



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

OFFICE OF THE
SECRETARY

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

ORDER NO. 2017-WH-0010

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

Issued To:

Heritage-Crystal Clean, LLC
c/o Mr. Phil Tiberi
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 protecting the public health and safety, the health of organisms and protecting 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 to assure the safe and adequate management of hazardous wastes originating within or transported into or through the State of Delaware, pursuant to the authorities set forth in 7 *Del. C.* Chapters 60 and 63 and DRGHW.

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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").
4. Respondent is a large quantity generator of hazardous waste¹ and operates a used oil recycling services facility in Wilmington, Delaware. The facility is permitted to accept various types of used or unused petroleum based oils, from various sources, within prescribed regulatory parameters. The facility historically produced marketable fuel oil products; Respondent now only uses the facility to store used oil prior to shipping the used oil off-site for processing.
5. Respondent stated in an August 24, 2016 meeting with Department representatives that it intended to completely close the facility and begin taking steps to empty and clean out the facility's on-site storage tanks.
6. Based on information and belief, the Department has come to learn that, on an unspecified date, Respondent cleaned out two on-site storage tanks, Tanks #1 and #4, and placed the contents into seven (7) vacuum boxes to be shipped off-site for disposal.
7. On February 21, 2017, Respondent shipped a load of waste generated from cleaning out Tanks #1 and #4 from its Wilmington, Delaware facility. The waste was shipped to Waste Recovery Solutions, Inc. in Myerstown, Pennsylvania, to be solidified prior to further off-site management.
8. During transport on February 21, 2017, representatives of Lebanon County, Pennsylvania, discovered that an oily substance had leaked from a container as it was transported through a portion of the county along Routes 72, 422, and 501. Upon investigation, it was determined that the leaking container was delivered to Waste Recovery Solutions, Inc. (WRS). The investigation further revealed that vacuum box V-414 was the leaking container, and that the shipment was generated by Respondent at its Wilmington, Delaware facility.
9. Shipping records obtained from Pennsylvania authorities for vacuum box V-414 (Hazmat Bill of Lading/Manifest Tracking Number 2195222-16314) indicate one (1) – 25 cubic yard container of "Non-DOT/Non-RCRA Regulated (Used Oil Tank Cleanout)" waste was in the leaking shipment. Vacuum box V-414 is also

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).

referenced in Section 13 (Special Handling Instructions and Additional Information) of the shipping records.

10. On February 23, 2017, Department representatives requested information from Respondent regarding the spilled material, including a copy of all analytical data Respondent utilized to determine whether the waste was non-hazardous, as indicated on the shipping records.
11. On February 27, 2017, Respondent provided contradictory information to Department representatives explaining that vacuum box V-223 had leaked and provided analytical data demonstrating that the waste in vacuum box V-223 was non-hazardous. Department representatives then requested an explanation of the discrepancy between Respondent's email stating that V-223 had leaked, while the shipping documentation and evidence provided by Pennsylvania authorities indicated the leaking vacuum box to be vacuum box V-414. Respondent has since confirmed that V-414 was the leaking vacuum box.
12. The analytical data submitted by Respondent on February 27, 2017 related to vacuum box V-223 also contained data related to vacuum box V-414. These data indicate that the waste in vacuum box V-414 is hazardous due to its benzene concentration.
13. On February 28, 2017, Respondent stated that each of the additional six (6) vacuum boxes generated from the tank cleanouts were shipped using the same non-hazardous shipping description identified in Paragraph 9.
14. On March 2, 2017, Respondent stated that the waste in each of the seven (7) vacuum boxes was managed as used oil for energy recovery. Additionally, on March 2, 2017, Respondent also submitted a waste profile, dated August 19, 2016, that was submitted to WRS as part of the waste approval process. The waste profile indicates the waste is 25% water and 75% tank sludge (antifreeze, diesel fuel). The waste profile does not indicate that the waste in the seven (7) vacuum boxes is used oil. Further, Section 4 (Material Properties) of the waste profile requires Respondent to provide information regarding the properties of the waste in order to for the receiving facility to properly manage the waste. On the line item for total organic halides, which is required for all used oil shipments, Respondent checked "N/A."
15. On March 3, 2017 and again on March 7, 2017, Department representatives requested an explanation of the discrepancy between the statement made by the Respondent that the waste in the seven (7) vacuum boxes was being managed as used oil for energy recovery and the documentation Respondent provided to WRS that does not describe that waste as used oil and specifically identifies that the

requirement related to used oil is not applicable. To date, Respondent has not provided a response.

16. As part of the waste approval process, Respondent provided analytical data attached to the waste profile submitted to WRS. The analytical data package for the waste profile submitted to WRS (TestAmerica Job ID 460-118033-1) also reveals that the waste stream has an extractable organic halogen concentration of 1,840 mg/kg.

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 279.10(b)(1)(ii) states:

*(b) Mixtures of used oil and hazardous waste
(1) Listed hazardous waste.*

...

(ii) Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D of Part 261 of these regulations. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of Part 261 of these regulations)...

and

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.

(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."

As described in Paragraph 16 above, analytical data related to the shipment of each of the seven (7) vacuum boxes indicates the waste stream has an extractable organic halogen concentration of 1,840 mg/kg. In accordance with DRGHW § 279.10(b)(1)(ii), because the halogen concentration exceeds 1,000 mg/kg, the used oil is presumed to be a hazardous waste.

On March 3, 2017 and again on March 7, 2017, the Department requested the analytical data Respondent utilized to rebut the presumption that the used oil is a hazardous waste. On March 3, 2017, Respondent stated that the Department was looking at an initial data package and that additional data was submitted to WRS; however, Respondent did not provide the requested analytical data by the March 7, 2017 deadline. As such, the Department is proceeding based on the information that Respondent has provided to date.

For each of the seven (7) vacuum box shipments, Respondent signed a shipping document indicating the waste was "Non-DOT/Non-RCRA Regulated." The document included a statement reading, "I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations." However, based on the rebuttable presumption in DRGHW § 279.10(b)(1)(ii), the waste stream is actually presumed to be hazardous waste. Additionally, analytical data provided by Respondent indicate the contents of vacuum box V-414 are hazardous waste, carrying the waste code D018 (benzene). Failing to properly characterize the waste is a violation of DRGHW § 262.11.

2. DRGHW Section 262.20(a)(1) states:

"A generator who transports, or offers for transportation, hazardous waste for off site treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a Manifest (U.S. OMB Control Number 2050-0039) on EPA Form 8700-22 and, if

necessary EPA Form 8700-22A, according to the instructions included in the appendix to this part.”

As described above, Respondent shipped seven (7) vacuum boxes of hazardous waste carrying the F001/F002 listing for halogenated solvents without using a hazardous waste manifest. Additionally, one of the seven vacuum boxes (V-414) also carried the D018 waste code, which was not identified. Failing to properly manifest a shipment of hazardous waste is a violation of DRGHW § 262.20(a)(1).

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 emptying, cleaning out, or offering for transportation waste generated from on-site tanks at its Wilmington, Delaware facility. Within 30 days, Respondent shall:

1. Submit to the Department a plan describing how and when each on-site storage tank will be emptied and cleaned out. The plan shall include procedures for representative sampling and obtaining analytical data in order to make a hazardous waste determination on the wastes generated. Further, Respondent shall direct any laboratory utilized to obtain analytical data as a result of this plan to provide a copy of the analytical data report directly to the Department.
2. Submit to the Department any and all analytical data related to waste generated from tank cleanouts conducted from July 2015 until the date this Order was issued and identify all laboratories utilized to conduct such analyses.
3. Submit to the Department copies of all shipping records related to wastes shipped off-site from July 2015 until the date this Order was issued.

The Department expressly reserves its right to take additional enforcement actions regarding these and any other violations which may be discovered, including, but not limited to, one or more of the following: criminal prosecution under 7 *Del. C.* § 6013, an action under 7 *Del. C.* § 6005(b)(1) seeking penalties for past violations, an action under 7 *Del. C.* § 6005(b)(2) seeking penalties for continuing violations, an action in the Court of Chancery pursuant to 7 *Del. C.* § 6005(b)(2) seeking a temporary restraining order or an injunction, and the imposition of administrative penalties and recovery of the Department's costs and attorney's fees pursuant to 7 *Del. C.* §§ 6005(b)(3) & (c)(1).

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

Date:

3/10/17



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

cc: William J. Kassab, Deputy Attorney General
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