



REGION 5

CHICAGO, IL 60604

**ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED**

James Lee
Senior Manager Environmental, Health, & Safety
Generac Energy Systems, Inc. – Whitewater Plant
757 N Newcomb Street
Whitewater, WI 53190
james.lee@generac.com

Re: **Notice of Violation**
Generac Energy Systems, Inc. – Whitewater Plant
WIR000028225
Whitewater, Wisconsin

Dear James Lee:

On June 5, 2024, the U.S. Environmental Protection Agency conducted a Resource Conservation and Recovery Act (RCRA) compliance evaluation inspection of the Generac Energy Systems, Inc. – Whitewater Plant (“Generac” or “you”) located in Whitewater, Wisconsin. The purpose of the inspection was to evaluate Generac’s compliance with provisions of RCRA and its implementing regulations¹ related to the generation, treatment, and storage of hazardous waste. A copy of the inspection report was emailed to you on July 12, 2024.

Information currently available to EPA suggests that Generac is in violation of RCRA. 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 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 violations identified below or demonstrating why the violation(s) have not occurred. EPA, however, reserves its right to take additional actions under RCRA including issuing an information request, seeking a penalty, and issuing an order.

¹ We note that effective September 1, 2020, the State of Wisconsin promulgated revised regulations which have not yet been authorized by EPA. EPA authorized the 2006 edition of Wisconsin’s hazardous waste regulations which contained a provision at Wis. Admin. Code s. NR 662.034 that remains the RCRA authorized Large Quantity Generator provision in Wisconsin.

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

A large quantity generator who stores or treats hazardous waste in a container may do so without a license provided the generator follows the applicable 90-day accumulation requirements found in Wis. Admin. Code s. NR 662.034(1) and (2).

During the inspection, EPA observed Generac's failure to comply with the RCRA license exemption requirements, below. When a hazardous waste generator fails to comply with the requirements for a license exemption, the generator is an operator of a hazardous waste storage facility without a license in violation of Wis. Admin. Code ss. NR 670.001(3) and 670.010(4)-(6). For purposes of remedying noncompliance or preventing future violations, EPA recommends that Generac comply with the requirements below instead of applying for a hazardous waste storage license.

1. Under Wis. Admin. Code ss. NR 662.034(1)(a)1 and 665.0173(1), a container holding hazardous waste must be closed, except when it is necessary to add or remove waste.

At the time of the inspection, one gaylord box labeled "Hazardous Waste, Filter Cake, F019," was open when waste was not being added or removed (see Inspection Report, Photographs 15 and 16).

Also, at the time of the inspection, a 5-gallon bucket collecting discarded adhesive² in the roofer robotics area was open (see Inspection Report, Photograph 8).

2. Under Wis. Admin. Code ss. NR 662.034(1)(a)1 and 665.0174, areas where hazardous waste is stored or treated must be inspected at least weekly for leaks and for deterioration caused by corrosion or other factors.

The 5-gallon bucket collecting discarded adhesive in the roofer robotics area was not included in the weekly inspections.

3. Under Wis. Admin. Code ss. NR 662.034(1)(a)1 and 665.0177(3), a container holding hazardous waste that is incompatible with any waste or other materials stored nearby must be separated from the other materials.

There were four containers of organic peroxide (an oxidizer) stored on the same pallets as other waste types (not separated) (see Inspection Report, Photographs 20, 25, 26, and 27).

4. Under Wis. Admin. Code s. NR 662.034(1)(b), the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container.

At the time of the inspection, two containers in main 90-day central accumulation area (CAA) did not have accumulation start dates. Also, many containers in the main 90-day CAA were not

² The adhesive in this bucket in the roofer robotics area was exposed to the air and was volatilizing. This action eliminated the ignitability characteristic of the raw adhesive and is considered treatment of a hazardous waste.

arranged for clear visibility of labels (including the ability to see whether accumulation start dates were present) (see Inspection Report, Photographs 18 and 24).

Also, the 5-gallon bucket collecting discarded adhesive in the roofer robotics area did not have an accumulation start date (see Inspection Report, Photograph 8).

5. Under Wis. Admin. Code s. NR 662.034(1)(c), each container must be labeled or marked clearly with the words, "Hazardous Waste."

At the time of the inspection, one container in the main 90-day CAA contained waste and was not labeled "Hazardous Waste."

Also, the 5-gallon bucket collecting discarded adhesive in the roofer robotics area was not labeled as "Hazardous Waste." (see Inspection Report, Photograph 8).

6. Under Wis. Admin. Code ss. NR 662.034(1)(d) and 665.0035, a large quantity generator of hazardous waste must provide aisle space throughout the facility to allow for the unobstructed movement of personnel and all emergency equipment.

At the time of inspection, the CAAs had tight aisle spacing that did not allow for the unobstructed movement of personnel and all emergency equipment (see Inspection Report, Photographs 18 and 24).

7. Under Wis. Admin. Code ss. NR 662.034(1)(d) and 665.0052(5), a large quantity generator of hazardous waste must have a contingency plan that includes 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) and where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

During the post-inspection records review, the contingency plan was missing the location and physical description for emergency equipment in the production areas.

8. Under Wis. Admin. Code ss. NR 662.034(1)(d) and 665.0053(2), a large quantity generator of hazardous waste must submit a copy of the contingency plan and all revisions to all local police departments, fire departments, hospitals and state and local emergency response teams that may be called upon to provide emergency services.

During the post-inspection records review, there was no record of the contingency plan being sent to: Hospitals, other Emergency Responders, or the contractor that was listed in the contingency plan for emergency response (North Shore Environmental Contractors). On July 23, 2024, Generac provided records demonstrating that they sent the contingency plan to Fire and Police Departments on 6/11/24 and 6/12/24, respectively.

However, there has been no record provided by Generac that demonstrates that the contingency plan was sent to the Hospital or to North Shore Environmental Contractors.

9. Under Wis. Admin. Code ss. NR 662.034(1)(d) and 665.0016(3), a large quantity generator of hazardous waste must have a program of classroom instruction or on-the-job training that teaches facility personnel to perform their duties in a way that ensures the facility's compliance with requirements of RCRA. With respect to this training program, a large quantity generator must, among other things, provide an annual review of initial training and maintain the records that document that the training has been given to and completed by facility personnel.

During the post-inspection records review, the following individuals were missing from the "RCRA based trained personnel for the past 3 years (2021-2023)" list that Generac provided in electronic files shared with EPA on July 23, 2024:

- Chris Ohuer (or possibly Oliver), who signed manifests in 2023;
- Rustin Shields, listed as the Primary Emergency Coordinator in the Contingency Plan;
- Tim Milewski, listed as the Facility Emergency Lead in the Contingency Plan; and
- Chuck Raduenz and Paul Taylor, listed as Facility/Production Leads in the Contingency Plan.

10. Under Wis. Admin. Code ss. NR 662.034(1)(d) and 668.07(1)(e), if a generator is managing and treating prohibited waste in containers to meet applicable land disposal restrictions (LDR) treatment standards, the generator must develop and follow a written waste analysis plan.

Treatment of the discarded adhesive waste in the 5-gallon bucket located in the roofer robotics area was not included in the existing Waste Analysis Plan (WAP).

Additionally, records provided by Generac do not demonstrate that the following requirement in the WAP is being followed for the varnish (resin)/catalyst waste: for each container, before it is transferred offsite, the facility must document visual inspection, including accumulation start date, container capacity, date of inspection, whether liquid is present, and if so, the amount of liquid present.

11. Under Wis. Admin. Code s. NR 662.034(2), a generator who accumulates hazardous waste on-site for more than 90 days is subject to license requirements, unless the generator has been granted an extension of the 90-day period.

At the time of the inspection, 12 containers labeled as "Varnish Waste," "Catalyst Varnish," "Varnish," or similar within the main 90-day CAA were marked with accumulation dates indicating they had been stored for more than 90 days. The table below summarizes the accumulation dates and storage duration for the 12 containers.

Also of note, Generac's WAP for the varnish waste includes the condition that the facility has up to 90 days for this curing process to complete, otherwise, they must either schedule a separate shipment to have the varnish waste sent off as hazardous waste or file an extension request through the WDNR.

Container Number	Accumulation Start Date	Storage Duration (days)
1	3/7/2024	91
2	3/7/2024	91
3	2/29/2024	98
4	2/28/2024	99
5	2/28/2024	99
6	2/23/2024	104
7	2/22/2024	105
8	2/13/2024	114
9	2/6/2024	121
10	2/6/2024	121
11	12/21/2023	168
12	7/31/2023	311

Other Violations

12. Hazardous Waste Determination

Under Wis. Admin. Code s. NR 662.011, a generator must determine whether its waste is hazardous.

- Generac has not provided documentation to support a non-hazardous waste determination for the soiled absorbent rags.
- Generac provided a waste profile document that they stated represents the cured varnish *and* cured adhesive wastestreams (combined). However, each wastestream requires an individual waste profile.
- At the time of inspection, Generac was unable to identify the contents of several unlabeled carboys in cardboard boxes that were stored in the main 90-day CAA (*see* Inspection Report, Photograph 22).

13. Land Disposal Restriction

Under Wis. Admin. Code s. NR 668.09(4)(a)2 and (b), a generator must identify underlying hazardous constituents (UHCs) for characteristic waste and the LDR certification must be signed.

During records review, there were at least two instances of UHCs being present that were identified via a code, but a key to the code definitions was not included on the LDR form (Adhesives, Waste Profile Approval Number 20230907THL; Lead-Acid Batteries, Waste Profile Approval Number 20230824PHL).

Additionally, during records review, there were some LDR certifications that were not signed.

14. Land Disposal Restriction

Under Wis. Admin. Code s. NR 668.09(4), wastes that exhibit a hazardous characteristic are also subject to NR 668.07, except that once the waste is no longer hazardous, a one-time LDR notification and certification shall be placed in the generator's or treater's on-site files.

Generac has not provided a record of a one-time LDR notification for the adhesive waste, which exhibits the ignitability characteristic prior to the curing (hardening) process.

15. Universal Waste Requirement

- a. Under Wis. Admin. Code s. NR 673.13(4), a small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. The containers and packages must, among other things, remain closed.

At the time of inspection, there were five boxes labeled "bad bulbs" that were not closed (see Inspection Report, Photographs 21 and 25).

- b. Under Wis. Admin. Code s. NR 673.14(5), a small quantity handler of universal waste must label or clearly mark each lamp or a container or package in which such lamps are contained with any one of the following phrases: "Universal Waste-Lamps," "Waste Lamps" or "Used Lamps."

At the time of the inspection, there were five boxes labeled "bad bulbs" that were not labeled with the phrase "Universal Waste-Lamps," "Waste Lamps" or "Used Lamps." (see Inspection Report, Photographs 21 and 25).

- c. Under Wis. Admin. Code s. NR 673.14(1), a small quantity handler of universal waste must label or clearly mark each battery or a container or package in which such batteries are contained with any one of the following phrases: "Universal Waste-Batteries," "Waste Batteries" or "Used Batteries."

At the time of the inspection, there were four discarded lead-acid batteries that were not labeled with the phrase "Universal Waste-Batteries," "Waste Batteries" or "Used Batteries." (see Inspection Report, Photographs 7 and 26).

- d. Under Wis. Admin. Code s. NR 673.15(3), a small quantity handler of universal waste must demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

At the time of inspection, there were five boxes of "bad bulbs" and four discarded batteries not dated or tracked in a manner to indicate the length of time they had accumulated (see Inspection Report, Photographs 7, 21, 25 and 26).

Actions Requested

In order to ensure compliance, by no later than 30 calendar days after receipt 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 violations have not occurred.

Please send all reports requested by this letter by electronic mail to:

r5lecab@epa.gov

and

cox.megan@epa.gov

The subject line of all email correspondence must include your EPA Identification Number: WIR000028225. 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 Megan Cox 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.

Contact Megan Cox at cox.megan@epa.gov if you have questions pertaining to this notice. Thank you for your prompt attention to these concerns and for your efforts to protect human health and the environment.

Sincerely,

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

cc: Michael Ellenbecker, WDNR (michael.ellenbecker@wisconsin.gov)
Andrea Keller, WDNR (andrea.keller@wisconsin.gov)