RESPONSE SUMMARY

RESPONSE TO COMMENTS ON THE DRAFT PERMIT FOR
Heritage Environmental Services, LLC
Federal RCRA Permit
Indianapolis, Indiana
IND 093 219 012

. INTRODUCTION

This summary is issued in response to all of the significant comments raised during the public comment period.

The public comment period for the draft permit extended from August 24, 2007 to October 9, 2007.

. COMMENTS, RESPONSES, AND CHANGES

Heritage Environmental Services, LLC (Heritage) submitted the following comments:

1. **General comment**: Is this permit required if the Indiana Department of Environmental Management is authorized to implement the hazard codes specified in this permit? If the State of Indiana is authorized, the codes can become part of the state issued permit.

   Response: If IDEM were authorized to implement all of the hazardous waste codes specified in this federal RCRA permit, then there would be no need for a new federal portion of the RCRA permit to be issued. However, Indiana currently is not authorized for any of the five newly listed "K" waste codes included in this federal portion of the effective RCRA permit. In order to have a completely effective RCRA permit, the federal portion is essential to permit Heritage to manage these five newly listed waste codes. The same federal portion of this permit, when it becomes effective, can be readily modified at any time during the federal permit term, to include any additional newly listed hazardous waste codes that may be listed during the remainder of the permit term. This affords administrative convenience and economic efficiency to the permittee which would otherwise be barred from managing such newly listed wastes until the State became authorized

   Change: No change is made per this comment.

2. In section I.A, please add the words "containment buildings" in the third sentence in addition to container storage, tanks, and miscellaneous units

Response: The U.S. EPA agrees with this comment and will modify the draft permit accordingly.

Change: Section I.A, First Paragraph: " ……. Other aspects of the treatment and storage of RCRA hazardous wastes in containers, tanks, and miscellaneous units are subject to the conditions in the State-issued portion of the RCRA permit." will be changed to "**…….** Other aspects of the treatment and storage of RCRA hazardous wastes in containers, tanks, containment buildings, and miscellaneous units are subject to the conditions in the State-issued portion of the RCRA permit."

3. In section I.B.1., please add clarifying language concerning Class 3 permit modifications where construction commences in accordance with the Temporary Authorization provisions of 40 CFR Part 270.42(e)

Response: 40 CFR § 270.42 sets forth criteria for permit modifications made at the request of the permitee and establishes three classes of modifications. As explained in the preamble to the final rule, Class 1 and Class 2 modifications are characterized as "permitee requested modifications [that] do not substantially alter existing permit conditions or significantly affect the overall operation of the facility." 53 Fed. Reg. 37912, 37913 (Sept. 28, 1988). On the other hand, "Class 3 modifications cover major changes that substantially alter the facility or its operations." Id. Class 1 changes are generally allowed under 40 CFR § 270.42(a) without prior Agency approval. Id. 40 CFR § 270.42(b)(8) specifies that a permitee may perform construction associated with a Class 2 permit modification request beginning 60 days after submission of the request. However, as explained by EPA in the preamble to the proposed , Rule 40 CFR § 270.42(b) creates an exception to the general statutory prohibition on construction before the issuance of a permit. In proposing this exception, EPA explained:

> One final issue related to class 2 modifications deserves discussion. The Committee agreed that the facility owner/operator should be allowed to perform any construction necessary to implement a Class 2 change before the modification request is granted. The permit modification regulations currently prohibit "preconstruction" for permit modifications, just as the statute prohibits preconstruction of hazardous waste management facilities before a permit is issued. The Committee agreed that, because of the limited nature of Class 2 modifications and the need for flexibility maintaining permits, preconstruction should be allowed for this category of modification. The

> Agency believes that it has the authority under RCRA to allow "preconstruction" of the Class 2 changes.

52 Fed. Reg. 35838, 35845 (Sept. 23, 1987). As a safeguard, however, EPA observed that the "facility owner/operator . . . assume[s] the risk that EPA might deny the permit modification, and the construction already undertaken would become unusable, at least for managing hazardous waste. Id. This thought was echoed in the preamble to the final Rule, where EPA stated that "such construction would be at the permitee's own risk if the modification request is ultimately denied." 53 Fed. Reg. 37912, 37913 (Sept. 28, 1988).

With respect to Class 3 modifications, construction of such modification may occur only after the EPA approves the modification by issuing a permit modification. Class 3 modifications involve a significant increase of the unit (i.e., 25 percent or more of the unit capacity), and, therefore, it is important not to initiate any construction associated with the unit until the modification request is approved. As stated by EPA "Class 3 modifications are subject to the same initial public notice and meeting requirements as Class 2 modifications. However, the . . . preconstruction provisions of Class 2 do not apply." 53 Fed. Reg. 37912, 37913 (Sept. 28, 1988). Simply, 40 § CFR 270.42 (c) which specifies procedures for the Class 3 modifications does not mention any flexibility of the Permittee to initiate construction activities prior to being approved by the agency. The Class 3 preconstruction ban is confirmed by EPA's ability to extend the 60 day deferral date for Class 2 modifications. As explained by EPA in the preamble to the final Rule, "there is no preconstruction allowed with a Class 3 modification . . . ." 53 Fed. Reg. 37912, 37918 (Sept. 28, 1988).

Temporary authorizations (see 40 CFR 270.42(e)) were made an available option to the regulatory agency as a tool by which to address temporary exigencies arising out of special circumstances, by allowing the permittee "to conduct activities necessary to respond promptly to changing conditions"....see 53 Fed. Reg. 37919. The language in the Preamble makes clear that this is an emergency authority to be used sparingly and in appropriate circumstances to thereby allow the Agency to further the goals of the statute and protect human health and the environment. This authority cannot substitute for or be used to circumvent other procedural requirements. The language used in the Preamble makes clear that the authors foresaw situations where the Agency might have to deny temporary authorization without any prejudice to a pending modification request which might itself be granted or denied on its own merits:

> A denial of a temporary authorization request would not prejudice action on any concurrent modification request. The denial only

means that the activities contemplated by the permittee were not eligible for a temporary authorization. The request could still be acceptable as a permit modification.

As indicated above, the Agency has clearly stated in the Preamble that any commencement of construction during the pendency of a Class 2 modification proceeding could not be encouraged and would be undertaken "at the permittee's own risk if the modification request is ultimately denied." 53 Fed. Reg. 37912, 37913 (Sept. 28, 1988). And, of course, "there is no preconstruction allowed with a Class 3 modification . . . ." 53 Fed. Reg. 37912, 37918 (Sept. 28, 1988).

Change: No change is made per this comment.

4. In section I.E.9, it appears that the cross-reference to the facility WAP is incorrect and should be "Attachment C" of the Indiana issued permit.

Response: The U.S. EPA agrees with this comment and will modify the draft permit accordingly.

Change: Section I.E.9.a, second line: " The methods used to obtain a representative . . . . . specified in the Waste Analysis Plan (WAP) which is Section 12 of the Part B Permit Renewal Application, or an . . . ." will be changed to "The methods used to obtain a representative . . . . . specified in the Waste Analysis Plan (WAP) which is Attachment C of the State-issued portion of the RCRA permit, or an . . . .. ."

5. In section I.E.12, Heritage does not believe that this section is relevant to the activities governed under the permit (e.g., authorization to receive certain federal hazard codes) and should be deleted from the permit. Although the entire section should be deleted, subsection I.E.12b, needs to contain is a 15 day time period for the Director to waive an inspection under 40 CFR Part 270.30(l)(1)(2).

Response: The U.S. EPA agrees with this comment and will modify the draft permit accordingly.

Change: Sections I.E.12, I.E.12a, and I.E.12b will be deleted from this permit. The subsequent section numbers will be updated accordingly.

6. In section I.I, please change the language from "independent registered professional engineer" to "qualified professional engineer" to be consistent with 40 CFR Part 264.115.

Response: The U.S. EPA agrees with this comment and will modify the draft permit accordingly.

Change: Section I.I. First Paragraph: "You must maintain at the facility, until closure is completed and certified by an independent registered professional engineer, the following documents and all amendments, revisions, and modifications to them." will be changed to "You must maintain at the facility, until closure is completed and certified by a qualified Professional Engineer, the following documents and all amendments, revisions, and modifications to them."

7. In section I.I.1, Heritage does not believe that 40 CFR Part 266 is applicable to the facility

Response: The U.S. EPA agrees with this comment and will modify the draft permit accordingly.

Change: Section I.I.1 Operating Record: "You must maintain in the facility's operating record the documents required by this permit, and by the applicable portions of 40 CFR § 266.102, § 264.13, and § 264.73 (as they apply to the equipment used to comply with this permit)." will be changed to "You must maintain in the facility's operating record the documents required by this permit, and by the applicable portions of 40 CFR §§ 264.13 and 264.73 (as they apply to the equipment used to comply with this permit)."

8. Heritage does not believe that Section I.K is appropriate for this permit. We have been unable to determine how broad, encompassing language for an environmental act that presumably has little or no relevance with this permit complies with the requirements of 40 CFR Part 270.32 and why this language is "necessary to protect human health and the environment." The Indiana Department of Environmental Management is authorized to implement the Clean Air Act in Indiana and we are concerned how this provision present in a federally issued permit interferes with the authority of the State of Indiana or local government in these matters.

Response: The U.S. EPA agrees with this comment and will modify the draft permit accordingly

Change: Section I.K COORDINATION WITH THE CLEAN AIR ACT will be deleted from this permit. Page iv (the Table of Contents) will be updated accordingly.