequences. Like, just like the people who die or survive cancer or mood disorders or symptoms like fibromyalgia, they have real-life consequences that stop them from working. This place ought to be stopped from working, not just have to pay a fine and move on with business as usual. That's my last comment.

My public comment is that I am -- I am completely against the PFAS emissions or the PFAS being burned down there or incinerated, whatever terminology you want to use. PFAS cause cancer, they cause other illness, and I don't think that the community should have to face those consequences

EPA Response: See Responses #A.1, C.1-C.4, and C.11, above.

2. **Comment:** I would like to echo that last remark. I certainly don't think that their permit should be approved. No way. Based on their history.

EPA Response: See Responses #A.1, C.1-C.4, and C.11, above.

** The following minor changes to the permit were also made:

1. Changes necessary to identify that the permit has been finalized.
2. Other minor typographical corrections and page number updates were made.
3. S-1 and S-2 are used for consistency.