



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

Office of the
Secretary

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SECRETARY'S ORDER TO CEASE AND DESIST

Pursuant to 7 *Del. C.* § 6018

Order No. 2024-WH-0030

Issued To:

Served Via Personal Service

Facility Operator:

Walt Finch
Clean Loop Group, LLC
1685 River Road
New Castle, DE 19720

Served Via Certified Mail, Return Receipt

Facility Operator Registered Agent:

Registered Agents Inc.
8 The Green
Suite R
Dover, DE 19901

Served Via Certified Mail, Return Receipt

Property Owner:

OSI 1685 River Road LLC
309 East Paces Ferry Road NE
Suite 59
Atlanta, GA 30305

Served Via Certified Mail, Return Receipt

Property Owner Registered Agent:

Cogency Global, Inc.
850 New Burton Road
Suite 201
Dover, DE 19904

Dear Mr. Finch:

This is to notify Clean Loop Group, LLC and OSI 1685 River Road, LLC (collectively “Respondents”) that the Secretary of the Delaware Department of Natural Resources and Environmental Control (“Department”) has found Respondents in violation of 7 *Del. C.* Chapter 60, 7 *Del. Admin. C.* § 1302, Delaware’s *Regulations Governing Hazardous Waste* (DRGHW), and 7 *Del. Admin. C.* § 1301, Delaware’s *Regulations Governing Solid Waste* (“DRGSW”).

Accordingly, the Department is issuing this Secretary's Order to Cease and Desist, pursuant to 7 *Del. C.* § 6018.

BACKGROUND

On May 23, 2023, Clean Loop Group, LLC submitted a *RCRA Subtitle C Site Identification Form* (EPA Form 8700-12) to the Department in order to obtain an EPA identification number. The submitted form indicated that the company was going to process used oil. The request for an EPA identification number was approved, and the EPA identification number DED980552780 was assigned to the site.

The next day, on May 24, 2023, a Department representative followed up with an email to Clean Loop Group, LLC, advising that an EPA identification number was not an approval to begin operating the facility, as permits may be required prior to operating such a facility. The Department representative conveyed that at a minimum, a solid waste facility permit was required. The Department representative also suggested that Clean Loop Group, LLC participate in the Department's Regulatory Advisory Service (RAS)¹.

On May 25, 2023, the Department's Small Business Ombudsman notified various Department programs that participate in the RAS that Clean Loop Group, LLC had requested a RAS review of its company's intended operations. The RAS Information Sheet submitted by Clean Loop Group, LLC indicated that the site intended to take used oil from local oil collectors and process it into saleable bunker fuel. The Information Sheet indicated the site had already obtained an EPA ID number as a used oil processor.

¹ The RAS is a free service provided to companies to learn about and navigate the regulatory and permitting requirements that may apply to their operations.

On June 5, 2023, Department and Clean Loop Group LLC's representatives participated in a virtual RAS meeting and discussed the regulatory requirements applicable to Clean Loop Group LLC's proposed operations. On June 20, 2023, the Department provided a summary of the RAS comments to Clean Loop Group, LLC. The comments addressed the regulatory and permitting requirements for each participating Department program. Specifically, the Department's summary document stated that as a used oil processor, Clean Loop Group, LLC was subject to the requirements of DRGHW Part 279, Subpart F. Guidance was provided about specific regulatory requirements, including but not limited to: (1) obtaining an EPA identification number; (2) sampling incoming oil to ensure it meets the rebuttable presumption² in DRGHW Section 279.53; (3) developing a written sampling and analysis plan; (4) tracking incoming and outgoing shipments; (5) secondary containment; and (6) contingency and emergency response planning. Department representatives also explained that if Clean Loop Group, LLC intended to process used oil and market it as on-specification used oil fuel (a product no longer subject to the used oil regulations), the produced fuel would also be subject to the standards for used oil fuel marketers in DRGHW Part 279, Subpart H. Specifically, Clean Group Loop, LLC would be required to sample and analyze the produced fuel to ensure it met the on-specification fuel requirements. In addition to the requirements in DRGHW, Clean Loop Group, LLC was advised that a solid waste facility permit was required for the proposed operations as used oil is a solid waste. To date, Clean Loop Group, LLC has not applied for, or obtained, a solid waste facility permit.

On July 25, 2024, Department representatives received a complaint that Clean Loop Group, LLC was operating a used oil processing facility at 1685 River Road in New Castle, Delaware ("Facility"). On July 30, 2024, Department representatives conducted an inspection at the Facility and confirmed that Clean Loop Group, LLC was operating a used oil processing facility and has been operating the facility since August 2023.

² The rebuttable presumption for used oil states that if the total halogen content of the used oil is less than 1,000 ppm, it can be presumed that the used oil has not been mixed with hazardous waste and can be managed as used oil.

FINDINGS

The Department has concluded Respondents are in violation of 7 Del. C. Chapter 60, DRGHW, and DRGSW, including, but not limited to:

1. **DRGHW Section 279.1 defines a used oil processor/re-refiner:**

“Used oil processor/re-refiner” means a facility that processes used oil.

DRGHW Section 279.1 defines processing as:

“Processing” means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived product. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining.

DRGHW Section 279.54(f)(1) states:

(1) Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities must be labeled or marked clearly with the words “Used Oil.”

Clean Loop Group, LLC operates a facility that processes used oil by using heat and chemicals to physically separate water from used oil. The definition of processing includes chemical and physical separation activities, and therefore, Clean Loop Group, LLC is a used oil processor. Clean Loop Group, LLC’s own submission of the RCRA Subtitle C Site Identification form identifies the site as a used oil processor. As such, Clean Loop Group is subject to the requirements in DRGHW Part 279, Subpart F.

During the inspection, Department representatives observed four 20,000-gallon frac tanks³ used to receive and process used oil. Department representatives also observed eleven 20,000-gallon frac tanks used as settling tanks, where water separates from the used oil. Given these 15 frac tanks are storing used oil, they are subject to the management standards in DRGHW Part 279, Subpart F, including DRGHW Section 279.54(f)(1). None of the 15 frac tanks were labeled with the words “Used Oil.” Failing to label the frac tanks with the words “Used Oil” violates DRGHW Section 279.54(f)(1).

2. DRGSW Section 3.0 defines a special solid waste:

“Special Solid Wastes” means those wastes that require extraordinary management. They include but are not limited to: abandoned automobiles, white goods, used tires, waste oil, sludges, dead animals, agricultural and industrial wastes, infectious waste, municipal ash, septic tank pumpings, and sewage residues.

DRGSW Section 4.1.1.1 states:

4.1.1.1 No person shall engage in the construction, operation, material alteration, or closure of a solid waste facility, unless exempted from these regulations under subsection 2.3, without first having obtained a permit from the Department.

Section 6003(a)(4) of Title 7 states in part:

(a) No person shall, without first having obtained a permit from the Secretary, undertake any activity: ...

(4) In a way which may cause or contribute to the collection, transportation, storage, processing, or disposal of solid wastes, regardless of the geographic origin or source of such solid wastes...

Used/waste oil is specifically included in the definition of a special solid waste that requires extraordinary management. As such, Clean Loop Group, LLC was required to obtain a permit to process solid waste. To date, Clean Loop Group, LLC has not applied for, and has not obtained, the required permit. Failing to obtain the required permit violates 7 Del. C. § 6003(a)(4) and DRGSW Section 4.1.1.1.

³ A frac tank is a large capacity steel tank that can store liquid or solids and can easily be moved using a tractor or truck when empty.

3. **DRGHW Section 279.52(b)(2) states:**

(2) Content of contingency plan.

(i) The contingency plan must describe the actions facility personnel must take to comply with paragraphs (b) (1) and (6) of this section in response to fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water at the facility.

(ii) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR Part 112 or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions that are sufficient to comply with the requirements of this part.

(iii) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to paragraph (a)(6) of this section.

(iv) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see paragraph (b)(5) of this section), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(v) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(vi) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of used oil or fires).

At the time of the inspection, Clean Loop Group, LLC was unable to provide a contingency plan that included the following information:

- (1) Arrangements to familiarize local emergency response agencies (i.e., police, fire, hospital, State/local emergency response teams) with the layout of the facility, properties of the used oil handled, or possible evacuation routes
- (2) Addresses of emergency coordinators
- (3) A list of emergency equipment at the facility, including its location and a brief outline of its capabilities

(4) Evacuation routes

Failing to have a contingency plan with the required elements violates DRGHW Section 279.52(b)(2).

4. DRGHW Section 279.52(b)(3) states:

- (3) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan must be:*
- (i) Maintained at the facility; and*
 - (ii) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.*

Clean Loop Group, LLC was unable to provide a copy of the contingency plan during the inspection. It was also unable to provide documentation demonstrating that the contingency plan had been submitted to local police departments, fire departments, hospitals, and State and local emergency response teams. Failure to maintain a copy of the contingency plan at the facility and demonstrate that it had been submitted to local emergency response agencies violates DRGHW Section 279.52(b)(3).

5. DRGHW Section 279.52(b)(5) states:

- (5) Emergency coordinator. At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristic of used oil handled, the location of all records within the facility, and facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.*

While Clean Loop Group, LLC provided a contingency plan via email on July 30, 2024, it listed emergency coordinators as H. Walton Finch, Karl Tamas, and David Molo. None of these employees are located at or near the Facility. Based on information and belief, Mr. Finch is located in North Carolina, and Mr. Tamas and Mr. Molo are located in Flagstaff, Arizona. Failing to identify an emergency coordinator that is on-site or on call and available to physically respond to the facility in the event of an emergency within a short period of time is a violation of DRGHW Section 279.52(b)(5).

6. DRGHW Section 279.57(b) states:

(b) Reporting. A used oil processor/re-refiner must report to the Secretary, in the form of a letter, on an annual basis (by March 1 of each year), the following information concerning used oil activities during the previous calendar year;

- (1) The EPA identification number, name, and address of the processor/re-refiner;*
- (2) The calendar year covered by the report; and*
- (3) The quantities of used oil accepted for processing/re-refining and the manner in which the used oil is processed/re-refined, including the specific processes employed.*

Clean Loop Group, LLC has been operating since August 2023. An annual report is required each year by March 1, summarizing the used oil processing operations that occurred the previous year. Clean Loop Group, LLC failed to submit the required annual report detailing its operations in 2023 that was due by March 1, 2024. Failing to submit the required annual report violates DRGHW Section 279.57(b).

7. DRGHW Section 279.55 states:

Owners or operators of used oil processing and re-refining facilities must develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of §279.53 and, if applicable, §279.72. The owner or operator must keep the plan at the facility.

Used oil processors are required to develop and follow a written analysis plan that describes the procedures that will be used to comply with DRGHW Section 279.53 (rebuttable presumption for used oil) and Section 279.72 (on-specification used oil fuel standards). Subsequent to the inspection, a Clean Loop Group, LLC representative stated that the company has a waste analysis plan. However, to date, Clean Loop Group, LLC has failed to provide a written waste analysis plan and one was not maintained at the facility, which violates DRGHW Section 279.55.

8. DRGHW Section 279.53 states:

(a) To ensure that used oil managed at a processing/re-refining facility is not hazardous waste under the rebuttable presumption of §279.10(b)(1)(ii), the owner or operator of a used oil processing/re-refining facility must determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The owner or operator must make this determination by:

- (1) Testing the used oil; or*
- (2) Applying knowledge of the halogen content of the used oil in light of the materials or processes used.*

Clean Loop Group, LLC is required to demonstrate that incoming used oil meets the rebuttable presumption for used oil found in DRGHW Section 279.53. In order to do so, a used oil processor can make this determination by testing the used oil or by using knowledge of the halogen content of the used oil in light of materials or processes used. Given Clean Loop Group, LLC is not the generator of the used oil, it can have no knowledge of the materials or processes that the used oil was subjected to at the generator's site. As such, Clean Loop Group, LLC must be able to provide analytical data, either data obtained itself or data obtained by a third party, such as the transporter delivering the used oil, demonstrating the halogen content of the used oil received. Clean Loop Group, LLC failed to provide this data. Failing to demonstrate the used oil meets the rebuttable presumption violates DRGHW Section 279.53.

9. DRGHW Section 279.1 defines used oil fuel marketer:

“Used oil fuel marketer” means any person who conducts either of the following activities:

- (1) Directs a shipment of off-specification used oil from their facility to a used oil burner;*
or
- (2) First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in §279.11 of this part.*

DRGHW Section 279.73 states:

Section 279.73 Notification.

(a) Identification numbers. A used oil fuel marketer subject to the requirements of this subpart who has not previously complied with the notification requirements of 7 Del.C., §6304(a) must comply with these requirements and obtain an EPA identification number.

(b) A marketer who has not received an EPA identification number may obtain one by notifying the Secretary of their used oil activity by submitting either:

- (1) A completed Delaware Notification of Regulated Waste Activity Form (8700-12); or*
- (2) A letter requesting an EPA identification number. The letter should include the following information:*

(i) Marketer company name;

(ii) Owner of the marketer;

(iii) Mailing address for the marketer;

(iv) Name and telephone number for the marketer point of contact; and

(v) Type of used oil activity (i.e., generator directing shipments of off-specification used oil to a burner).

While Clean Loop Group, LLC obtained the required EPA ID number, it did not identify that it was a used oil fuel marketer on EPA Form 8700-12 as required, which violates DRGHW Section 279.73.

10. DRGHW Section 279.72 states:

Section 279.72 On-specification used oil fuel.

(a) Analysis of used oil fuel. A generator, transporter, processor/re-refiner, or burner may determine that used oil that is to be burned for energy recovery meets the fuel specifications of §279.11 by performing analyses or obtaining copies of analyses or other information documenting that the used oil fuel meets the specifications.

(b) Record retention. A generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under §279.11, must keep copies of analyses of the used oil (or other information used to make the determination) for three years.

DRGHW Section 279.11 states:

Section 279.11 Used oil specifications.

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.

Table 1 - Used Oil Not Exceeding Any Allowable Level Shown Below Is Not Subject to This Part When Burned for Energy Recovery¹

<i>Constituent/property</i>	<i>Allowable level</i>
<i>Arsenic</i>	<i>5 ppm maximum.</i>
<i>Cadmium</i>	<i>2 ppm maximum.</i>
<i>Chromium</i>	<i>10 ppm maximum.</i>
<i>Lead</i>	<i>100 ppm maximum.</i>
<i>Flash point</i>	<i>100 °F minimum.</i>
<i>Total halogens</i>	<i>4,000 ppm maximum.²</i>

FOOTNOTE: ¹The allowable levels do not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (see §279.10(b)).

FOOTNOTE: ²Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under §279.10(b)(1). Such used oil is subject to Subpart H of Part 266 of these regulations rather than this part when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Clean Loop Group, LLC provided the analytical data for its used oil fuel shipments in May and June 2024, but that analytical data was incomplete. The analytical data showed that Clean Loop Group, LLC analyzed each batch of used oil fuel for calcium, silicon, zinc, aluminum, American Petroleum Institute (API) gravity, and percentage of water content, none of which were sufficient to meet the regulatory requirement. Clean Loop Group, LLC was unable to provide data showing analysis of arsenic, cadmium, chromium, lead, flash point, or total halogens. Failing to demonstrate that its fuel meets the required fuel specifications and thus is no longer considered used oil violates DRGHW Section 279.72.


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 Respondents cease and desist in operating a used oil processing facility. While Respondents are prohibited from conducting used oil processing operations, Respondents must manage the Facility in such a way that prevents releases of used oil or other hazardous substances to ensure protection of human health and the environment.

The Department reserves the right to take additional enforcement actions regarding these or other violations at the site, including but not limited to one or more of the following: 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 civil penalties and recovery of the Department's costs and attorney's fees pursuant to 7 Del. C. §§ 6005(b)(3) and (c)(1).

If you have any questions, please contact, or have your attorney contact Devera B. Scott, Esquire, Deputy Attorney General, at (302) 395-2600.

Date: August 6, 2024



For Shawn M. Garvin, Secretary

cc; Devera B. Scott, Deputy Attorney General
Timothy Ratsep, Division Director