



REGION 5

CHICAGO, IL 60604

ELECTRONIC MAIL DELIVERY RECEIPT REQUESTED

Noel Cornwell
Owner
Accu-Labs Inc.
3433 West 48th Place
Chicago, Illinois 60632
noel@acculabsinc.com

Re: **Notice of Potential Violation and Opportunity to Confer**
Notice of Intent to File Civil Administrative Complaint Against Accu-Labs Inc.
ILR000119743
Chicago, Illinois

Dear Ms. Cornwell:

The EPA plans to file an administrative complaint for civil penalties against Accu-Labs Inc. ("Accu-Labs or you"). We will allege that you violated the Resources Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 - 6992k, as amended, as described below. RCRA is a cradle-to-grave framework to ensure proper management of hazardous wastes which, if handled in an unsafe manner, could present risks to humans and the environment.

Based on information provided by Accu-Labs, EPA's review of records pertaining to Accu-Labs, and EPA's observations during the April 7, 2022, inspection, you may have unlawfully stored hazardous waste without a permit or interim status as a result of Accu-Lab's failure to comply with certain conditions for a permit exemption under: Ill. Admin. Code tit. 35 § 722.134(a)-(c). 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)]. Accordingly, if you unlawfully stored hazardous waste without a permit, EPA would deem Accu-Labs to be in significant noncompliance with RCRA.

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 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. Accu-Lab's failure to comply with certain conditions are violations of the corresponding requirements in Ill. Admin. Code tit. 35 Part 725.

Finally, it appears that you also violated a RCRA requirement related to manifests.

Please see the attachment for a list of the alleged violations.

Based on information currently available to us, we plan to propose a penalty of \$170,492 in the complaint. In developing the penalty amount proposed in a complaint, EPA considers the particular facts and circumstances of the case, as well as EPA's penalty policy.

Please note that, in determining the appropriate penalty amount, EPA also may consider a violator's voluntary performance of a Supplemental Environmental Project ("SEP"). A SEP is a project that a violator has not otherwise planned to perform and is not otherwise legally required to perform, and that is designed to either (1) reduce the likelihood that similar violations will occur in the future, (2) reduce adverse public-health or environmental impacts to which the violations contributed, or (3) reduce the overall risk to public health or the environment potentially affected by the violations.

You may learn more about SEPs on EPA's SEP website, which includes a link to a database with examples of past-completed SEPs: <https://www.epa.gov/enforcement/supplemental-environmental-projects-seps>, and EPA's 2015 SEP Policy: <https://www.epa.gov/sites/default/files/201504/documents/sepupdatedpolicy15.pdf>.

If you are interested in proposing or discussing performance of a SEP as part of the settlement of this matter, please review the SEP Policy prior to our meeting. EPA would welcome discussion of any proposals or questions you may have about potential SEPs.

This letter is not a demand to pay a penalty. We will not ask you to pay a penalty until we file the complaint or a final order. Before filing the complaint, we are giving you the opportunity to present any information that you believe we should consider. Relevant information might include evidence that you did not violate the law; evidence that you relied on compliance assistance from EPA or a state agency; evidence that we identified the wrong party; or financial data bearing on your ability to pay a penalty. If you believe that you will be unable to pay a \$170,492 penalty because of financial reasons, please electronically send us certified, complete financial statements including balance sheets, income statements and all notes to the financial statements, and your company's signed income tax returns with all schedules and amendments, for the past three years.

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.

Please send any written responses to this letter to:

r5lecab@epa.gov

and

paulin.jamie@epa.gov

If you want to confer with us regarding this Notice, you should contact Jamie Paulin via email or by phone at 312-886-1771, requesting such a conference, within ten (10) calendar days after you receive this Notice. Please be advised that this conference is not a settlement negotiation covered by Federal Rule of Evidence 408 and we may use any information you submit in support of any administrative, civil, or criminal action. After this conference (or after you have submitted a written reply), you will have an opportunity to engage in settlement negotiations before we file the complaint.

After 30 days from receipt of this letter, EPA may file a complaint without further notice against Accu-Labs as authorized under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

This letter is being made available to the State of Illinois as a means of notifying the State pursuant to Section 3008(a) of RCRA, as amended, that EPA is preparing to issue a formal enforcement action to Accu-Labs.

If you have any legal questions regarding this Notice, please contact Justin Berchiolli, at (312) 353-8640 or berchiolli.justin@epa.gov.

Sincerely,

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

Enclosures

cc: Paul Eisenbrandt, Illinois Environmental Protection Agency [paul.eisenbrandt@illinois.gov]

Attachment List of Violations

Storage of Hazardous Waste without a Permit or Interim Status and Violations of TSD Requirements.

At the time of the April 7, 2022, inspection (Inspection), Accu-Labs was out of compliance with the following large quantity generator permit exemption conditions:

1. Initial Notification

Under Ill. Admin. Code tit. 35 § 722.112(a)¹, a generator must not treat, store, dispose of, transport, or offer for transportation hazardous waste without having received a USEPA identification number from USEPA. At the time of the Inspection, Accu-Labs was storing and offering for transportation hazardous waste at 3421 West 48th Place, Chicago without obtaining an EPA identification number. Accu-Labs was using the EPA identification number for the 4831 South Whipple, Chicago address.

2. Hazardous Waste Accumulation

Under Ill. Admin. Code tit. 35 § 722.134(a) and (b)², a large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit or interim status unless the generator has been granted an extension of the 90-day period. At the time of the April 7, 2022, Inspection, Accu-labs had one tote that was not marked with an accumulation date. Accu-labs had shipped only one manifest in 2021, on April 1, 2021, indicating that it had shipped 14 tons of hazardous waste during the calendar year of 2021. This date demonstrates that Accu-Labs stored hazardous waste on-site for approximately eight months greater than 90 days (7/1/21-3/16/22). The next load of hazardous waste Accu-Labs shipped—of eight tons of hazardous waste—was on March 16, 2022. Finally, Accu-Labs delivered a third shipment—of eight tons of hazardous waste—on September 15, 2022, meaning that Accu-Labs had stored this hazardous waste on-site for about three months greater than 90 days (6/16/22-9/15/22).

Per 35 Ill. Admin. Code tit. 23 § 721.102(c)(4), “A material is a solid waste if it is recycled – or accumulated, stored, or treated before recycling – as specified in subsections (c)(1) through (c)(4), if one of the following occurs with regard to the material: . . . (4): Accumulated Speculatively.”

Per 35 Ill. Admin. Code tit. 23 § 721.101(c)(8), “A material is ‘accumulated speculatively’ if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that, during the calendar year (commencing on January 1), the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials must be

¹ EPA notes that on November 19, 2018, the State of Illinois promulgated revised regulations which EPA has not yet authorized. EPA authorized an earlier edition of the Illinois hazardous waste regulations that contained a provision at Ill. Admin. Code tit. 35, § 722.112(a) that remains the RCRA authorized Large Quantity Generator provision in Illinois.

² EPA notes that on November 19, 2018, the State of Illinois promulgated revised regulations which EPA has not yet authorized. EPA authorized an earlier edition of the Illinois hazardous waste regulations that contained a provision at Ill. Admin. Code tit. 35, § 722.134 that remains the RCRA authorized Large Quantity Generator provision in Illinois.

placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under Section 721.104(c) are not to be included in making the calculation. Materials that are already defined as solid wastes also are not to be included in making the calculation. Materials are no longer in this category once they are removed from accumulation for recycling, however.”

Here, Accu-Labs has speculatively accumulated the process rinse water³ that it ultimately shipped as hazardous waste because:

- Accu-Labs cannot show that the amount of material it recycled throughout the year exceeded 75 percent of the weight or volume of the amount of material that it accumulated throughout the year, and
- Accu-Labs cannot show that it placed the material in a storage unit with a label indicating the first date that it began to accumulate the material.

3. Date When Each Period of Accumulation Begins

Under Ill. Admin. Code tit. 35 § 722.134(a)(2)⁴, a large quantity generator must clearly mark each container holding hazardous waste with the date upon which each period of accumulation begins. At the time of the Inspection, Accu-Labs failed to label one tote with the required date.

4. Hazardous Waste Container Labeling

Under Ill. Admin. Code tit. 35 § 722.134(a)(3)⁵, a large quantity generator must label or clearly mark each container holding hazardous waste with the words “Hazardous Waste.” At the time of the Inspection, Accu-Labs failed to affix the required label on one tote.

The permit exemption conditions identified below are also independent TSD requirements that Accu-Labs violated:

5. Use and Management of Containers

Under Ill. Admin. Code tit. 35 §§ 722.134(a)(1)(A) and 725.273(a)⁶, a large quantity generator must always keep a container holding hazardous waste closed during storage, except when it is necessary to add or remove waste. At the time of the Inspection, Accu-Labs had left one tote open even though it was not adding waste to it or removing waste from it.

³ Here, Accu-Labs accumulated process rinse waters, qualifying as a “spent material” that may be speculatively accumulated pursuant to Ill. Admin. Code tit. 35 §§ 721.Appendix Z and 721.101(c)(1).

⁴ See footnote 2, *supra*.

⁵ See footnote 2, *supra*.

⁶ See footnote 2, *supra*.

6. Contingency Plan

Under Ill. Admin. Code tit. 35 § 725.153(a) and (b), a copy of the contingency plan and all revisions to the plan must be maintained at the facility; and 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. At the time of the Inspection, Accu-Labs failed to maintain a copy of the contingency plan at the facility where it was generating the waste. In addition, Accu-Labs failed to submit the contingency plan to all local police departments, fire departments, hospitals, and State and local emergency response teams.

7. Contingency Plan Amendment

Under Ill. Admin. Code tit. 35 § 725.154(c), the contingency plan must be reviewed, and immediately amended, if necessary, whenever the facility changes – in its design, construction, operation, maintenance, or other circumstances – in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents or changes the response necessary in an emergency. At the time of the Inspection, Accu-Labs' contingency plan stated that the production area "is surrounded by containment walls and impervious flooring to retain any spillage. Even in the worst-case scenario, this containment area offers enough volume to retain the largest tank within its boundaries." However, the Inspection revealed that the 3421 West 48th Place location did not appear to have impervious flooring and instead appeared to have been damaged.

Other Violation

Accu-Labs also violated the following generator requirement:

8. Hazardous Waste Manifests

Under Ill. Admin. Code tit. 35 § 722.120(a)(1) a generator who transports, or offers for transport, a 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 (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. At the time of the inspection, Accu-Labs had offered hazardous waste for transport on a manifest without complying with the instructions included in the appendix. Accu-Labs failed to include in the manifest the EPA identification number for the 3421 West 48th Place location and the physical site address from which the shipment originated.