



REGION 5

CHICAGO, IL 60604

**ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED**

Philip Grogan
Plant Manager
Tradebe Treatment and Recycling of Wisconsin, LLC
5611 West Hemlock Street
Milwaukee, Wisconsin 53223
Philip.grogan@tradebe.com

Re: **Notice of Violation and Opportunity to Confer**
Tradebe Treatment and Recycling of Wisconsin, LLC
EPA Identification No.: WID988580056
Milwaukee, Wisconsin

Dear Philip Grogan:

On March 26-27, 2024, the U.S. Environmental Protection Agency and Wisconsin Department of Natural Resources conducted a Resource Conservation and Recovery Act (RCRA) compliance evaluation inspection of Tradebe Treatment and Recycling of Wisconsin ("Tradebe" or "you") located in Milwaukee, Wisconsin. The purpose of the inspection was to evaluate Tradebe's compliance with its hazardous waste operating license (Final Determination to Approve a Feasibility and Plan of Operation Report effective June 29, 2007, or "License") and certain additional provisions of RCRA and its authorized implementing regulations related to the generation, treatment, and storage of hazardous waste.¹ After the inspection, Tradebe provided to EPA additional records on April 19, 2024 to support the inspection. A copy of the inspection report was provided to Tradebe on May 22, 2024.

Information currently available to EPA suggests that Tradebe 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 violations.

¹ We note that effective September 1, 2020, the State of Wisconsin promulgated revised regulations which have not yet been authorized by EPA. In April 2009, EPA authorized the 2006 edition of Wisconsin's hazardous waste regulations which remains the EPA-authorized RCRA provision in Wisconsin.

EPA requests that you voluntarily submit a response to this Notice of Violation in writing to the Agency 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.

Part 1 - Storage of Hazardous Waste without Applicable License Conditions and Failure to Comply with License Exemptions, Violating Section 3005 of RCRA, 42 U.S.C. § 6925(a) and State Licensing Requirements

A large quantity generator (LQG) of hazardous waste who is also a licensed treatment, storage, and or disposal facility (TSDF) must follow not only the conditions of its license, but also any LQG conditions for a license exemption that are not specifically addressed in its license.

During the inspection, EPA observed Tradebe's failure to comply with LQG conditions for an exemption from a license that are not specifically included as conditions in its License. Upon failure to comply with any such conditions, an LQG who is also a licensed TSDF must either come into compliance with the conditions for exemption or apply for a license modification that allows the generator an alternative to compliance with the conditions for exemption. Failure either to comply with the conditions for exemption or to modify the license is a violation of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and of Wisc. Admin. Code §§ NR 670.001(3) and NR 670.010(1) and NR 670.010(4) (2006).

1. Use and Management of Containers

Pursuant to Wis. Admin. Code §§ NR 662.034(1)(a)1., NR 662.034(3)(a)1., and NR 665.0173(1) (2006), a large quantity generator must always keep a container holding hazardous waste closed during storage, except when it is necessary to add or to remove waste.

At the time of the inspection, a yard-box in Area 1 of the facility managed as a 90-day storage container for hazardous wastes was not closed. Waste was not observed being added or removed from the container during the inspection. See the inspection report, page 5.

Additionally, one 5-gallon carboy of spent solvent in the facility laboratory was labeled as "Hazardous Waste" and managed as a satellite accumulation container. The container was open with a funnel in the bung. The carboy was stored in a larger pedal-operated flip-top container; however, the lid was settled loosely on the outer container and was not able to be fastened. Waste was not observed being added or removed from the container during the inspection. See the inspection report, page 6.

Tradebe failed to keep containers closed when waste was not being added or removed and therefore failed to comply with the LQG conditions for a license exemption.

Part 2 – Storage of Hazardous Waste in Violation of License Conditions

2. Waste Analysis Plan and Waste Profiles – Violation of License Conditions and Wis. Admin. Code § NR 664.0013(1)

License Conditions #1 (from license modifications dated June 29, 2007 and April 15, 2020) and License Conditions #2 (from license modifications dated December 20, 2007, June 16, 2010, November 20, 2014, and April 4, 2017) require that the facility shall, among other things, be operated in accordance with the approved Feasibility and Plan of Operation Report (FPOR), otherwise known as Part B of the facility license application, and the requirements of Wis. Admin. Code ch. NR 660 to 670. License Condition #20 (from license modification dated June 29, 2007) requires the facility to analyze each waste stream in accordance with the waste analysis procedures set forth in the waste analysis plan in Appendix D of the March 17, 2006 FPOR.

The facility Waste Analysis Plan (WAP) is included as Appendix D in the FPOR. According to page 37 (PDF page 40) of the WAP, Tradebe is to develop accurate waste profiles for each wastestream to be received at the facility using information provided by the generator or by analysis so that the waste is properly treated, stored, or disposed pursuant to Wis. Admin. Code § NR 664.0013(1) (2006). Records and results of waste analyses and determinations performed pursuant to Wisc. Admin. Code § NR 644.0013 (2006) are to be maintained in the operating record per Wis. Admin. Code § NR 664.0073(2)(c) (2006).

Based on a review of records provided by Tradebe by email to EPA on April 19, 2024, the following waste profiles were not supported by information supplied by the generator or by analysis.

- a. Profile # 240153-2 is for aerosol cans. According to the profile, this material is classified as a universal waste. Aerosol cans are not included under universal waste provisions in Wisconsin. Data in the profile indicates that the wastestream meets the definition of hazardous waste. The waste exhibits ignitability with a flash point below 73°F and contains underlying hazardous constituents above treatment standards. In addition, a 55-gallon drum of this wastestream was observed during the inspection labeled as “Universal Waste.”
- b. Profile # 1000447216 is for oil rags/absorbents from lubricating oil clean-up. Section B of the profile includes the question, “Is this waste exempt from RCRA regulation?” The profile is marked “Yes” and cites “Used Oil Exemption” as the reason. Depending on the fate of the waste, materials contaminated with used oil are regulated under RCRA either as used oil under Wis. Admin. Code ch. NR 679 or as a solid waste requiring a hazardous waste determination under Wis. Admin. Code ch. NR 662.011. The profile failed to include any documentation or explanation indicating whether the waste is a used oil, a hazardous waste, or a non-hazardous waste.
- c. Profile # 1000147741 is for acetone. According to the profile, this material is generated from “cleaning equipment.” This waste profile includes the following generic question:

“Is this material subject to a RCRA regulation?” The profile is marked “No” but fails to provide a reason and documentation to support this conclusion. A 55-gallon drum labeled with this profile number was observed during the inspection. The container was not being managed as a hazardous waste. The label on the container applied by Tradebe indicated that the material was being managed as “CORE – Solvents for Continued Re-use.” The profile provided to EPA on April 19, 2024 for this wastestream failed to include supporting documentation or data to support an exemption from hazardous waste regulations for this wastestream.

Failure to maintain complete and accurate chemical and physical analysis waste profiles that contain all the information which must be known to treat, store, or dispose of waste properly is a violation of NR 664.0013(1) and NR 664.0073(2)(c), and of License Conditions #1 (from license modifications dated June 29, 2007 and April 15, 2020), License Conditions #2 (from license modifications dated December 20, 2007, June 16, 2010, November 20, 2014, and April 4, 2017), and License Condition #20 (from license modification dated June 29, 2007).

3. Air Emissions for Containers – Violation of License Conditions and Wis. Admin. Code § NR 664.0073(2)(e)

License Conditions #1 (from license modifications dated June 29, 2007 and April 15, 2020) and License Conditions #2 (from license modifications dated December 20, 2007, June 16, 2010, November 20, 2014, and April 4, 2017) require that the facility shall, among other things, be operated in accordance with the requirements of Wis. Admin. Code ch. NR 660 to 670.

Containers of hazardous wastes that have an average volatile organic concentration greater than 500ppm by weight are subject to air emissions requirements in Wis. Admin. Code § NR 664.1086. Under Wis. Admin. Code § NR 664.1086(3)(d) (2006), an owner or operator of containers using Container Level 1 controls² shall visually inspect the containers and their covers and closure devices within 24 hours of arrival at the facility. Wis. Admin. Code §§ NR 664.1088(1) and NR 664.1088(2) (2006) require the owner and operator to develop, implement, and incorporate in its facility inspection plan under Wis. Admin. Code § NR 664.0015 (2006) a written plan and schedule to inspect and monitor air emission control equipment used to comply with NR 664.1086. Records of these inspections must be kept in the facility operating record pursuant to Wis. Admin. Code § NR 664.0073(2)(e).

At the time of the inspection, Tradebe had neither a written inspection plan and schedule for Container Level 1 control inspections nor a record of inspections carried out in accordance with NR 664.1086(3)(d). See inspection report, page 7.

Failure to develop, implement a written inspection plan and schedule for Container Level 1 control inspections and incorporate that inspection plan into the facility inspection plan required under NR 664.0015 is a violation of NR 664.1088(1) and (2).

² See Wis. Admin. Code s. NR 664.1086(3) for the requirements applicable to Level 1 containers.

Failure to maintain records of inspections of Container Level 1 controls is a violation of NR 664.0073(2)(e).

Failure to operate the facility in accordance with the requirements of Wis. Admin. Code ch. NR 660 to 670 is a violation of License Conditions #1 (from license modifications dated June 29, 2007, and April 15, 2020) and License Conditions #2 (from license modifications dated December 20, 2007, June 16, 2010, November 20, 2014, and April 4, 2017).

4. Incompatible Wastes – Violation of License Condition and Wis. Admin. Code § NR 664.0017

License Condition #8 (from license modification dated April 15, 2020) and Wis. Admin. Code § NR 664.0017 (2006) require that wastes shall be separated and segregated such that any potential leakage or spillage will not combine with other incompatible wastes or materials.

At the time of the inspection, in the area set aside for lab pack containers in Area 5, one 5-gallon bucket of hydrochloric acid/sulfuric acid (profile ZA, drum number D010816409, waste number D002) was located on the same pallet next to a 5-gallon bucket of hydrogen sulfide (profile CZ6, drum number D010753291, waste number D001, D003, U135). Though individual containers may have been overpacked within the 5-gallon buckets, the terms of this License Condition are not permissive of co-locating containers of incompatible wastes on the same pallet. See inspection report, page 5.

Failure to keep incompatible wastes separated is a violation License Condition #8 (from license modification dated April 15, 2020) and of NR 664.0017.

Part 3 - Other Violations

5. Universal Waste – Violations of Wis. Admin. Code §§ NR 673.33(4)(a), NR 673.34(1), and NR 673.34(5)

Pursuant to Wis. Admin. Code § NR 673.32 (2006), Tradebe has notified as a large quantity handler (LQH) of universal waste. An LQH must follow, in part, the following requirements:

- Manage lamps in a way that prevents releases of universal waste or components of universal waste to the environment by ensuring, among other things, that containers of lamps remain closed. *See*, Wis. Admin. Code § NR 673.33(4)(a) (2006).
- Clearly label or mark universal waste batteries or containers in which the batteries are contained with one of the following phrases: “Universal Waste – Batteries,” or “Waste Batteries,” or “Used Batteries. *See*, Wis. Admin. Code § NR 673.34(1) (2006).
- Clearly label or mark universal waste lamps or containers in which the lamps are contained with one of the following phrases: “Universal Waste – Lamps,” or “Waste Lamps,” or “Used Lamps.” *See*, Wis. Admin. Code § NR 673.34(5) (2006).

At the time of the inspection, the following observations were made in Area 4 of the Tradebe facility:

- a. One 4-foot box labeled as “Universal Waste Fluorescent Lamps” was open.
- b. One 5-gallon bucket of used batteries was marked as “Lithium batteries for reclaim” and “Non-regulated Waste.” The container was not marked to indicate universal waste.
- c. One 5-gallon bucket marked as “Lithium batteries for reclaim” and “DOT Regulated Hazardous Material” was not marked to indicate universal waste.
- d. One 5-gallon bucket marked as “Lead-acid batteries for reclaim” was not marked to indicate universal waste.
- e. One 6-gallon bucket marked as “Lithium Batteries for reclaim” was not marked to indicate universal waste.
- f. One container of used lamps was marked as “Lamps for Mercury Retort” and “Non-Regulated Waste.” The container was not marked to indicate universal waste.

See inspection report, page 6.

An LQH’s failure to manage lamps such that that containers of lamps remain closed is a violation of NR 673.33(4)(a).

An LQH’s failure to clearly label or mark universal waste containers in which the batteries are contained with one of the following phrases: “Universal Waste – Batteries,” or “waste Batteries,” or “Used Batteries is a violation of NR 673.34(1).

An LQH’s failure to clearly label or mark universal waste lamps or containers in which the lamps are contained with one of the following phrases: “Universal Waste – Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s)” is a violation of NR 673.34(5).

Part 4 – Unresolved Violations Identified by WDNR in 2023

The following violations were identified by WDNR during an inspection at the Tradebe facility on March 29, 2023. These violations are to be addressed simultaneously with this current action.

6. Failure to include EPA hazardous waste numbers on Land Disposal Restriction (LDR) Notices– Violation of Wis. Admin. Code §§ NR 668.07(1)(b) and NR 668.07(2)(e)

Pursuant to Wis. Admin. Code §§ NR 668.07(1)(b) and NR 668.07(2)(e) (2006) respectively, when waste or treatment residue will be further managed at a different treatment, storage or disposal facility, when waste or contaminated soil does not meet the applicable treatment standards in NR 688.40, 688.45, or 688.49, the treatment storage or disposal facility that is sending the waste or treatment residue to the different treatment facility must comply with the notice and certification requirements applicable to generators under NR 668.07, which requires EPA hazardous waste numbers to be included on the one-time written notice the facility sends to the disposal facility.

- a. Inbound manifest 023792094JJK shipped on February 17, 2022, listed hazardous waste numbers D001, D002, D003, and F003 for line 4 on the LDR. The corresponding outbound LDR, 017668175FLE shipped on November 4, 2022, only listed two hazardous waste numbers, D002 and D003 for the matching hazardous waste on line 5 of the LDR. Analytical information indicating that the original composition was incorrect was not provided.

See October 24, 2023 Notice of Noncompliance from WDNR to Tradebe page 3.

- a. For the lab contaminated debris LDR, the waste numbers on the LDR do not match the waste numbers on the waste profile or waste determination.
- b. The waste numbers on the waste profile for the lab sample retains do not match the waste numbers on the LDR.

See June 29, 2023 Notice of Noncompliance from WDNR to Tradebe page 2.

Failure to include all EPA hazardous waste numbers on LDR notices is a violation of NR 668.07(1)(b) and (2)(e).

7. Determine if solid waste is characteristic – Violation of Wis. Admin. Code § NR 662.011(3)

Under Wis. Adm. Code § NR 662.011(3) (2006), a person who generates a solid waste, as defined in NR 661.02, must determine whether the waste exhibits one or more hazardous characteristics as identified in subchapter C of NR 661.

In the lab, the PerkinElmer Spectrometer generates spent nitric acid (pH ≤2). The spectrometer is used to analyze lab samples for the presence of hexavalent chromium. The waste determination for the spent nitric acid does not address whether this waste stream is characteristic for heavy metals or whether heavy metals are present as an underlying hazardous constituent.

See June 29, 2023 Notice of Noncompliance from WDNR to Tradebe page 2.

Failure of a person who generates solid waste to determine whether the waste exhibits one or more hazardous characteristics as identified in NR661 subchapter C is a violation of NR 662.011(3).

Part 5 - Areas of Concern (*Note: These Items Are for Informational Purposes Only*)

i. Storage of Hazardous Wastes in Accordance with Placards – License Condition #28

License Condition #28 (from license modification dated June 29, 2007) requires that placards be used to clearly identify the separate storage areas for the different types of hazardous waste stored, such as poisons, reactive, corrosive, and ignitable wastes. At the time of the inspection, Tradebe had posted placards throughout the facility. In a few instances, however, certain containers were identified with different types of hazards than the placard posted in the

storage area the container was in. Specifically, Area 5 is placarded for storage of ignitable wastes and poisons. The following containers were observed in this area:

- a. One 55-gallon metal drum (drum #D010713089) was affixed with an incoming label marked as, "Petroleum distillates" and "Ignitable." A placard indicating a flammable hazard was also on the container. The outgoing label, however, affixed by Tradebe included "D002" and "Nitric Acid." Though the container appeared actually to have contained a flammable material, Tradebe employees should have moved the container upon making the erroneous determination that the waste contained corrosive waste.
- b. One container of "Corcoat 920" (profile #1000464783) was marked as "Non-Hazardous;" however, the container was placarded as corrosive.

See inspection report, page 5.

ii. Land Disposal Restrictions (LDR)– License Condition #1 (from Modification dated April 15, 2020) and Wis. Admin. Code § NR 668.07(2)(e)

Per License Condition #1, Tradebe shall, among other things, be operated in accordance with the requirements of Wis. Admin. Code ch. NR 668. Under NR 668.07(2)(e), storage facilities that transship containers of hazardous waste through the facility must comply with the notice and certification requirements applicable to generators under NR 668.07(1).

Tradebe provided LDR notices to EPA in an email dated April 19, 2024. Each of the notices provided included the following generator certification: "This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination." Tradebe, therefore, was not required to include any other information on the LDR notice. Tradebe, however, did add information into the LDR forms. EPA observed the following omissions from that information:

- a. Failure to mark the treatability group on six LDR notices.
 - Profile # PCI-SDS4.1 associated with outgoing manifest 025058136JJK;
 - Profile # 551352 associated with outgoing manifest 025058227JJK;
 - Profile # 1000358653 associated with outgoing manifest 025058168JJK;
 - Profile # 1000377103 associated with outgoing manifest 025058263JJK;
 - Profile # 1000312525 associated with outgoing manifest 025058285JJK; and
 - Profile named Helena06 associated with outgoing manifest 025058240JJK.
- b. Failure to identify hazardous constituents for F001-F005 listed wastes on an LDR notice for profile 551352 associated with outgoing manifest 025058227JJK (ethyl acetate was not identified).
- c. Failure to identify underlying hazardous constituents on LDR notice for metal salts containing zinc and nickel for profile 1000312525 associated with outgoing manifest 025058285.
- d. Failure to identify methyl ethyl ketone as either a primary waste number (D035) or as an underlying hazardous constituent for solids containing between 0.1% and 1% MEK for profile named Helena06 associated with outgoing manifest 025058240JJK.

iii. Profiling CESQG/VSQG Wastestreams

Hazardous wastes generated by a Very Small Quantity Generator (VSQG) under NR 662.220 are not wholly exempt from RCRA regulation but are conditionally exempt from certain hazardous waste regulations. Pursuant to Wis. Admin. Code § NR 662.220(6)(a) (2006), in relevant part, one condition for exemption from full hazardous waste regulation is that the generator must conduct a hazardous waste determination in accordance with Wis. Admin. Code § NR 662.011. Waste determinations include determining applicable hazardous characteristics or listings for the wastes. Wastes generated by a VSQG that exhibit a characteristic or meet a listing are hazardous wastes. A second condition ensures proper final disposition of the hazardous waste in accordance with Wis. Admin. Code NR § 662.220(6)(e). If the generator fails to follow all the conditions for exemption, the wastestream is not conditionally exempt from regulation and is subject to full regulation as a hazardous waste.

At the time of the inspection and during a review of records provided by Tradebe by email to EPA on April 19, 2024, EPA made the following observations:

- a. In general, the Tradebe waste profile template includes the following question: “Is this waste exempt from RCRA regulation?” The question is followed by examples of wastes that may be exempt from RCRA regulation, one of which is very small quantity generator (VSQG) waste. As mentioned above, this exemption is conditional on proper waste characterization and disposal and is not a blanket exemption.
- b. On VSQG waste profile # 1000478822, the pH of the waste is identified to be greater than or equal to 12.5 in Section C (General Characteristics) of the profile. Section F (RCRA Characterization) includes an area for the identification of characteristic numbers. The area is left blank. Because the waste has a pH greater than or equal to 12.5, the waste should be identified as exhibiting the D002 characteristic for corrosivity. Section F also includes a question, “Is this a USEPA ‘Hazardous Waste’ per 40 CFR 261.3?” This question is incorrectly marked “No” on the profile. This waste is hazardous.
- c. On VSQG waste profiles # 1000476442 and # 1000467243, the pH of the wastes is identified to be less than or equal to 2.0 in Section C of the profile. Section F for the identification of characteristic numbers is left blank on both profiles. Because the wastes have a pH less than or equal to 2.0, the wastes should be identified as exhibiting the D002 characteristic for corrosivity. The question, “Is this a USEPA ‘Hazardous Waste’ per 40 CFR 261.3?” is incorrectly marked “No” on both profiles. These wastes are hazardous.

iv. Shipping VSQG Hazardous Wastes

Under Wis. Admin. Code § NR 664.0071(3) (2006), whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of Wis. Admin. Code Ch. NR 662, including, but not limited to Subchapter B – The Manifest A VSQG that elects to use a manifest must comply with the manifest requirements of

Wis. Admin. Code §§ NR 662.020 to 662.023 pursuant to Wis. Admin. Code § NR 622.220(5)(f) or (6(f)).

On January 30, 2024, Jan Air shipped waste petroleum distillates in a metal drum to Tradebe on Manifest 025302304JJK. The waste was received by Tradebe on February 14, 2024. Jan Air notified as a VSQG in RCRAInfo in 1992 and obtained the EPA ID No.: ILD984851899. One 55-gallon drum of this waste was observed during the inspection at Tradebe. The information on the generator's label on the container matched the incoming manifest and was marked with the words, "Petroleum Distillates," and "Ignitable." The container was stored in Area 5, which is placarded for storage of flammable materials. Tradebe, however, applied the incorrect wastestream profile number (1000472345 for Energy Light - notified as VSQG) and incoming manifest number (025677050JJK) to this container. Tradebe subsequently added labels that identified the waste as "Nitric Acid" with the D002 waste number. Tradebe then erroneously manifested this container off-site on Manifest 02505801JJK as Nitric Acid.

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 violation(s) have not occurred. You do not need to provide documentation regarding alleged violations that you addressed during the inspection, or post-inspection, as noted above.

Please send all information requested by this letter by electronic mail to Brenda Whitney at whitney.brenda@epa.gov and R5LECAB@epa.gov. The subject line of all email correspondence must include Tradebe's EPA Identification Number: WID988580056.

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 Brenda 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.

As mentioned above, the EPA contact in this matter is Brenda Whitney. You may contact Ms. Whitney at (312) 353-4796 or at whitney.brenda@epa.gov if you have questions about this letter. If you have questions of a legal nature, please contact Ariel MacMillan-Sanchez at (312) 353-9351 or at macmillansanchez.ariel@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
Division Director
Enforcement and Compliance Assurance Division

cc: Michael Ellenbecker, WDNR (michael.ellenbecker@wisconsin.gov)
Andrea Keller, WDNR (andrea.keller@wisconsin.gov)
Tita LaGrimas, Tradebe (tita.lagrimas@tradebe.com)