



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-9000
FAX: (302) 739-6242

Secretary's Order to Cease and Desist
Issued Pursuant to 7 *Del. C.* § 6018

ORDER NO. 2015-WH-0016

***PERSONALLY SERVED BY
AN ENVIRONMENTAL CRIMES
UNIT OFFICER***

Issued To:

Heritage-Crystal Clean, LLC
Attn: Mr. Vinnie Glorioso
Regional Manager, EHS
505 South Market Street
Wilmington, Delaware 19801

Registered Agent:

The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

This is to notify Heritage-Crystal Clean, LLC ("Respondent") that the Secretary of the Delaware Department of Natural Resources and Environmental Control ("Department") has found Respondent in violation of 7 *Del. C.* Chapters 60 and 63 and 7 DE Admin. Code 1302, Delaware's *Regulations Governing Hazardous Waste* ("DRGHW"). Accordingly, the Department is issuing this Secretary's Order to Cease and Desist, pursuant to 7 *Del. C.* § 6018.

BACKGROUND

1. The Secretary of the Department is responsible for the protection of the public health and safety, the health of organisms and the environment from the effects of the improper, inadequate or unsound management of hazardous wastes by establishing a program of regulation over the storage, transportation, treatment and disposal of hazardous wastes and to assure the safe and adequate management of hazardous wastes within the State of Delaware, pursuant to the authorities set forth in 7 *Del. C.* Chapters 60 and 63.

Delaware's Good Nature depends on you!

2. Respondent's principal executive office is located in Elgin, Illinois; however, Respondent operates out of many branch offices and regional centers within the United States. Respondent provides parts cleaning services, oil collection services, re-refinery products, and hazardous and non-hazardous waste services.
3. Respondent owns and operates a facility at 505 South Market Street, in Wilmington, Delaware ("Wilmington, Delaware facility"). Respondent purchased the Wilmington, Delaware facility from Fomento de Construcciones y Contratas ("FCC") on October 16, 2014.
4. FCC had operated the Wilmington, Delaware facility as International Petroleum Corporation of Delaware ("IPC").
5. IPC was a large quantity generator of hazardous waste¹ and operated a used oil recycling services facility in Wilmington, Delaware. The facility was and continues to be permitted to accept various types of used or unused petroleum based oils, from various sources, within prescribed regulatory parameters. IPC's process produced marketable fuel oil products; Respondent now only uses the facility to store used oil prior to off-site shipment for processing.
6. Beginning in 2003, IPC utilized Tank 6 at its Wilmington, Delaware facility to store its marketable fuel oil.
7. On April 5, 2012, the City of Wilmington issued an Administrative Order to IPC prohibiting the discharge of wastewater to the City's wastewater treatment plant.
8. Subsequent to the City of Wilmington's Administrative Order, IPC removed marketable fuel oil from Tank 6 and began to use the tank to store treated wastewater.
9. Prior to the sale of the facility on October 16, 2014, all wastewater had been removed from Tank 6 in order to make permanent repairs to pinpoint holes identified in the tank. However, at the time of the sale, IPC was attempting to determine how to properly dispose of the approximately 100,000 gallons of sludge remaining in the tank.
10. In an email to the Department, dated March 19, 2015, Respondent provided analytical data obtained from a sample of the sludge and indicated it planned to send the sludge to Clean Waters of Dayton, Ohio as used oil for energy recovery. However, analytical data indicate the sample is a characteristic hazardous waste due

¹ Generators of more than 1,000 kilograms (2,200 pounds) of hazardous waste in any calendar month (see Delaware's *Regulations Governing Hazardous Waste*, 2014).

to concentrations of benzene (D018), trichloroethylene (D040), and tetrachloroethylene (D039), therefore the waste does not qualify as used oil.

FINDINGS

The Department has found Respondent in violation of 7 *Del. C.* Chapters 60 and 63, and in violation of 7 DE Admin. Code 1302, Delaware's *Regulations Governing Hazardous Waste* ("DRGHW") including, but not limited to:

1. DRGHW Section 279.1 states in part:

"'Used oil' means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities."

The Solid & Hazardous Waste Management Section ("SHWMS") has determined that the sludge does not qualify as used oil. EPA guidance (RO13697) indicates that sludge accumulated at the bottom of a used oil tank continues to qualify as used oil, provided it is sent for energy recovery. While the incoming used oil that IPC processed to create marketable fuel oil meets the definition of used oil, and thus any sludge generated in the bottom of a used oil tank is also used oil, the marketable fuel oil IPC produced itself no longer meets the definition of used oil, as described in DRGHW § 279.11, which states in part:

"Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under this part unless it is shown not to exceed any of the allowable levels of the constituents and properties shown in Table 1. Once used oil that is to be burned for energy recovery has been shown not to exceed any allowable level and the person making that showing complies with §§279.72, 279.73, and 279.74(b), the used oil is no longer subject to this part."

IPC certified the fuel it marketed met the allowable levels and complied with the necessary reporting requirements. As such, the marketable fuel oil IPC produced is no longer considered used oil and is not subject to DRGHW, Part 279. Therefore, sludge generated in the bottom of the product tank, which held the marketable fuel oil, is also not considered used oil.

As such, the sludge in Tank 6 is governed by DRGHW § 261.4(c), which states:

"Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in

a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under Parts 262 through 265, 268, 122 or 124 of these regulations or to the notification requirements of 7 Del. C. §§ 6304, 6306 & 6307, until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.”

Under this exemption, any sludge in the bottom of the tank is not subject to regulation until it is removed from the tank or until the sludge remains in the tank more than 90 days after the tank was used for the storage of product or raw materials.

Subsequent to April 5, 2012, but prior to October 30, 2013², IPC ceased utilizing Tank 6 for the storage of its marketable fuel oil, a product, and began using the tank to store wastewater that could not be discharged to the City of Wilmington. This change in storage was done without first removing residual sludges from or cleaning Tank 6. As with the marketable fuel oil, the treated wastewater that could not be discharged to the City of Wilmington also does not meet the definition of used oil. As such, any sludge generated during the storage of wastewater does not meet the definition of used oil.

Respondent indicated during a December 18, 2014, meeting with Department representatives that the sludge in Tank 6 was generated as a result of fuel oil storage, not during the storage of wastewater. As such, the Department concludes that the sludge in the tank became fully regulated 90 days after IPC ceased utilizing Tank 6 for the storage of its marketable fuel oil. Therefore, no later than January 27, 2014, the sludge in Tank 6 generated as a result of fuel oil storage was fully subject to regulation.

2. DRGHW Section 262.11 states:

“A person who generates a solid waste, as defined in §261.2, must determine if that waste is a hazardous waste using the following method:

(a) He should first determine if the waste is excluded from regulation under §261.4.

(b) He must then determine if the waste is listed as a hazardous waste in Subpart D of Part 261.

Note: Even if the waste is listed, the generator still has an opportunity under Part 260, Subpart C to demonstrate to the Secretary that the waste from his particular facility or operation is not a hazardous waste.

² On October 30, 2013, IPC representatives stated during a phone call with SHWMS representatives that Tank 6 was being used to accumulate wastewater that could no longer be discharged to the City of Wilmington.

(c) For the purpose of compliance with Part 268, or if the waste is not listed in Subpart D of Part 261, the generator must then determine whether the waste is identified in Subpart C of Part 261 by either:

(1) Testing the waste according to the methods set forth in Subpart C of Part 261, or according to an equivalent method approved by the Secretary under Part 260, Subpart C, or;

(2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

(d) If the waste is determined to be hazardous, the generator must refer to Parts 261, 264, 265, 266, 268 and 273 of these regulations for possible exclusions or restrictions pertaining to management of the specific waste.”

No later than January 27, 2014, when the waste became subject to regulation, a hazardous waste determination was required. On April 8, 2014, a representative of IPC stated that a sample had been obtained; however, no analytical data was available at the time. IPC failed to perform a hazardous waste determination within the required timeframe and Respondent continued to fail to make such determination until March 19, 2015, when Respondent submitted analytical data to the Department indicating the waste was a characteristic hazardous waste due to concentrations of benzene (D018), trichloroethylene (D040), and tetrachloroethylene (D039).

3. DRGHW Section 262.34(a)(1)(ii) states:

“(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, provided that:

(1) The waste is placed:

...

(ii) In tanks and the generator complies with the applicable requirements of §265.112(f) and Subparts J, AA, BB, and CC of Part 265 except §§ 265.197(c) and 265.200; and/or...”

No later than April 26, 2014, the waste was required to be shipped off-site in accordance with the 90 day limit set forth in DRGHW § 262.34(a). Respondent continues to accumulate this waste in Tank 6 in violation of DRGHW § 262.34(a)(1)(ii).

4. DRGHW, Subpart J, Section 265.190 states in part:

“The requirements of this subpart apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste except as otherwise provided in paragraphs (a), (b), and (c) of this section or in §265.1 of this part.”

As cited above in DRGHW §262.34(a)(1)(ii), hazardous waste may be accumulated in a tank, provided the tank is in compliance with DRGHW, Subpart J. This subpart requires owners and operators to obtain an assessment of the tank by a Professional Engineer (“PE”), who will certify the tank system (including the tank and ancillary equipment) is capable of storing hazardous waste. Subpart J also requires daily, documented inspections of the tank system. Respondent has not complied with DRGHW Subpart J.

5. DRGHW Section 122.1(c) states in part:

“(c) Scope of the hazardous waste permit requirement. DNREC requires a permit for the ‘treatment’, ‘storage’, and ‘disposal’ of any ‘hazardous waste’ as identified or listed in Part 261...”

and 7 Del. C. § 6307(b) states:

“(b) Beginning 180 days after the effective date of regulations adopted for this purpose, no person shall construct, substantially alter, own or operate any hazardous waste treatment, storage or disposal facility or site, nor shall any person store, treat or dispose of any hazardous waste without first obtaining a permit from the Secretary for such facility, site or activity, except that generators may accumulate hazardous wastes on site without a permit for such periods and upon such conditions as the Secretary may by regulation prescribe.”

By failing to comply with the 90 day accumulation limit and Subpart J requirements set forth in DRGHW § 262.34(a), Respondent is operating a hazardous waste storage facility without a permit; a violation of DRGHW § 122.1(c) and 7 Del. C. § 6307(b).

ORDER

IT IS HERBY ORDERED, based on the foregoing findings and pursuant to the authority vested in the Secretary by 7 Del. C. § 6018, that Respondent cease and desist all operations relating to the storage of hazardous waste in Tank 6. Within 30 days, Respondent shall:

1. Remove and properly manage all sludge from Tank 6 in accordance with DRGHW. This shall include, but is not limited to, properly manifesting the waste and sending it to a permitted hazardous waste treatment, storage, and disposal facility.
2. Provide copies to the Department of all hazardous waste manifests utilized to document shipments of sludge from Tank 6.
3. Provide written documentation to the Department of the date Tank 6 ceased being used as a product fuel oil storage tank and began to be used for wastewater storage.

Nothing in this order shall be deemed to estop or in any way preclude, any additional enforcement action for these or any other violations, including administrative and civil penalties for each day of violation, or an action for the recovery of Department costs expended in abating this violation.

If you have any questions, please contact Karen J'Anthony at 302.739.9403, Option 8.

Date: 4-17-15



David S. Small, Secretary
Department of Natural Resources
and Environmental Control

cc: William J. Kassab, Deputy Attorney General
Marjorie A. Crofts, Director, WHS
Nancy C. Marker, Administrator, SHWMS
Karen G. J'Anthony, Program Manager, SHWMS
Melissa A. Ferree, Engineer, SHWMS
Susan S. Baker, Paralegal
Jennifer M. Bothell, Enforcement Coordinator
SHWMS File