



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

**77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590**

**ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED**

Mr. Steve Obert
Owner
Cody Metal Finishing
1620 N. Throop Street
Chicago, IL 60642
codymetals@sbcglobal.net

Re: Notice of Potential Violation
Cody Metal Finishing
Facility ID: ILD984806224
Chicago, Illinois

Dear Mr. Obert:

On October 27, 2021, representatives of the U.S. Environmental Protection Agency (EPA) conducted a RCRA compliance evaluation inspection of Cody Metal Finishing ("Cody Metal," "facility," or "you") located in Chicago, Illinois. The purpose of the inspection was to evaluate Cody Metal's compliance with certain provisions of RCRA and its implementing regulations related to the generation, treatment, and storage of hazardous waste. A copy of the inspection report is enclosed for your convenience.

Based on information provided by Cody Metal, EPA's review of records, and the inspector's observations, EPA has reason to believe Cody Metal may be in violation of RCRA regulations. By this letter, EPA is extending to you an opportunity to advise the Agency, in person or in writing, of any further information EPA should consider with respect to the potential violation(s).

We request that you voluntarily submit a response in writing to us no later than 30 calendar days after receipt of this letter documenting the actions, if any, which you have taken since the inspection to address the potential violations identified below or demonstrating why the violation(s) have not occurred. EPA, however, reserves its rights to take additional actions under RCRA including issuing an information request, seeking a penalty, and issuing an order.

Storage of Hazardous Waste without a Permit or Interim Status Which Potentially Violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and State Permitting Requirements

During the inspection, EPA observed Cody Metal's failure to comply with the RCRA permit exemption conditions below. When a hazardous waste generator fails to comply with the conditions for a permit exemption, the generator becomes an operator of a hazardous waste storage facility without a permit in violation of Ill. Admin. Code tit. 35 §§ 703.121(a) and (b);

703.180(c); and 705.121(a) [40 C.F.R. §§ 270.1(c), and 270.10(a) and (d)]. Many of the RCRA permit exemption conditions are also independent requirements that apply to permitted and interim status hazardous waste management facilities that treat, store, or dispose of hazardous waste (TSD requirements). When a hazardous waste generator loses its permit exemption due to a failure to comply with such an exemption condition (incorporated from Ill. Admin. Code tit. 35 Part 725,) the generator: (a) becomes an operator of a hazardous waste storage facility; and (b) simultaneously violates the corresponding TSD requirement. For purposes of remedying potential noncompliance or preventing future violations, EPA recommends that Cody Metal comply with the conditions below instead of applying for a hazardous waste storage permit.

The information available to date reflects that you may be in non-compliance with several conditions for the general exemption from the requirement for a hazardous waste permit, as described below:

1. Accumulation Time

Under Ill. Admin Code tit. 35 § 722.134(a)(3)¹, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that while being accumulated on-site, each container and tank is labeled or marked clearly with the words, “Hazardous Waste.”

At the time of the October 2021 inspection, three tanks located in the Outside Storage Area were missing the required labels with the words “Hazardous Waste.”

2. Personnel Training

Under 35 Ill. Adm. Code § 725.116(d)(4), the owner or operator of the facility must maintain records that document that the facility personnel have completed an annual review of the initial training set forth in 35 Ill. Adm. Code § 725.116(a) and 40 C.F.R. § 265.16(a).

During the inspection, a representative of Cody Metal stated the Facility provided all training documentation to EPA in response to the 3007 information request sent in March 2021 requesting documentation dated from 2017 onwards. The Facility response provided no records of annual personnel training for facility personnel, including emergency response coordinators Joseph Libenson and Oscar Lopez.

¹ We note that on November 19, 2018, the State of Illinois promulgated revised regulations which have not yet been authorized by EPA. EPA authorized an earlier edition of the Illinois hazardous waste regulations which contained a provision at Ill. Admin. Code tit. 35 § 722.134 that remains the RCRA authorized Large Quantity Generator provision in Illinois.

3. Design and installation of new tank systems or components

- I. Under Ill. Admin Code tit. 35 § 725.292(a), the owner or operator of a new tank system² or components must obtain and submit a written assessment, reviewed and certified by a qualified Professional Engineer, attesting that the tank system has sufficient structural integrity and is acceptable for storing and treating of hazardous waste.

At the time of the inspection, Cody Metal had a four-tank system. A representative of Cody Metal stated that the facility uses the new fourth tank as a hazardous waste overflow storage from the other three tanks. However, the Facility's written and certified assessment of its tank system accounted for "... three storage units in one area, outside the building." No additional assessment or certification was provided for the addition of the fourth tank in the system.

- II. Under Ill. Admin Code tit. 35 § 725.292(b) and (g), the owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent qualified, installation inspector or a qualified Professional Engineer, either of whom is trained and experienced in the proper installation of tanks systems or components, must inspect the system for weld breaks; punctures; scrapes of protective coatings; cracks; corrosion; and other structural damage or inadequate construction or installation. All discrepancies must be remedied before the tank system is covered, enclosed, or placed in use. The owner and operator must obtain and keep at the facility written and certified statements by the installation inspector or qualified Professional Engineer to attest that the tank system was properly designed and installed in accordance with Ill. Admin Code tit. 35 § 725.292(b)-(f) and any repairs pursuant to Ill. Admin Code tit. 35 § 725.292(b)-(d) were performed.

At the time of the inspection, Cody Metal had not provided written and certified statements and documentation from an installation inspector or qualified Professional Engineer to attest that the tanks were properly designed and installed per the design proposal; inspected for weld breaks, punctures, scrapes of protective coatings, cracks, corrosion, and other structural damage or inadequate construction or installation; and any repairs prior to the tank system's use.

² *New tank system* is defined as a tank system that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986. See, 35 IAC § 720.110 [40 CFR § 260.10].

4. Containment and detection of releases

- I. Under Ill. Admin Code tit. 35 § 725.293(b)(1)(2), secondary containment systems must be designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during use and capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

Cody Metal's secondary containment system was designed such that an alarm would be enunciated inside the building if the level of liquids in the secondary containment system exceeds 1.5 inches. During the inspection, the secondary containment system had approximately 6.5 inches of standing water, which made the detection system incapable of detecting additional releases and accumulated liquids. The secondary containment system also contained debris and an additional tank, so the system would not be able to contain the full capacity of the largest tank in the event of a release. The secondary containment system, then, was not being operated to prevent overflow of wastes and accumulated liquid out of the system.

- II. Under Ill. Admin Code tit. 35 § 725.293(c)(3), secondary containment systems must be at a minimum be provided with a leak detection system that is designed and operated so that it will detect the failure of either the primary and secondary containment structure or any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time if the existing detection technology or site conditions will not allow detection of a release within 24 hours.

Cody Metal's secondary containment system was designed such that an alarm would sound inside the building if the level of liquids in the secondary containment system exceeds 1.5 inches. During the inspection, the secondary containment system had standing water over 1.5 inches, but inspectors did not hear an alarm in the building. The most recent precipitation event had occurred over 24 hours prior to the inspection.

- III. Under Ill. Admin Code tit. 35 § 725.293(c)(4), the secondary containment system must be sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within 24 hours, or in as timely a manner as possible to prevent harm to human health or the environment, if removal of the released waste or accumulated precipitation cannot be accomplished within 24 hours.

During the inspection, EPA inspectors observed approximately 6.5 inches of standing water within the secondary containment. The most recent precipitation measured approximately 2.8 inches of rain and had occurred about 48 hours prior to the inspection.

- IV. Under Ill. Admin Code tit. 35 § 725.293(e)(1)(A) and (B), external liner systems in secondary containment systems must be designed or operated to contain 100 percent of the capacity of the largest tank within the liner system's boundary and prevent run-on or infiltration of precipitation into the secondary containment system, unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

Cody Metal's secondary containment system was designed and installed to contain a total volume of 2,154 gallons. The largest tank in the system has a volume of 1,700 gallons. During the inspection, EPA inspectors observed that the secondary containment system was over halfway full of standing water, debris, excess materials, and an additional tank not included in the Facility's written and certified assessment. Cody Metal's operation of the secondary containment system prevented it from containing 100 percent of the 1,700-gallon tank's capacity.

5. Inspections

Under Ill. Admin Code tit. 35 § 725.295(a), (b) and (g), the owner or operator must inspect and document the following, where present, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells, etc.) to ensure that the tank system is being operated according to its design. This includes overflow/spill control equipment; above ground portions of the tank system for corrosion or releases, erosion, or signs of releases of hazardous waste; and construction materials and the area immediately surrounding the externally accessible portion of the tank system to detect erosion or signs of releases of hazardous waste.

During the inspection, Cody Metal did not produce documentation of inspections of overflow/spill control equipment; above ground portions of the tank system for corrosion or releases, erosion, or signs of releases of hazardous waste; and construction materials and the area immediately surrounding the externally accessible portion of the tank system to detect erosion or signs of releases of hazardous waste.

Actions Requested

In order to ensure compliance, by no later than 30 calendar days from the date of this letter, please provide information documenting the actions, if any, which you have taken since the inspection to address the identified potential violations or demonstrating why the violation(s) have not occurred.

Please send any written responses to this letter by electronic mail to:

r5lecab@epa.gov

and

Dierich.andrea@epa.gov

The subject line of all email correspondence must include ILD984806224. All electronically submitted materials must be in final and searchable format, such as Portable Document Format (PDF) with Optical Character Recognition (OCR) applied. If you are unable to send a response to these email addresses due to email size restrictions or other problems, contact Andrea Dierich to make additional arrangements for transmission of the response.

This letter is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks information from specific individuals or entities as part of an administrative investigation. You may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B for any part of the information you submit to EPA in response to this letter. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth at 40 C.F.R. Part 2, Subpart B. If you do not assert a business confidentiality claim when you submit the information, EPA may make this information available to the public without further notice.

EPA may use any information submitted in response to this letter in an administrative, civil, or criminal action.

The EPA contact in this matter is Andrea Dierich. You may contact her at (312) 353-6134 or by email at Dierich.andrea@epa.gov if you have additional questions. Thank you for your prompt attention to these concerns and your efforts to protect human health and the environment.

Sincerely,

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

Enclosures

cc: James Jennings, *Illinois EPA*, James.m.jennings@illinois.gov