



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Mr. Elliot Jentz
Environment, Health, and Safety Manager
RathGibson, LLC
2505 Foster Avenue
Janesville, Wisconsin 53545
elliot.jentz@rathgibson.com

Re: NOTICE OF POTENTIAL VIOLATION AND OPPORTUNITY TO CONFER
Description of Potential Areas of Concern
Facility EPA Identification No.: WID006075634

Dear Mr. Jentz:

On December 13, 2022, the U.S. Environmental Protection Agency and Wisconsin Department of Natural Resources conducted a Resource Conservation and Recovery Act (RCRA) compliance evaluation inspection of the RathGibson, LLC, facility (hereinafter "RathGibson") located in Janesville, Wisconsin. As a generator of hazardous waste, RathGibson is subject to RCRA. The purpose of the inspection was to evaluate RathGibson's compliance with certain provisions of RCRA and its implementing regulations¹ related to the generation, treatment, and storage of hazardous waste. The inspection report was previously provided to you via electronic mail on February 9, 2023.

Information currently available to EPA suggests that RathGibson may be 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 potential violations.

During the inspection, EPA observed potential areas of concern as described below. The description of potential areas of concern is not a final determination regarding the Facility's compliance with RCRA. EPA requests 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 areas of concern described below. We also ask that you voluntarily provide responses to the question(s) found in the "Additional Information" section below. After 30 calendar days from your receipt of this letter, and if applicable, review of your response, EPA will notify you of any further action.

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 contain a provision at Wis. Admin. Code § NR 662.034 (2006) that remains the RCRA authorized Large Quantity Generator provision in Wisconsin.

PART I: AREAS OF CONCERN

During the inspection, EPA observed the following potential areas of concern:

1. Waste Determinations

Under Wis. Admin. Code § NR 662.011(2), a person who generates a solid waste must, among other things, determine if that waste is a listed hazardous waste in Wis. Admin. Code subch. D of ch. NR 661.

At the time of the inspection, RathGibson was operating an electropolishing (EP) process for stainless steel tubing. The baths in the EP process, when spent, are pumped into storage totes for discard. The spent material contains acid and chromium and has been determined by RathGibson to exhibit the D002 and D007 hazardous waste characteristics. The spent baths, however, appear also to meet the listing description for K062 found in Wis. Admin. Code subch. D of ch. NR 661, which defines K062 as spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332). SIC Code 331 applies to steel rolling and finishing mills and appears to apply to RathGibson. Therefore, RathGibson potentially failed to determine if the spent EP process acid baths are also K062 listed hazardous wastes.

2. Waste Determination Documentation

Under Wis. Admin. Code § NR 662.040(3), a generator must keep records of any test results, waste analyses, or other determinations made in accordance with Wis. Admin. Code § NR 662.011 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

Documentation supporting verbal non-hazardous waste determinations for the following waste streams observed during the inspection were not available for review:

- Grinding swarf from the polishing process;
- Air filters (from units that are not directly attached to the milling process);
- Roofing material (buckets of material observed in the 90-day accumulation area);
- Baghouse filters from milling;
- Wastewater filters; and
- Construction debris from the filter unit in the EP wastewater treatment room.

EPA requests that RathGibson provide documentation that supports waste determinations for these discarded materials.

3. Storage of Hazardous Waste Beyond 90 days

Under Wis. Admin. Code § NR 662.034(2), a generator of 1,000 kilograms or greater of hazardous waste in a calendar month, who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of Wis. Admin. Code chs. NR 664 and 665 as well as the licensing requirements of Wis. Admin. Code ch. NR 670 unless the generator has been granted an extension to the 90-day period. Such

extension may be granted if hazardous wastes remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted on a case-by-case basis.

From a post-inspection online review of electronic manifests, it appears that the following hazardous waste streams may have been stored at RathGibson for more than 90 days (see table below).

Waste Name	Manifest Number	Number of 55-Gallon Drums	Date of Shipment	Days between shipments
Wastewater Treatment Sludge	000314466DAT	8	June 26, 2020	N/A
	000314934DAT	6	October 14, 2020	110
	001140469WAS	11	February 24, 2021	133
	001253769WAS	27	May 5, 2022	435
Lab Acids	000314934DAT	1	October 14, 2020	N/A
	001253769WAS	5	May 5, 2022	568
Baghouse Dust from Milling	001873437VES	3	February 19, 2021	N/A
	001769943VES	16	August 5, 2021	167
	001997888VES	12	December 13, 2021	130

The wastewater treatment sludge, as observed during the inspection, collects in a small hopper that is shoveled into a single 55-gallon drum at a time. The system generates waste in small batches steadily over time and does not generate bulk waste in one cleanout. Between June 26, 2020 and October 14, 2020, a period of 110 days, 6 drums of sludge had accumulated. Between October 14, 2020 and February 24, 2021, a period of 133 days, 11 drums of sludge had accumulated. Over the next 435 days until May 5, 2022, 27 drums of sludge had accumulated.

The lab acids, as observed during the inspection, accumulate in a single 55-gallon drum at a time. Between October 14, 2020 and May 5, 2022, a period of 568 days, 5 drums had accumulated prior to shipment.

Baghouse dust is also generated on a steady basis in 55-gallon drums. It is EPA's understanding that the containers are removed from each of the 14 baghouses individually over time and not all at one time unless there is a plant shut down. Between February 19, 2021 and August 5, 2021, a period of 167 days, 16 drums had accumulated. Between August 5, 2021 and December 13, 2021, a period of 130 days, 12 drums had accumulated.

EPA does not have any record of RathGibson applying for an extension to store the wastes listed above for longer than 90 days.

4. Date When Each Period of Accumulation Begins

Under Wis. Admin. Code § NR 662.034(1)(b), a generator must clearly mark visibly for inspection each container holding hazardous waste with the date upon which each period of accumulation begins.

At the time of the inspection, four pallets each containing four 55-gallon drums of hazardous waste were positioned on top of a bottom row of drums of mostly hazardous waste. The labels for each of these containers in both the bottom and top rows were placed on the lids of the containers. These labels were not observable for inspection in this configuration. Mr. Richards, of RathGibson, moved the containers to the ground using a forklift so that all labels could be observed.

Additionally, at the time of the inspection, 17 drums of hazardous waste were marked with an inaccurate start date of accumulation (7/13/22) that was accidentally printed out on the drum labels and was not changed by hand to reflect the actual start date. Mr. Jentz stated that the actual start date of accumulation for 9 drums of steel grindings, which had been generated during a maintenance cleanout of baghouses, was between 10/27/22 and 11/4/22. Start dates for 3 drums of EP acid with absorbents and for 5 drums of wastewater treatment sludge, however, were not immediately known during the inspection.

5. Satellite Accumulation – Open Containers

Under Wis. Admin. Code § NR 662.034(3)(a)1., a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without an operating license or interim license and without complying with Wis. Admin. Code § NR 662.034(1) provided the generator complies with, among other things, Wis. Admin. Code § NR 665.0173(1). According to Wis. Admin. Code § NR 665.0173(1), a container holding hazardous waste must always be closed during storage, except when it is necessary to add or to remove waste.

At the time of the inspection, one 55-gallon drum in the maintenance/oil storage room in Building 1 was being managed as a satellite container to accumulate floor sweepings. The lid of the container was askew, and the container was not closed.

In the wastewater treatment area in Building 3, a hopper (approximately 55 gallons in size) was filled with wastewater treatment sludge. The press was not operating at the time of the inspection. Though the hopper is positioned directly beneath the filter press, it does not have a separate cover. Additionally, a 55-gallon drum of treatment sludge near the press was three-quarters full at the time of the inspection. Waste was neither being added to nor removed from the drum at that time. Mr. Jentz stated that the container would be filled and moved to the 90-day area within one shift; however, it was not covered.

6. Satellite Accumulation – Labeling

Under Wis. Admin. Code § NR 662.034(3)(a)2., a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without an operating license or interim license and without complying with Wis. Admin. Code § NR 662.034(1) provided the generator, among other things, marks the containers either with the words “Hazardous Waste” or with other words that identify the contents of the containers.

At the time of the inspection, the following satellite containers of hazardous waste were not labeled as prescribed in the regulation, above:

- One 55-gallon drum in the maintenance/oil storage room in Building 1 that was being managed as a satellite container to accumulate floor sweepings (D007);
- One 55-gallon drum that had been removed from service collecting baghouse dust (D007) and was moved to the maintenance/oil storage room in Building 1 during the inspection in order to be labeled and marked for 90-day storage;
- Approximately fourteen 55-gallon drums collecting baghouse dust (D007) from the milling process in Building 1;
- A hopper (approximately 55-gallons in size) of wastewater treatment sludge (F006, D007) located in the wastewater treatment area of Building 3; and
- A 55-gallon drum of wastewater treatment sludge (F006, D007) in the wastewater treatment area of Building 3. Mr. Jentz stated that the container would be filled and moved to the 90-day area within one shift; however, it was not labeled.

7. Use and Management of Containers – Weekly Inspections

Under Wis. Admin. Code §§ NR 662.034(1)(a)1. and 665.0174, a generator shall inspect at least weekly areas where containers of hazardous waste are stored.

At the time of the inspection, records of weekly inspections for the 90-day accumulation area were kept in the maintenance area of Building 1. Mr. Richards conducts the inspections. Records dating back to 4/18/22 were available for review. Mr. Richards took over the position from another employee, Randy Kagen, at that time. Records from Mr. Kagen were not available for review during the inspection.

Upon review of the available documents, several gaps in the inspections were identified: 4/25/22 – 5/26/22; 6/27/22 - 7/18/22; 8/22/22 – 9/6/22; 9/12/22 – 10/5/22; 10/5/22 – 10/19/22; 10/19/22 – 11/9/22; 11/9/22 – 11/23/22; and 11/23/22 – 12/8/22.

8. Training

Under Wis. Admin. Code §§ NR 662.034(1)(d) and 665.0016(1)(a)(3), a large quantity generator of hazardous waste must have a program of classroom instruction or on-the-job training that teaches personnel whose duties include hazardous waste management to perform their duties in a way that ensures the facility's compliance with the requirements of RCRA. This training must be provided within six months of employment and annually thereafter.

At the time of the inspection, RathGibson had not provided RCRA hazardous waste management training to emergency coordinators for the facility including Mr. O'Donnell, Mr. Hanson, and Mr. Kennerson.

9. Maintenance and Operation of Facility

Under Wis. Admin. Code §§ NR 662.034(1)(d) and 665.0031, facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or

non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

At the time of the inspection, two secondary containment pallets for totes of spent EP baths (the totes were empty at the time of the inspection) in the 90-day central accumulation area in Building 2 held a measurable amount of liquid. In addition, secondary containment pallets for containers of used oil in the maintenance/oil storage room in Building 1 held measurable amounts of oily liquid. Secondary containment is meant to provide immediate containment for wastes that are stored within its boundary. The containment must be maintained empty in order to effectively capture the next release.

Also, in Building 3, which houses the EP process, the floor of the wastewater treatment area was coated in green wastewater treatment sludge. Small chunks/particles of the sludge were on the floor around the sludge hopper beneath the filter press and a 55-gallon drum of sludge. The sludge is an F006 listed hazardous waste.

10. Universal Waste

A small quantity handler of universal waste lamps must, among other things:

- (1) Contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the content of the lamps. The containers and packages shall remain closed and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. See, Wis. Admin. Code § NR 673.13(4)(a);
- (2) 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.” See, Wis. Admin. Code § NR 673.14(5); and
- (3) Accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the handler proves that the activity is solely for the purpose of accumulation of quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. See, Wis. Admin. Code § NR 673.15(1) and (2).

At the time of the inspection, RathGibson was accumulating universal waste in the east dock area of Building 2. The following observations of universal waste were made in the area:

- A start date of accumulation was not marked on one cylinder of an upright 4-foot cardboard cylinder of lamps.
- Five 4-foot boxes of lamps were stored on a shelving unit. The boxes were neither labeled nor dated.
- Four individual lamps greater than 8 feet in length were not containerized.
- Two 8-foot boxes labeled as “Universal Waste” contained used lamps. One box was open. The second box was not marked with a start date and was closed.
- One plastic tote was labeled only as “Batteries” and one plastic tote was labeled only as “Bulbs.” The totes were not marked with start dates of accumulation.

- Start dates of accumulation for the universal wastes did not appear to be consistently tracked at the facility. RathGibson did not provide evidence that they were storing the lamps solely for the purpose of facilitating recovery, treatment, or disposal.

PART II: ADDITIONAL INFORMATION

- A. At the time of the inspection, RathGibson provided EPA with waste profiles for certain waste streams. Information in the profiles was missing, inaccurate, or inconsistent either within the profiles or across profiles. **Please address the items identified below.**

In general, the following issues were identified during a review of the profiles:

- Under the “Non-Hazardous Waste Determination” section, specific questions such as “Is this a listed waste?” and items regarding toxicity characteristics, such as asking for chromium content (D007), were all marked “Not Applicable” even if a listing or toxicity characteristic was identified elsewhere in the profile.
- The hazardous materials identification system (HMIS) section on some of the profiles was left blank.
- Supporting documentation, such as analytical results or safety data sheets, was not provided with any of the profiles.
- The NAICS code for RathGibson identified on many of the profiles was 333241. This code is also provided by RathGibson in their Annual/Biennial reports. This code is for Food Product Machinery Manufacturing. The final products manufactured by RathGibson (stainless steel tubes) do not appear to fall within this classification.

Specifically, the following issues were identified in individual profiles:

- Electropolishing Acid
 - Under the section “EPA LDR Hazardous Constituents,” the “UTS Parameter Description” is marked “None.” Elsewhere in the profile, however, nickel is identified as a constituent in the waste stream up to 4500ppm. The Universal Treatment Standard for Nickel is 11 mg/L in non-wastewater.
 - Under the “Potential High Hazard” section, “Oxidizer” is marked as “No,” whereas the same section in the Electropolishing Acid with Absorbents profile is marked as “Yes.”
- Electropolishing Acid with Absorbents
 - The waste profile indicates that the appropriate waste number for this waste stream is D007. The profile states that the waste can contain up to 5 gallons of free liquid. The waste number D002 was not indicated on the profile.
 - Similar to the Electropolishing Acid profile, K062 was not indicated, and nickel was not included as a possible underlying hazardous constituent. The total nickel content in this waste stream is estimated to be up to 90 ppm.
- Lab Acids
 - The profile indicates that the appropriate waste numbers for this waste stream are D002, D007, and D008. Lead (D008) is estimated as a constituent in this waste stream up to 1 percent or 10,000 ppm. The cause of the lead contamination was

not clear during the inspection. It appears, however, to be confined to the laboratory wastes.

- Under the “Potential High Hazard” section, “Oxidizer” is marked “No,” whereas the same section in the Lab Acids with Absorbents profile is marked “Yes.”
 - Lab Acids with Absorbents
 - The waste profile indicates that the appropriate waste numbers for this waste stream are D007 and D008. The profile states that the waste can contain up to 5 gallons of free liquid. The waste number D002 was not indicated on the profile.
 - Unlike the Lab Acids profile, nickel was not included as a possible underlying hazardous constituent in this profile. The total nickel content in this waste stream is estimated to be up to 1 percent or 10,000ppm.
 - Oil-Soaked Debris
 - The waste profile indicates this waste stream is non-hazardous. The profile shows an estimated 100-500 ppm total for benzene. The hazardous waste characteristic limit is 0.5 ppm for benzene (TCLP). Neither the used oil in the facility nor this oil-soaked debris have been analyzed for metals, notably, chromium.
- B. Under Wis. Admin. Code §§ NR 662.034(1)(d) and 665.0016(1)(a)(4)(d), a large quantity generator that has a program of classroom instruction or on-the-job training must maintain records documenting that the training or job experience has been given to, and completed by, applicable facility personnel.

During a post-inspection review of manifests, additional employees who signed manifests were identified as being subject to RCRA hazardous waste management training. Because these employees were identified after the inspection, EPA was not able to ask for these records during the inspection. **Please provide, as available, training documentation from 2021 and 2022 for the following employees:**

- Jerry Hemmenling
- Patrick McGuire
- Zach Dinkle
- Paul Kneck
- Michael Brennaw, and
- Don Dorn.

PART III: ACTIONS REQUESTED

By no later than 30 calendar days from the date of this letter, you should provide information documenting the actions, if any, which you have taken since the inspection to address the identified potential areas of concern, as well as any additional information requested.

Send all responses requested by this letter by electronic mail to Brenda Whitney at whitney.brenda@epa.gov and to R5LEECAB@epa.gov.

The subject line of all email correspondence must include RathGibson’s EPA Identification Number (WID006075634). 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 Ms. Whitney 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.

The EPA contact in this matter is Brenda Whitney. Contact Ms. Whitney at (312) 353-4796 or at whitney.brenda@epa.gov if you have additional questions. Should you have questions of a legal nature, please contact Matthew Russo at (312) 353-4410 or at russo.matthew@epa.gov. Thank you for your prompt attention to these concerns and for your efforts to protect human health and the environment.

Sincerely,

Michael D. Harris, Director
Enforcement and Compliance Assurance Division

Enclosure

cc: Michael Ellenbecker, WDNR (michael.ellenbecker@wisconsin.gov)
Andrea Keller, WDNR (andrea.keller@wisconsin.gov)
Erik Reinhard, WDNR (erik.reinhard@wisconsin.gov)
Matthew Russo, EPA Office of Regional Counsel (russo.matthew@epa.gov)