



REGION 5

CHICAGO, IL 60604

ELECTRONIC MAIL DELIVERY RECEIPT REQUESTED

Mr. Jake Proctor
Business Unit Manager
Nylok LLC
6465 Proesel Avenue
Lincolnwood, Illinois 60712
jake.proctor@Nylok.com

Re: **Notice of Potential Violation and Opportunity to Confer**
Notice of Intent to File Civil Administrative Complaint Against Nylok LLC
Facility ID: ILD130875172
Lincolnwood, Illinois

Dear Mr. Proctor:

The EPA plans to file an administrative complaint for civil penalties against Nylok LLC ("Nylok" or "you"). We will allege that you violated RCRA, 42 U.S.C. §§ 6901 - 6992k, as amended, as described below, at your Lincolnwood, Illinois facility. 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 people and the environment.

Based on information provided by Nylok, and the EPA inspector's observations, we will allege that Nylok unlawfully stored hazardous waste without a permit or interim status as a result of Nylok's failure to comply with certain conditions necessary to qualify for a permit exemption under Ill. Admin. Code tit. 35 § 722.134(a)-(c).¹ 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)]. If Nylok unlawfully stored hazardous waste without a permit, EPA would deem Nylok to be in significant noncompliance with RCRA.

¹ 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, promulgated in 2011, that remain the RCRA authorized provisions in Illinois. Accordingly, this letter cites to the 2011 version of the Illinois regulations.

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. Nylok's failure to comply with certain conditions in Ill. Admin. Code tit. 35 § 722.134(a)-(c) are violations of the corresponding requirements in Ill. Admin. Code tit. 35 Part 725. Nylok also violated RCRA requirements related to hazardous waste determinations, recordkeeping, and reporting.

Please see the attachment for a list of the violations.

Based on information currently available to us, we plan to propose a penalty of \$100,754 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 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/2015-04/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 \$100,754 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

garvin.melissa@epa.gov

If you want to confer with us regarding this Notice, you should contact Melissa Garvin via email or by phone at (312) 886-1462, 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 Nylok 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 Nylok.

If you have any legal questions regarding this Notice, please contact Olivia Bauer, Assistant Regional Counsel, at (312) 886-6436 or bauer.olivia@epa.gov.

Sincerely,

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

Enclosure

cc: Chris Cahnovsky, Acting FOS Manager, Illinois Environmental Protection Agency (IEPA)
chris.cahnovsky@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 inspection, Nylok was out of compliance with the following large quantity generator permit exemption conditions:

1. Date When Each Period of Accumulation Begins

Under Ill. Admin. Code tit. 35 § 722.134(a)(2), a large quantity generator must clearly mark each container holding hazardous waste with the date when the container began accumulating waste. At the time of the inspection, four drums containing hazardous waste were missing the required accumulation start date.

2. Hazardous Waste Container Labeling

Under Ill. Admin. Code tit. 35 § 722.134(a)(3), 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, four drums containing hazardous waste were missing the required label or clear marking.

The permit exemption conditions identified below are also independent TSD requirements violated by Nylok:

3. Use and Management of Containers

Under Ill. Admin. Code tit. 35 §§ 722.134(a)(1)(A) and 725.273(a), 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, four drums containing hazardous waste were left open when waste was not being added or removed.

4. Weekly Inspections

Under Ill. Admin. Code tit. 35 § 722.134(a)(1)(A) and 725.274, a generator must inspect areas where containers are stored at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. Nylok did not provide proof that it was performing weekly inspections of two storage lockers storing hazardous waste.

5. Contingency Plan

Under Ill. Admin. Code tit. 35 §§ 722.134(a)(4) and 725.152(d), a generator must have a contingency plan that lists names, addresses, and phone numbers

(office and home) of all persons qualified to act as an emergency coordinator, and this list must be kept up to date. During the inspection, Mr. Jakub Zagorski stated that he was the emergency contact for Nylok, but he was not listed as the emergency contact in the contingency plan.

6. Training

Under Ill. Admin. Code tit. 35 §§ 722.134(a)(4) and 725.116(d), 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 maintain the following documents and records at its facility for employees filling a position related to hazardous waste management: the job title for each position at the facility and the name of the employee filling each job; a written job description for each position; a written description of the type and amount of both introductory and continuing training that will be given; and records that document that the training or job experience described above has been given to and completed by facility personnel.

Nylok did not have documentation regarding training given to and completed by facility personnel for the years 2020 and 2021.

Other Violations

Nylok violated the following generator requirements:

7. Hazardous Waste Determination

Under Ill. Admin. Code tit. 35 § 722.111, a generator must determine whether its waste is hazardous. At the time of the inspection, Nylok had not made a determination whether the discarded material present on the floor of the storage lockers containing hazardous waste drums was hazardous.

8. Exemption Report

Under Ill. Admin. Code tit. 35 §§ 722.123(a), 722.140(b), and 722.142(a)(2), for shipments of hazardous waste, a generator must submit an Exception Report to Illinois Environmental Protection Agency if the generator has not received a copy of the hazardous waste manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. For the manifest numbered 019807257JJK, Nylok did not file an exception report even though the waste had been accepted by the facility more than 45 days earlier and Nylok had not received a copy of the manifest with a handwritten signature from the designated facility within that time period.