



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
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GUAYNABO, PR 00968-8069

MAR 18 2013

CERTIFIED MAIL /RETURN RECEIPT REQUESTED

Mr. Craig G. Hogarth, Director
Safety & Compliance
Heritage Environmental Services, LLC
7901 West Morris Street
Indianapolis, IN 46231

Re: **Approval of RCRA Class 3 Permit Modification Request for
Revision of Waste Analysis Plan and Administrative Updates
Heritage Environmental Services PR, LLC
Mayagüez, Puerto Rico
EPA ID Number: PRD091024786**

Dear Mr. Hogarth:

The United States Environmental Protection Agency ("EPA") has reviewed the January 11, 2012 Revision 1, Class 3 Permit Modification request filed by Heritage Environmental Services PR, LLC ("Heritage-PR") for the revision of the Mayaguez facility's Waste Analysis Plan and other administrative updates associated with the existing Resource Conservation and Recovery Act, as amended, ("RCRA") permit. Heritage-PR filed this modification request initially as a Class 2 Permit Modification in December 27, 2010. In letter dated March 30, 2011, EPA notified Heritage-PR about its determination to designate the Class 2 Modification as a Class 3 Modification instead, based on widespread public interest in the matter and concerns that were expressed about the proposed modification.

As a RCRA Class 3 permit modification request, Heritage-PR's request has been subject to the requirements of 40 C.F.R. § 270.42(c), as well as the decision-making procedures of 40 C.F.R. Part 124. The review process of this modification request took over two years and included ample public involvement. Since its initial filing as a Class 2 modification request, on December 27, 2010, up to the end of the public comment period after the second public hearing on the Class 3 modification request, on June 30th, 2012, EPA received over 700 individual written comments in relation to the proposed modification. Two public meetings (February 3, 2011 and July 21, 2011) and two public hearings (April 18, 2012 and June 9, 2012) were conducted in relation to the subject RCRA permit modification request. A large number of public comments were made during the above public outreach events.

All public comments received during this process were reviewed and considered by EPA. Comments determined to be relevant and/or significant to the Agency's decision making process were addressed. EPA has prepared a document that provides responses to comments received from the public in relation to this Permit Modification. It should be noted that some of the public comments concerned matters beyond the scope of the regulations governing the permit modification at issue. A copy of this Responsiveness Summary is included as an enclosure to this letter. The Responsiveness Summary and a

copy of this letter are being posted online and are being made available to persons who participated in the public hearing or supplied comments to EPA during the public comment period.

The facility has expressed its intentions to continue, and further expand, several public outreach/service initiatives it has implemented in Mayaguez such as the Community Advisory Panel and Household Hazardous Waste Collection activities. Heritage-PR also has informed EPA it plans to develop collaborative agreements with local academic and research institutions toward the development of alternative waste treatment methods and/or waste reuse/reduction options. Heritage continues to evaluate additional measures to further enhance its public communication and involvement strategies in order to better address the concerns expressed by the public during this Permit Modification process. These voluntary actions by Heritage-PR go beyond RCRA regulatory requirements.

This letter serves as issuance of EPA's approval of the January 11, 2012 Class 3 Permit Modification request. The approval will be effective as of **May 1, 2013**, unless the Modification is stayed on appeal. As per 40 C.F.R. Part 124.19, any person who filed comments on the draft permit action or participated in the public hearing may petition the Environmental Appeals Board ("EAB") to review this permit decision within 30 days after the issuance of this permit decision. For computation of time, see 40 C.F.R. § 124.20. See also the EAB website at www.epa.gov/eab for appropriate information on EAB procedures and practices.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jose Font', with a stylized flourish at the end.

Jose Font, Director
Caribbean Environmental Protection Division

Enclosure

cc: María V. Rodriguez, PREQB-Land Pollution Control Program

RESPONSIVENESS SUMMARY

Resources Conservation and Recovery Act (RCRA)

Permit Modification Request

Heritage Environmental Services PR, Mayaguez Facility

EPA I.D Num. PRD-091024786.

INTRODUCTION

This Responsiveness Summary (RS) has been prepared by the United States Environmental Protection Agency (EPA) as part of the process of evaluation of the RCRA permit modification request filed by Heritage Environmental Services-PR (Heritage-PR) for the revision of the Waste Analysis Plan (WAP) at its Mayaguez facility. This action is in accordance with the requirements of 40 C.F.R. Parts 270.42(c)(6) and 124.17. In this document, EPA provides responses to the comments received by the Agency from the public in relation to the subject permit modification.

Heritage PR's request has generated significant public interest in Mayaguez and other western municipalities. From the time when Heritage-PR filed an initial Class 2 permit modification request, on December 27, 2010, until the end of the public comment period after the second public hearing on the modification request, on June 30th, 2012, EPA received over 700 individual written comments in relation to the proposed modification. (The initial request by Heritage was for a Class 2 Modification; EPA determined that the request should be designated as a Class 3 Modification, and the request has been processed as a Class 3 Modification).

As part of the extensive public participation process concerning Heritage-PR's permit modification request, two public meetings (February 3, 2011 and July 21, 2011) and two public hearings (April 18, 2012 and June 9, 2012) were conducted in Mayaguez. A large number of public comments were made during the above public outreach events.

Although all the comments received were reviewed and considered by EPA, only those determined to be significant by the Agency are addressed in this summary, as per 40 C.F.R. Part 270.42(c)(6). Similar or repetitive comments that were received from many individuals, including form letters, were also considered. In its response, EPA has grouped all significant comments received under eight relevant topics: (1) Facility location in a flood plain, (2) Facility location in a highly transited area, (3) Facility location in a densely populated area, (4) Facility ecological impact, (5) Facility impact on Rio Añasco as drinking water source, (6) Facility Permit and Municipal Ordinances applicability, (7) Facility operational concerns, and (8) Facility location and seismic considerations. Detailed responses to each of these topics are provided in this RS.

Many of the concerns expressed to EPA during the public comment period go beyond the scope of RCRA regulatory requirements and this permit modification, but for informational purposes, this RS includes discussion of such concerns.

Transcripts of the April 18 and June 9, 2012 Public Hearings, and other documents concerning the Permit Modification, are deposited in the Document Repositories located at the Colección Puertorriqueña Section of the University of Puerto Rico Mayaguez Campus' Library, and the Mayaguez Municipal Library in downtown Mayaguez.

FACILITY PERMIT'S HISTORY

Heritage-PR currently owns and operates an environmental services facility for the treatment, storage and disposal (TSD) of hazardous wastes located at 3080 Hostos Avenue in Mayaguez, Puerto Rico. The facility occupies approximately 49

acres in the Sabanetas Ward of Mayaguez, southward of the former “Central Igualdad” sugarcane plantation. The facility is limited to the west by Highway #2, (at approximately 0.75 kilometers (km) distance, and by the Mayaguez Airport to the east, at approximately 2 km distance. (Note: all distances used in this RS are straight linear distances).

The facility is located in the Rio Grande de Añasco hydrological basin. Land use around the facility is mostly agricultural, although some commercial/industrial activities occur in its immediate vicinity. The Igualdad Community, a small residential cluster of 22 households, is the nearest residential area, located approximately 0.65 km north of the facility. A fuel storage/dispensing operation, Western Petroleum, is the nearest commercial neighbor to the facility, located about 0.5 km to the north, next to the “Central Igualdad” Community.

Heritage-PR is a permitted RCRA TSD facility that stores hazardous wastes in tanks and containers for off-site shipment. The facility’s existing RCRA Permit authorizes the operation of ten (10) hazardous waste storage tanks¹, one (1) container storage area², several satellite accumulation areas³ (currently five), and a hazardous waste incinerator (Callidus) unit, which has been closed as per RCRA requirements (additional information on the incinerator unit’s closure is provided toward the end of this RS). Heritage-PR ships the wastes off-site to any of three final disposal facilities it operates in the continental US: an incineration facility in East Liverpool, Ohio; a landfill facility in Indianapolis, Indiana; or a neutralization facility in Indianapolis, Indiana.

Heritage-PR acquired the facility formerly owned and operated by Lilly del Caribe, Inc., in Mayaguez on August 2009. At the time of the transaction, the facility’s activities were limited to the management of hazardous waste generated by the

¹The ten tanks have a combined total maximum permitted holding capacity of **272,000** gallons. The facility’s internal process safety management (PSM) practices, however, limit the actual maximum operational holding capacity of these tanks to **244,800** gallons, which is 90% of the permitted maximum capacity. The ten tanks are located in areas known as Dike #3 and Dike #4, surrounded by reinforced concrete enclosure walls.

² The container storage area, known as Dike 5, has a permitted maximum storage capacity of **50,000** gallons. The maximum permitted amount of drums the facility could have stored at any given time is **900** 55-gallon drums. The facility’s operational procedures, however, further limit the amount of 55-gallon drums the facility actually stores at any given time to approximately **200**.

³ Each satellite accumulation area has a maximum permitted storage capacity of **55** gallons.

Lilly del Caribe operations in Puerto Rico. Lilly del Caribe operations in Mayaguez were downsized from a full chemical (bulk pharmaceutical products) manufacturing operation between the late 1960s and 2005, to an environmental services operation for treating, storing and disposing hazardous waste generated by other Lilly manufacturing plants on the Island, from 2005 until 2009.

Upon acquiring the facility, Heritage-PR filed a request with EPA for the transfer of the Lilly Mayaguez RCRA Permit. EPA approved the Permit's transfer, effective August 29, 2009, with the same requirements and under the same conditions the Lilly del Caribe Permit had (that is, limited to handling waste generated by Lilly operations in Puerto Rico, under the same waste codes and capacity limitations).

The Permit Modification being approved is limited in its scope. The Modification allows Heritage-PR to manage hazardous wastes from generators other than Lilly del Caribe. Such modification will allow Heritage-PR to receive and manage hazardous wastes from industrial, commercial, institutional, and governmental entities in PR. However, it should be noted that the existing permit already allows waste management at the facility, subject to specified conditions. No additional waste codes or additional capacity are being authorized at the company's facility under the Permit Modification.

RESPONSES TO SIGNIFICANT COMMENTS RECEIVED FROM THE PUBLIC ON HERITAGE-PR'S RCRA PERMIT MODIFICATION REQUEST

- 1. Facility location in a flood plain**-public concern has been expressed about the vulnerability of the facility to flooding and washouts during storm events that could potentially lead to hazardous waste spills and impacts to public health and the environment; a discussion of the regulatory flood protection vs. disaster prevention perspectives is also provided in this section.

RCRA regulations establish a *Location Standard on Floodplains* for hazardous waste TSD facilities under *40 C.F.R. Part 264.18(b)*. Such floodplain location

standard requires that a facility located in a 100-year floodplain be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood event; alternatively, the facility must demonstrate to the EPA Regional Administrator that procedures are in effect to remove the waste safely and timely before the flood waters can reach the facility, to a location where it will not be vulnerable to flood waters.

It's worth mention that most public comments received and reviewed by EPA regarding flooding concerns seem to view RCRA's floodplain location standard from a disaster prevention and/or emergency response standpoint. However, the 100-year floodplain location standard in *40 C.F.R. Part 264.18(b)* is the current requirement under RCRA that the facility must meet. Any flood protection requirement more stringent than the 100-year standard is beyond RCRA's requirements. The facility has demonstrated compliance with the *Part 264.18(b)* floodplains location standard.

Historical Background

Since its construction in 1966, this facility (then under Lilly del Caribe's ownership) has been in the same location. According to the facility's original *Location Assessment (Consulta de Ubicación, in Spanish)*, the lands occupied by Lilly del Caribe were classified as Heavy Industrial Area (I-2) in the Puerto Rico Planning Board's 1970 Zoning Map, and "Zona 1" in the Flood Map. The Rio Grande de Añasco is the most proximal water body to the facility, located to the north at a distance of approximately 0.32 km.

The facility's *Location Assessment* also indicated that waste incineration activities started at the facility in 1972. Due to the facility's location, the incinerator's combustion chamber was elevated 26 feet above ground surface.

Although several severe flooding events have occurred in the Rio Grande de Añasco river basin, these events have not impacted the facility's hazardous waste management areas subject to RCRA. During the flooding event associated with Hurricane Georges⁴ in September 21, 1998, however, the

⁴ Hurricane Georges flood event is regarded as a 90-year flood.

facility was flooded by the Añasco River, and a number of drums of raw materials were washed away by the flooding waters, including eighteen (18) drums of propionic anhydride. These drums were carried away from the raw materials storage area known as PM-14. In response to this incident, EPA initiated enforcement actions against Lilly del Caribe under CERCLA § 103 and EPCRA § 304 for failure to provide immediate notice to the National Response Center (NRC) and State Emergency Response Commission (SERC), respectively. The drum storage area involved in this incident was demolished by Lilly del Caribe in 2007.

Confirmation of 100-year Floodplain Location Standard Demonstration

A recent hydrological assessment performed by Heritage-PR was submitted to EPA confirming the facility's compliance with the RCRA floodplains standard under *40 C.F.R. Part 264.18(b)*. The assessment, titled *Hydrological Study Report (HSR): Impact of Extreme Floods on Waste Storage Facilities Operation at Heritage Environmental Services PR, LLC Plant at Mayaguez, Puerto Rico, January 27, 2011*, concluded that the existing flood protection features (i.e., dike elevations at tanks and container storage areas) for the facility's hazardous waste management areas meet and exceed the 100-year floodplain location standard required under RCRA. Furthermore, additional hydraulic modeling and flow simulations conducted by the facility's hydrology contractor with the *HSR* data indicated that the facility's existing flood protection features would provide protection to the facility's hazardous waste management areas up to a 500-year flood event. These additional hydraulic modeling and flow simulations were provided as an addendum to the *HSR* titled *Estimation of the Reliability of the Hazardous Waste Storage Facilities Design at Heritage Environmental Services PR, LLC Plant at Mayaguez, Puerto Rico, August 2, 2012 (HSR Addendum)*.

These hydrological documents have been prepared and submitted to EPA in relation to the Class 3 Permit Modification request for revision of its Waste Analysis Plan (the subject of this RS), and a Class 1 Permit Modification request for revision of the *Contingency Plan*, filed in July 18, 2011 at EPA's request.

EPA requested Heritage-PR to revise the facility's *Contingency Plan* to reflect the current flood protections at the facility. Such request was made in response to public concerns regarding the facility's vulnerability to flooding and any potential impacts on adjacent communities and natural resources. As part of the *Contingency Plan* revision, Heritage-PR prepared and submitted to EPA the above referred hydrological assessment (HSR) and HSR Addendum. The HSR confirmed that the facility far exceeded the 100-year floodplain location standard requirement imposed by RCRA. EPA used a third-party hydrological contractor in reviewing Heritage-PR's HSR. EPA's contractor validated the hydrologic study report's conclusions.

An overall discussion of the HSR is presented here in order to illustrate the flood protection measures the facility has in place. Along with the facility's flood protection features description, the HSR provides diagrams and pictures showing water level lines ("delta values") and measured elevations of enclosure walls for the hazardous waste storage areas, and extensive hydrological and historical flood data for the facility location.

The facility has three hazardous waste storage areas: Dike #3, Dike #4 and Dike #5. The HSR features diagrams that show the projected flood delta values (water level lines) calculated by Heritage-PR for each of the three hazardous waste storage areas.

The HSR uses two scenarios to describe the potential flooding elevation impacts to the facility. The first scenario corresponds to the 100-year flood event (Wave 1); for instance, the 1998 Hurricane Georges event that flooded the Rio Grande de Añasco hydrological basin and impacted the former Lilly del Caribe facility has been classified as a 90-year flood. The second scenario corresponds to an event where the 100-year flood and a Tsunami wave (similar to the one that affected the Mayaguez-Aguadilla area in 1918) occur simultaneously (Wave 2). In each diagram, Wave 1 corresponds to the lower delta value and Wave 2 to the upper delta value.

Dike #3 consists of six hazardous waste storage tanks (12,000 gallon capacity each) enclosed by a reinforced concrete wall with a total height of 2.29

meters (7.51 feet) from the ground. Each tank is made of carbon steel and bolted down to the slab. Under the first scenario, Wave 1 would reach a maximum height of 0.64 meters (2.10 feet), allowing a minimum freeboard of approximately 1.65 meters (5.41 feet). Under the second scenario, Wave 2 would reach a maximum height of 1.27 meters (4.17 feet), allowing a minimum freeboard of approximately 1.02 meters (3.34 feet).

Dike # 4 consists of four 50,000-gallon hazardous waste storage tanks enclosed in a 2.22 meters (7.28 feet) high reinforced concrete wall. Wave 1 would reach 0.45 meters (1.48 feet) high, leaving a freeboard of 1.77 meters (5.80 feet). Wave 2 would reach 1.08 meters (3.54 feet) high, resulting in a freeboard of 1.14 meters (3.74 feet). Likewise Dike #3, any hazardous waste inside Dike #4 would be contained inside the four carbon steel tanks that are bolted down to the slab.

Dike #5 is an enclosed hazardous waste drums storage warehouse that can store up to ~500 drums (double-stacked). It has been designed and constructed with an elevation of 2.21 meters (7.25 feet) above ground level. The container storage warehouse-Dike #5 is topographically higher than other areas of the facility, thus providing additional protection. For example, there is a 3.6 feet difference in elevation between Dike #5 and the facility's main administrative building, PM-2. Under the first scenario, Wave 1 would reach 0.34 meters (1.12 feet) high, allowing a freeboard of 1.84 meters (6.13 feet). Under the second scenario, Wave 2 would reach 0.97 meters (3.18 feet) high, having a freeboard of 1.24 meters (4.07 feet). Any hazardous waste inside Dike #5 would be contained inside 55-gallon drums or other sealed smaller containers. The facility has added additional measures to further enclose the hazardous wastes stored inside Dike #5. Metal rolling doors were recently installed at the main gated access and at the elevated emergency exit to completely seal the storage area and its contents. These additional mechanical barriers would prevent any hazardous waste drums from leaving the storage area even in the highly unlikely event that the storage area gets flooded.

In summary, technical review confirms that by a combination of secondary containment barriers, and location topography, the hazardous waste storage areas are protected against extreme flooding events.

Additional Requirements

As previously mentioned, at EPA's request, Heritage-PR filed a Class 1 Permit Modification request in July 18, 2011 for revising its *Contingency Plan* in order to have the *Plan* updated to address changes in the facility's operation, including the 10-day transfer activities under 40 C.F.R. Part 263.12.

Besides the *floodplains* location standard, RCRA requires the facility to comply with *Preparedness and Prevention standards-Subpart C (40 C.F.R. Part 264.30-37)*, which include requirements for the facility's design and operation, emergency equipment, testing and maintenance of equipment, alarm system, and arrangements with local authorities. The facility must also comply with *Contingency Plan and Emergency Procedures standards-Subpart D (40 C.F.R. Part 264.50-56)*, which establish the requirements for the facility's *Contingency Plan*. All these requirements are incorporated into the facility's existing RCRA Permit.

- 2. Facility location in a highly transited area**-public comments expressed concern regarding increased traffic flow and accident potential in Highway #2, in the vicinity of the facility. These comments referred to concerns such as the already unacceptable traffic congestion levels in the stretch of Highway #2 proximate to Heritage-PR; on the expected increases in the flow of heavy vehicles to and from the facility transporting hazardous substances/wastes; on the expected increases in the likelihood of traffic accidents involving hazardous substances/waste transport vehicles and potential spills from these vehicles; and on the lack of technical knowledge and equipment at the regional level to handle spills of hazardous materials on roadways.

EPA is aware of the fact that high traffic congestion levels are an issue in most urban areas in Puerto Rico, including Mayaguez. However, the RCRA regulatory scheme does not allow EPA to address road traffic control or

planning issues, nor requirements related to traffic congestion. At the Federal level, the United States Department of Transportation (DOT) is the agency with primary jurisdiction over the regulation of roadways and any transportation activities, including transportation of hazardous materials. DOT regulations are codified in *49 C.F.R. Subchapter C*.

Under RCRA, EPA does have regulatory jurisdiction over the transportation of hazardous waste, a subcategory of the broader hazardous materials universe. EPA has established requirements for hazardous waste transporters under RCRA in *40 C.F.R. Part 263-Standards Applicable to Transporters of Hazardous Waste*. As part of its hazardous waste transportation regulations, EPA has expressly adopted certain regulations of the DOT governing the transportation of hazardous materials. EPA and DOT have worked together in developing these standards in order to avoid conflicting requirements.

At the local level, Commonwealth of Puerto Rico agencies such as the Department of Transportation (DTOP) and the Public Service Commission have primary jurisdiction over the regulation of road transportation of *hazardous materials*. The Puerto Rico Environmental Quality Board (PREQB) has local jurisdiction over the transportation of *hazardous waste* and has established its own set of requirements under its *Reglamento para el Control de Desperdicios Sólidos Peligrosos or RCDSP* (in Spanish). PREQB's regulations require that all transporters of hazardous waste file for a transporter's permit under Rule I-905 of the *RCDSP*. PREQB's transporters regulations are based on the federal *Part 263* requirements with additional, more stringent requirements.

- 3. Facility location in a densely populated area**-numerous public comments raised concern about a small rural community located in the facility's immediate vicinity, which is mostly comprised of elderly residents, and about a fuel storage operation that is the closest commercial neighbor to the facility. Some comments referred to the lack of emergency plans for the mobilization and/or evacuation of community residents as well as to the presence of schools, hospitals, malls and other commercial facilities in close proximity to the facility.

The former Lilly del Caribe facility was established in 1966 in the same location that currently occupies Heritage-PR. The facility has continually operated there for nearly 45 years. The facility occupies approximately 49 acres in the Sabanetas Ward of Mayaguez, next to the former Central “Igualdad” sugarcane plantation. Highway #2 is located approximately 0.75 km west of the facility and the Mayaguez Airport approximately 2 km to the east.

The facility is located in the Rio Grande de Añasco hydrologic basin. Land use around the facility is mostly agricultural, although some commercial/industrial activities occur in its immediate vicinity. A small residential cluster of 22 households, the “Igualdad” Community, is the closest residential area located approximately 0.65 km north of the facility. A fuel storage/dispensing operation, Western Petroleum, is the closest commercial neighbor to the facility, located about 0.5 km to the north, next to the “Igualdad” Community.

The facility has a *Contingency Plan* in place to address any emergency situations that could result from its hazardous waste management operations, in compliance with RCRA requirements set out at *40 C.F.R. Part 264.50-56*. Such plan, which is a requirement of the facility’s RCRA Permit, stipulates the emergency procedures the facility personnel will follow in emergency situations. The plan is focused on handling emergencies inside the facility premises, and on preventing that any incidents occurring inside the facility from spreading outside its boundaries. The plan also contains procedures to communicate any emergency situations occurring in the facility to the appropriate local, state and federal authorities, as well as to surrounding communities and institutional, commercial or industrial installations, as per the requirements of *40 C.F.R. Parts 264.37 and 264.52(c)*.

With regard to installations such as schools, hospitals, day care, senior care center or malls, none of these are located in the immediate vicinity of the facility. The school closest to the facility (the Antonio Gonzalez Suarez Community School in Añasco) is located approximately 1 km across the Añasco River. The closest hospital, the Añasco Hospital, lies approximately 3.6 km from the facility across the Añasco River. The closest senior care center lies

approximately 2.9 km from the facility across the Añasco River. The closest mall, Western Plaza Mall, is located approximately 5 km from the facility.

The facility's *Contingency Plan* includes procedures to communicate any emergency situations that occur in the facility to the appropriate authorities and surrounding communities and other neighbors, but any mass mobilization/evacuation of community residents, schools, hospitals, malls and other commercial/industrial facilities outside the facility is the responsibility of local/commonwealth governmental authorities. Local/commonwealth governmental authorities have their own contingency/emergency response procedures through entities such as the Emergency Management Agencies, Civil Defense, and Local Emergency Planning Committee (LEPC).

4. **Facility ecological impact-** public comments raised concern about the potential impact of spills of hazardous substances on nearby ecologically sensitive protected areas such as wetlands, estuarine reserves (i.e., "Caño La Boquilla"), nesting grounds for endangered species; also on the potential adverse impacts on the basin's agricultural and/or tourism activities.

As previously indicated, as per its RCRA Permit, the facility must comply with *Preparedness and Prevention standards (40 C.F.R. Part 264.30-37)* and *Contingency Plan and Emergency Procedures standards (40 C.F.R. Part 264.50-56)*. The facility's Contingency Plan covers all activities that occur at the facility which may have an impact on the environment, including potential spills of hazardous waste. Heritage-PR has revised and updated its Contingency Plan in order to address changes it had proposed for the facility's operation, such as the 10-day transfer activities under *40 C.F.R. Part 263.12*. Besides RCRA, other environmental regulations have their own, specific contingency requirements (i.e., National Pollutants Discharge Elimination System or NPDES, Spill Prevention Control and Countermeasure Plan or SPCC).

The contingency procedures and requirements discussed above are aimed at preventing, addressing, and/or mitigating any unexpected or emergency situations that may occur as part of the facility's operation, which may impact the environment.

There were additional specific comments regarding ecological impact, including those regarding the requirement of the Clean Water Act (CWA). Heritage-PR operations are regulated under other environmental programs, such as the CWA. Heritage-PR has an NPDES Permit that was transferred from Lilly del Caribe on August 29, 2009 via a minor Permit modification. Heritage-PR's NPDES Permit expired on May 31, 2011, but was administratively extended pursuant to *5 U.S.C. § 558(c) and 40 C.F.R. § 122.6*. The Permit continues in full force and effect; it authorizes Heritage-PR to discharge from outfall serial number 002 waters composed of stormwater and non process waters. The discharges are required to be in conformance with the Permit conditions, which are to be met at all times, including effluent limitations, monitoring, and reporting requirements.

Heritage-PR's Permit does not authorize the discharges from the facility's industrial wastewater treatment plant (the "WWTP") through outfall serial number 002. Any discharge other than the waste streams authorized by the Permit (provided in Table A-1, page 2 of the Permit), will constitute an unauthorized discharge subject to *Section 301(a)* of the *Clean Water Act (CWA)*, which prohibits the discharge of pollutant into waters of the United States without an NPDES issued pursuant to *Section 402* of the *CWA*. Any such unauthorized discharges may be subject to civil and/or criminal actions pursuant to *Section 309* of the *CWA*.

Heritage-PR was issued a pretreatment permit ("PRASA Permit") on May 26, 2010 by the Puerto Rico Aqueduct and Sewer Authority (PRASA) for the treatment of process waters. The PRASA Permit addresses the effluent limitation guidelines for centralized waste treatment (CWT) facilities, in accordance with *40 C.F.R § 437*. The PRASA Permit (in its Part I.A) describes the wastestreams that are authorized to be discharged through outfall serial number 001 into the PRASA Mayaguez sanitary collection system, which eventually connects to the PRASA Mayaguez Regional Wastewater Treatment Plant.

The PRASA Permit contains effluent limitations, known as the Federal categorical standards (40 C.F.R § 437) and local limits, which are included in the Permit to comply with the Federal and PRASA pretreatment programs. The PR Environmental Quality Board has issued an operational permit for the facility's WWTP, which sets the treatment technology for treating process wastewater prior to discharging into a sanitary collection system and/or directly into receiving waters. The PRASA Permit also requires Heritage to pre-treat their process wastewater prior to discharging it into PRASA's sanitary collection system.

RCRA regulated operational units at the facility, such as SWMU#4, have their drainage system connected to the industrial wastewater sewer line, which directs process wastewater into the facility's WWTP.

5. **Facility impact on Rio Añasco as drinking water source**-public comments expressed concern over the potential impact of spills of hazardous substances on the Rio Grande de Añasco, which is the main source of water for Mayaguez and other western municipalities; also over the potential impact of such spills on water intakes of the PRASA potable water plant located in close proximity to the facility.

There are two PRASA water intakes at the Rio Grande de Añasco, both of which are located a considerable distance upstream from the facility. The closest water intake to the facility is the "Miradero intake" that feeds the Miradero Filter Plant, which is located approximately 2.4 km upstream in the Miradero Ward of Mayaguez. The Añasco intake, which feeds the Añasco Filter Plant, is even farther from the facility, located approximately 4.5 km upstream in the Espino Ward of Añasco. Due to their distance from the facility, it is unlikely that any potential contamination of the Rio Grande de Añasco originating from Heritage-PR may impact these water intakes.

Additional comments regarding the potential impact of potential hazardous waste discharges into the Rio Grande de Añasco were submitted to EPA in January 29, 2013 by the Mayaguezanos por la Salud y el Ambiente organization in the form of a study report titled *Vulnerabilidad de las Tomas de Agua de*

AAA Ubicadas en el Rio Grande de Añasco y su Impacto Regional. Although received after the close of the public comment period, EPA reviewed the report to determine if the report's contents constituted new and relevant information that could not have been reasonably submitted within the modification's comment period. Upon review, EPA determined that the report's information cannot be regarded as new information that could not have been reasonably submitted within the modification's comment period. As per Part 124.13, a commenter who requests additional time to provide comments on the subject permit action must demonstrate the need for such additional time.

6. **Facility Permit and Municipal Ordinances**-public comments raised concern regarding legal-jurisdictional issues, specifically on the applicability of the Municipal Ordinances and local zoning requirements, and on the applicability of the *40 C.F.R. Part 270.4(c)* requirements.

EPA has evaluated the issue of jurisdiction and permit validity that has been brought to its attention and has determined that the facility's RCRA permit is in effect and that the potential implementation of the ordinances by the Municipality of Mayaguez is a matter between the Municipality and the Facility.

Regarding local zoning requirements, and their applicability under the requirements of *40 C.F.R. Part 270.4(c)*, EPA notes that such requirement would apply when a facility files for a new RCRA permit, or possibly when an existing RCRA permit is opened for review during a renewal process, and not to a modification to an existing RCRA permit such as this one.

The facility's RCRA permit was transferred from its previous owner/operator, Lilly del Caribe, to Heritage-PR under the same permit conditions and requirements (i.e. same waste codes, same maximum tank storage capacity), and for the same activities (i.e., hazardous waste management) previously conducted at the site. As per EPA's August 2009 permit transfer determination, any change in the facility's permitted operational status would

require the filing of a permit modification request, as per *40 C.F.R. Part 270.40*. The Permit Modification was filed in accordance with such requirement.

- 7. Facility operational concerns**-public comments raised concern over the continuation of waste incineration activities and dumping of toxic wastes at the facility; the addition of waste codes through the current modification; an increase (>25%) in wastes storage capacity; the import of wastes from other countries in the Caribbean; and the management procedures in place at the facility for waste segregation based on chemical compatibility as well as for waste spill prevention and control measures.

Waste incineration ceased at this facility on November 2008, when the facility was still owned and operated by Lilly del Caribe (prior to acquisition by Heritage-PR). The facility's Callidus incinerator unit has been closed and dismantled as per the facility's RCRA Permit's closure requirements. The incinerator unit's closure activities at Mayaguez concluded in September 4, 2012, and EPA approved the Closure Report and Certification for the incinerator in February 6, 2013.

The Heritage-PR facility in Mayaguez does not have land disposal units; all wastes are shipped off-site and disposed of at other Heritage treatment and/or disposal facilities in the continental United States. Heritage owns and operates three treatment and/or disposal facilities in the US: one incineration facility in East Liverpool, Ohio; a landfill facility in Indianapolis, Indiana; and a neutralization facility in Indianapolis, Indiana.

The permit modification request filed by Heritage-PR does not include any new waste codes in addition to, or different from, the 384 waste codes the facility already has in the existing RCRA permit. The waste codes authorized under Heritage-PR's RCRA permit are listed in *Section 9. Description of Hazardous Wastes of the Hazardous Waste Permit Information Form* of the revised Part A Application (Notice of Regulated Waste Activity) submitted by Heritage-PR in January 11, 2012 with the revised Permit Modification proposal, as well as in the Modification's *Appendix A-List of Hazardous Waste Codes and Onsite Management*.

A clarification of the terms waste codes and waste substances should help clarify a commentator's apparent confusion regarding this subject. A single hazardous waste code may apply to (or encompass) a number of different yet chemically related waste substances. For example, waste code F001 applies to six spent halogenated solvents used in degreasing: PCE, TCE, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons. Therefore, the relation one waste code = one waste substance is not correct, as illustrated in the F001 example, above.

The facility's maximum storage capacity is dictated by the existing RCRA permit. Currently, the facility is authorized to store up to 272,000 gallons of hazardous waste. The Class 3 Permit Modification request filed by Heritage does not increase the facility's maximum waste storage capacity. Heritage-PR has also clarified in its Permit Modification request, as well as in official corporate statements presented during public participation activities, that it will not import hazardous waste from any clients abroad. The facility has consistently indicated that it will only receive and manage hazardous waste from generators on the Island.

Waste management procedures are in place at the facility for all operational activities, including segregation and storage of wastes based on chemical compatibility (as stated in the Permit's Waste Analysis Plan), prevention of waste spills (in the Permit's Preparedness and Prevention section), and control of waste spills if they occur (in the Permit's Contingency Plan). These procedures, which are described in the facility's RCRA Permit, can be readily reviewed in the Permit Modification request document filed by Heritage-PR.

8. **Facility location and seismic considerations**-public comments raised concern over the vulnerability of the facility to fault displacements, potentially leading to hazardous waste spills and impacts to public health and the environment.

RCRA regulations establish a *Location Standard on Seismic Considerations* for hazardous waste treatment, storage and disposal facilities under *40 C.F.R. Part 264.18(a)*. The seismic location standard requires that such facilities not be

located within 61 meters (200 feet) of a fault which has had displacement in Holocene time. In order to demonstrate compliance with *40 C.F.R. Part 264.18(a)*, the facility must meet the requirements specified in *40 C.F.R. Part 270.14(b)(11)*. Heritage-PR Mayaguez facility has demonstrated that it meets the requirements of *40 C.F.R. Part 270.14(b)(11)*, therefore, it is in compliance with the RCRA seismic standard.

ADDITIONAL INFORMATION REGARDING HERITAGE-PR'S PLANNED PUBLIC OUTREACH ACTIVITIES

After discussions, Heritage-PR has notified EPA of outreach and other activities it voluntarily plans to undertake in order to enhance communication with the facility's neighboring communities and the general public. These activities include:

- Community Discussion Panel (monthly meetings).
- Household Hazardous Waste Education Program (at least yearly).
- Corporate Research and Development program, including recycling.
- Evaluation of a reverse 911 type system for future implementation to enhance emergency response public notifications.